

February 10, 2017

Lieutenant General Michael T. Flynn
Assistant to the President for National Security Affairs
The White House
Washington, D.C. 20500

Dear Lieutenant General Flynn:

We write to seek your assistance in resolving an issue related to the Wassenaar Arrangement that threatens to undermine our nation's cybersecurity posture and economic competitiveness.

The Wassenaar Arrangement ("Arrangement"), named after the city in the Netherlands where it was negotiated, is composed of 41 countries that agree upon export controls on conventional arms and dual-use goods and technologies. Each country has discretion in implementing these controls under its own national laws.

In 2013, Arrangement member countries agreed to add fundamental cybersecurity technologies to their list of export controls. The goal was to prevent intrusion and surveillance technologies from falling into the hands of authoritarian regimes that have used these technologies to spy on their populations and identify political dissidents. But negotiators failed to consult with experts in the cybersecurity industry, and agreed to expansive and vague additions to the Arrangement's export control regime.

Our concern relates to the 2013 addition of "intrusion software" provisions to the Arrangement's list of dual-use goods and technologies that are subject to export control. Having examined this issue the past two years, including in a joint hearing of the House Committees on Homeland Security and Oversight and Government Reform, we have determined these provisions are not in the best interests of the United States. They are defective and must be renegotiated.

The language used by the Arrangement to restrict products and technologies that relate to intrusion software has unintended negative consequences that undermine legitimate, defensive cybersecurity activity in every U.S. industry, from energy to healthcare. For example, development and sharing of exploits among researchers or within security teams are important for identifying vulnerabilities and hardening network defenses against malicious hackers. Penetration testing tools are used for defensive purposes precisely because they allow network defenders to subject their systems to real-world conditions.

In addition to these direct effects on U.S. cybersecurity, the provisions undermine U.S. strategic economic interests. The U.S. stands only to disadvantage itself strategically and economically against foreign competitors by subjecting its firms to the administrative burden involved in applying for an export license each time they wish to conduct simple information sharing activities with international subsidiaries, partners, or clients.

The fundamental defects of the language agreed upon by the members of the Arrangement became apparent when, in 2015, the Department of Commerce issued a draft rule attempting to implement the new controls. Some of us wrote to highlight those flaws during the public comment period, and a copy of those comments is enclosed for your review. We were joined in our concerns by over 250 commenters representing a diverse array of interests, and the Commerce Department has since

committed to seeking another round of public feedback before finalizing any rule implementing the intrusion software controls.

The underlying Arrangement control needs significant changes. We expressed these sentiments in a letter to your predecessor, the Honorable Susan E. Rice, in a December 16, 2015 letter joined by a bipartisan group of 125 members of the House of Representatives. We also participated in a hearing on January 12, 2016, where we examined these issues more closely. U.S. negotiators fell short of their objective, leaving the status quo largely unchanged. We, therefore, strongly encourage the Executive Office of the President to work with the Department of State and the interagency process to ensure that changes to the provisions remain a U.S. priority. The first step it seems is to ensure that these matters are placed on the agenda for consideration during the 2017 Arrangement negotiations. Further, while carrying out these negotiations, we strongly suggest the continued involvement of cybersecurity experts whose guidance has thus far proven invaluable.

We encourage the Executive Office of the President to reconvene the interagency, including the Departments of State, Commerce, Defense, Homeland Security, and Energy, to explore changes to the underlying control groups and the definition of "intrusion software." These efforts should ensure that American companies and researchers are not unduly hampered in their pursuit of more effective and efficient cybersecurity practices and technologies. We also request that no further cybersecurity-related controls be added to the control list while the intrusion software language is being resolved. Finally, we hope you will work with the Department of Commerce to continue to forgo rulemaking on the issue during negotiations.

Taken together, these actions will strengthen our nation's cybersecurity posture and maintain American industry's edge in the cyber domain. With the deadline for proposing agenda items for consideration at the 2017 Wassenaar Arrangement negotiations approaching, your involvement is critical to make sure that this issue is properly prioritized. Please confirm whether or not the Department of State will seek changes to the 2013 control on cybersecurity intrusion and surveillance software in the Arrangement's 2017 plenary session. Given that the deadline for submission occurs this month, we request an update as soon as possible, but no later than February 17, 2017. We thank you for your leadership on this issue, and we look forward to working with you to support our nation's cybersecurity.

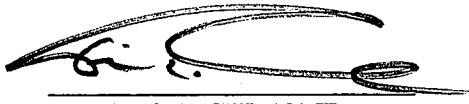
Sincerely,



JAMES R. LANGEVIN
Member of Congress

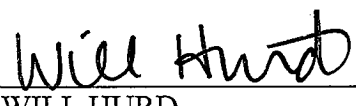

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WILL HURD
Member of Congress

cc: The Honorable Rex Tillerson
The Honorable Daniel O. Hill
The Honorable James Mattis

encl: Letter to Director Catherine Wheeler
Letter to the Honorable Susan E. Rice