

## Written evidence submitted by Kevin J. Wolf

The following are written comments submitted to the UK Parliament, Committees on Arms Export Controls, in support of the Committees' December 7, 2022 session on "Strategic Export Controls and Russia."<sup>1</sup>

**Background.** I am a partner in the international trade group of Akin Gump Strauss Hauer & Feld LLP. I am also a non-resident Senior Fellow at Georgetown University's Center for Security and Emerging Technology. I was the Assistant Secretary of Commerce for Export Administration during both terms of the Obama Administration. I have been an export control practitioner for nearly 30 years. I am a true believer in the value and use of export controls to advance and protect national security and foreign policy objectives. Thus, I am pleased to help with the Committees' efforts, particularly with respect to discussing how to make more enforceable and effective the allied export controls against Russia. The views I express today are my own.

**Content.** The written comments below are in order of the questions presented. They are quite general and based on impressions and experience. I have not curated a collection of the objective data, studies, and evidence that exist relevant to your questions. If the Committees would like me to provide follow-on evidence, analysis, and commentary to help with their efforts, I am happy to do so for the greater good.

**Scope.** Although export controls and sanctions have blended in novel ways with respect to the tools the allies have used to respond to the invasion of Ukraine, I will focus my comments today on the export control side of the issues, i.e., the regulation of exports, reexports, and transfers of military, dual-use, and commercial commodities, software, and technologies to specific destinations, end uses, and end users. These are the types of regulations that the [Export Control Joint Unit](#) (ECJU) administers in the UK and the [Bureau of Industry and Security](#) (BIS) and the [Directorate of Defense Trade Controls](#) (DDTC) administer in the US.

**Compliment the Allied Export Control Officials.** Whatever recommendations the Committees make to enhance the effectiveness of the Russia-specific export controls, any such discussions should begin with compliments to the allied export control officials. The UK's ECJU, the US's BIS, and the other allied export control authorities have accomplished an extraordinary degree of cooperation and coordination<sup>2</sup> that have not been seen since the end of the Cold War.<sup>3</sup> In particular, the allies and partner countries have agreed to a common licensing policy of denial for exports of controlled items to Russia. Until these rules, the standard had been one of "national discretion," which allows each country to make its own licensing decisions without a need to coordinate with other countries. The allies and partner countries have each also agreed to impose their own unilateral controls on items that only the United States has historically controlled. Until these rules, allies and partner countries had

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<sup>1</sup> To simplify the commentary, I implicitly incorporate Belarus whenever I refer to Russia. The export controls against Belarus are essentially the same because of its enabling of Russia's invasion of Ukraine.

<sup>2</sup> An excellent story on these efforts is at: [Exports to Russia Blocked by U.S. and Its Allies - The New York Times \(nytimes.com\)](#)

<sup>3</sup> A detailed description of the initial Russia-specific export controls and their scope is at: <https://www.akingump.com/a/web/ayCoxfB41bXG1H8Y4jUWup/3FFMet/us-government-imposes-expansive-novel-and-plurilateral-export.pdf>

been reluctant to, or did not have the legal authority to, impose controls on items that were not identified in one of the four primary multilateral export control regimes. European authorities have also led with controlling additional items the US had not historically controlled.

Indeed, the Russia-specific ad hoc plurilateral rules create a whole new paradigm, structure and purpose for coordinated export controls. That is, traditional multilateral export controls since the end of the Cold War have been focused on regulating weapons of mass destruction, conventional weapons, and the bespoke and dual-use commodities, software, and technologies necessary for their development, production, or use. In contrast, the new rules have a much broader purpose, which is the plurilateral control over exports to specific end users and the types of items important to a specific country's *strategic* economic and military objectives. Moreover, export controls are being used as, and to enhance, economic sanctions tools.

### **Question 1: What is the strategic intent of the sanctions and export controls against Russia?**

US and allied government authorities have answered this question many times in many settings, and I, of course, defer to such statements.<sup>4</sup> In sum, the strategic intent of US and allied actions is to degrade Russia's ability to wage its unjust war against Ukraine and prevent Russia from projecting military force beyond its borders. The goal of the sanctions and export controls is to have significant and long-term impacts on Russia's defense industrial base, which relies extensively on foreign-sourced items. By restricting Russia's access to categories of commodities, software, technology, and services, the UK, the US, and their allies have and will continue to degrade the Russian defense industry's ability to replace weapons destroyed in the war.

The strategic intent of the controls is not, however, to impose undue harm on the Russian people for universally needed items. This is why exports of food, medicine, and most non-luxury consumer goods are not within the scope of the controls. Indeed, one of the reasons the controls are complex and need regular tweaking is that it is quite difficult to identify and control the otherwise commercial items the Russian military needs to operate without capturing the basic consumer items that should not be controlled. When that line cannot be drawn clearly, then the UK, US, and allied controls need to focus on controls over exports of unlisted items to specific end uses and specific end users that provide support to the Russian government and military.

