

United States Senate

WASHINGTON, DC 20510

November 18, 2019

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Ross,

We write to you today about the Commerce Department's progress on a series of policy reviews mandated by the Export Control Reform Act of 2018.

As you know, the Chinese Communist Party (CCP) is engaging in a rapid military buildup in an attempt to displace the United States as the world's leading power. In order to surpass U.S. military capabilities, the CCP's strategy is to steal as much American dual-use technology as it can get its hands on. As Vice President Pence observed, "the Chinese Communist Party is turning plowshares into swords on a massive scale" using stolen American technology. The CCP has effectively fused its military and civilian industrial bases to ensure that the People's Liberation Army can rapidly develop and field cutting-edge military platforms. This strategy of "Military-Civil Fusion" is deeply concerning to Congress, as it leads to American businesses unwittingly exporting sensitive technology to our primary military competitor.

Congress passed two critical pieces of legislation to combat China's technology strategy as part of the fiscal year 2019 National Defense Authorization Act (NDAA). First, the Foreign Investment Risk Review Modernization Act (FIRRMA) updated the Committee on Foreign Investment in the United States' authority to screen foreign investments that may be harmful to our national security. Second, the Export Control Reform Act (ECRA) provided a permanent statutory authority for the Export Administration Regulations. These laws are two sides of the same coin. Both provide our government with vital tools necessary to keep sensitive, cutting-edge American technology from falling into the CCP's hands.

In September 2019, the Department of Treasury released draft regulations to implement FIRRMA. By contrast, the Commerce Department has been slow to complete a series of critical export-control reviews mandated in ECRA. Accordingly, we ask the following questions:

1. Section 1758 of the fiscal year 2019 NDAA mandates that the Commerce Department institute interim controls around emerging and foundational technologies that are essential to the national security of the United States. Disruptive technologies such as artificial intelligence and quantum computing could be key components of future warfare. We understand the technical challenges of evaluating cutting-edge technologies, as well as the staffing and institutional challenges faced by the Department of Commerce, but it is imperative that the Department act expeditiously to develop guidance around these technologies to prevent them from being exported to our military competitors.

What is the status of this review process following the open comment period on emerging technologies that closed on January 10, 2019? Has the Department of Commerce established a regular interagency working group to lead this process? Has the Department of Commerce developed a series of interim controls and worked with the Department of State to propose that these technologies be controlled by the appropriate multilateral regime, or are these technologies still being transferred as they were before the fiscal year 2019 NDAA was signed into law?

2. Section 1759 of the fiscal year 2019 NDAA mandates that the Department of Commerce conduct a review of license requirements for exports, reexports, or in-country transfers of items to countries subject to a comprehensive United States arms embargo and implement the results of this review not later than 270 days after enactment. Regimes currently under arms embargo from the United States include China, Iran, and North Korea, among others. We believe that this review should assess the CCP's attempts to circumvent the U.S. arms embargo by stealing U.S. technology with military applications and by acquiring dual-use technologies that currently fall under the threshold for control.

What is the status of this review and implementation of the results? Will this review determine specific sectors of the U.S. economy that the Chinese are targeting for espionage and forced technology-transfer efforts? Will you modify the scope of controls for military end uses and end-users in China? Will you make the results of this review public?

We urge you to conduct these mandatory reviews as quickly and thoroughly as possible. Thank you for your time and attention to this important matter of national security.

Sincerely,



Tom Cotton
United States Senator



Charles E. Schumer
United States Senator

CC:

Secretary of State Michael Pompeo

Secretary of Defense Mark Esper

Secretary of Energy Rick Perry

Assistant to the President for National Security Affairs Robert O'Brien

Acting Director of National Intelligence Joseph Maguire