### **Question 2: Are Russia-specific export controls targeted against the right goods and services?**

Probably, but I also know that the process of updating the list of items important to the strategic objectives referred to in the previous answer must be ongoing. That is the nature of export controls. They are never perfect. There are always inadvertent over-controls and under-controls. There is always new information coming into officials regarding how items

<sup>4</sup> A collection of the U.S. Government's export control actions and statements is at: <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/russia-belarus>. A collection of the sanctions-specific actions is at: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>

work or are used, even when there is a clear policy objective, such as in this case.<sup>5</sup> This is why there must be robust government systems and personnel in place to enable regular and massive information-sharing among allies regarding supply chain and technology developments. There must then also be commitments among the allies to align the inevitable revisions to the controls on the lists of items covered.

**Question 3: Are the Russia-specific export controls effective? How will we know over the long-term if they have been effective? And what are your thoughts about the reports of UK and other countries' parts being found in Russian assets (acknowledging that some of the parts did not require a license)?**

Governments will need to rely on classified assessments of the controls and the war to properly answer the first and second questions. From my perspective as a compliance attorney for allied country companies and based on public information, the controls have been extremely effective. Indeed, it is almost certainly the case that the export control measures had a quicker, and will have a more significant longer-term, impact on the ability of Russia to wage its unjustified war than most of the various financial sanctions. In particular, Russia's defense industry is reliant on imported microelectronics. Since the imposition of broad UK, US, and other allied controls over even legacy semiconductors, imports into Russia from all global sources have, from public reports, significantly dropped.

The long-term impact of such controls is enhanced by the nature of Putin's Russia. It does not have an independent entrepreneurial class or the rule of law. It thus does not have a Silicon Valley or a Thames Valley. As was the case with the Soviet Union, it is dependent upon the key technology inputs from outside of Russia to function at advanced levels. This means that the effectiveness of the current controls over high- and low-tech inputs in degrading the Russian military will magnify over time – so long as the allies stay coordinated and committed to updating them, and dramatically more allied resources are dedicated to identifying, enforcing, and prosecuting violations.

With respect to the third question, I have read the referenced reports of allied country-branded basic commercial components being found in Russian military equipment. Such reports were inevitable for various reasons. There are literally hundreds of billions of semiconductors and other microelectronics in the global ecosystem being distributed and used in ordinary commercial items. The US, the UK, and the allies did not agree to comprehensive controls over such commercial items to achieve strategic objectives against Russia until after the invasion, and most such items were legally shipped before the invasion. There are still many countries with distributors of such items that have not imposed any form of informal or formal controls on exports to Russia. Although the US has imposed novel and significant extraterritorial controls over otherwise uncontrolled commercial items produced, even in part, with US-origin technology or equipment, they are extraordinarily difficult to enforce given that they apply to small, otherwise basic commercial items that are produced and shipped from countries that do not regulate such items. No other countries have imposed any material form of extraterritorial controls over items that could be subject to their long-

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<sup>5</sup> The corollary to this conclusion is that when there is not a clear policy objective for controls, then it is impossible to know whether they over-control or under-control. This is why, as allied countries move beyond classical, multilateral regime-focused export controls, it is critical that there be a clear understanding of what is meant by the "national security" objectives of the new controls. The meaning of "national security" in connection with export control objectives has evolved over the decades, and must continue to evolve. See: [https://www.uscc.gov/sites/default/files/2021-08/Kevin\\_Wolf\\_Testimony.pdf](https://www.uscc.gov/sites/default/files/2021-08/Kevin_Wolf_Testimony.pdf)

arm jurisdiction outside their territory. And, again, no export controls are ever perfect. It is impossible to staple a government enforcement official to every export of hardware, software, and technology, even with dramatically more resources for allied export control licensing and enforcement agencies. Their goal is to have as significant of an impact as possible, and to constantly evolve.

Thus, my strong counsel to the Committees and all other allied country legislative and administrative bodies is to use these reports as a catalyzing event and justification for massive increases in funding and support for allied government investigation and enforcement authorities. These and other recommendations are set out in the answers to the next question.

**Question 4: How could UK and other allied export control authorities be updated to make them more effective generally in the face of contemporary national security issues, particularly with respect to the objectives behind the Russia-specific controls?**

**Recommendation 4.1: Allied export control agencies need to have sufficient legal authorities to be nimbler.** That is, they should have the broad statutory authorities to quickly make changes to list-based, end-use, and end-user controls outside the multilateral regime structure without needing to wait for amendments to authorizing legislation or other legislative changes. This is not now the case, except in the US. I am, of course, not saying to your export control oversight committees that there should be less parliamentary oversight. Indeed, I think it is terrific that your oversight committees are devoting time to considering how export controls can be made more effective. Rather, to align controls with allies, to adapt to new information about gaps and technologies, and to fix errors and unintended impacts, export control agencies need to be able to move and move quickly outside the multilateral regime process for controls to be effective and not counter-productive. This recommendation is in line with the general principle that export controls and sanctions are administrative functions. Legislatures and parliaments are not administrative bodies and, thus, cannot move with the necessary speed to effectively address the broad policy mandates set out by legislatures and parliaments.

**Recommendation 4.2: Allied export control agencies need broad and clear statutory authorities to impose unilateral and plurilateral controls on: (i) commodities, software, and technology outside the scope of the four multilateral regime lists; (ii) specific *end uses* other than just those related to weapons of mass destruction, particularly conventional military end uses; and (iii) specific *end users* outside the scope of sanctions authorities.** With rare exceptions, the allied export control authorities outside the US are limited to regulating the export of (i) items on the multilateral regime lists, which largely exist to address non-proliferation objectives; and (ii) end uses associated with WMD, i.e., the “catch-all” controls created as part of the Enhanced Proliferation Control Initiative in the 1990’s.

As the response to the Russia invasion has shown, strategic export controls need to broadly apply to: (i) items that are not on the multilateral regime lists; (ii) end uses involving unlisted items other than just related to WMD; and (iii) specific end users, even if involving unlisted items. This recommendation goes to the fundamental point of my last set of comments below, which is that we are now, particularly with respect to issues involving China<sup>6</sup> and Russia, at

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<sup>6</sup> For additional commentary on the China-specific issue, please see, e.g., my testimony at: [https://www.uscc.gov/sites/default/files/2021-08/Kevin\\_Wolf\\_Testimony.pdf](https://www.uscc.gov/sites/default/files/2021-08/Kevin_Wolf_Testimony.pdf), client alert at: [international-trade-alert.pdf \(akingump.com\)](#), and podcast at: [170. National security, semiconductors, and the US move to cut off](#)

an inflection point in the role and purpose of export controls. This point is as significant as the policy shift from the Cold War era COCOM controls to the non-proliferation-focused regime system. Today's multilateral-regime-focused export control system that was established basically in the 1990's to address the national security issues of the immediate post-Cold War era is not sufficient to address the national security and foreign policy issues of common allied concern today. That system was created, in part, to bring post-Soviet Russia into the group of countries that could be a core member of the group of countries dedicated to common non-proliferation objectives. Russia, of course, has shown that it is not a reliable partner with any of these objectives. Yet, it still has a veto over any changes in three of the four multilateral regimes. In addition, the 1990's-era system was created at a time when most of the sensitive technologies had some sort of direct or indirect government funding, which could be used as a separate lever of control. Most potentially sensitive technologies today are created in the private sector without any government funding or involvement.

The UK and the US each have (slightly different) controls over exports of unlisted commercial items if there is knowledge they are for a military end use in a country of concern. These and other end use controls should become standard and harmonized among the allied countries with respect to Russia, China, and other countries of concern. It will always be impossible to identify all the commercial items of use to military applications. Some items are so widely available in commercial applications or available from third-country sources as to be almost uncontrollable. In such cases, regulatory controls must be imposed on the activities of companies and individuals to achieve the objective of the controls. For example, if every allied and partner country had the following end use control (and aggressively enforced it), the cause of export controls would be greatly advanced: "The unlicensed export, reexport, and transfer of commodities, software, and technology to Russia, Belarus, China, and any other country subject to an arms embargo with knowledge that such items will be for a military end use is prohibited." Any final regulation would, of course, require more regulatory detail, but this should be the essence of a common, standard catch-all prohibition to the same extent that current WMD-specific catch-all controls exist in the allied countries.

Finally, when list-based and knowledge-based end-use controls cannot be completely effective, prohibitions on shipments to specific entities are necessary to achieve policy objectives. Outside of sanctions authorities, the authority of UK and allied governments to impose such controls is limited or non-existent. The US has its Entity List. I know first-hand how carefully and aggressively most multinationals and other exporters screen their shipments against these lists. Their impact and effectiveness would be significantly enhanced, and backfill significantly reduced, if the allies each gave themselves authority to impose end user controls – and then coordinated regularly to align such lists as new information became available about which entities were providing support to Russia's invasion or undertaking other activities of common concern. As things stand now, the allies are all out of synch with one another on their end-user-based controls, which imposes unnecessary compliance burdens on compliant companies. The lists are also thus not as effective as they could be.

**Recommendation 4.3: There needs to be significantly more intra-government coordination between export control policy/licensing agencies and the agencies**

**responsible for export control enforcement.** The US BIS houses both an export control licensing and policy office and an office solely responsible for export control enforcement. No other country (except Singapore, I think) has any such similar arrangement. Rather, most countries rely on their Customs enforcement officials to enforce export controls. Customs officials are primarily trained and focused on inbound issues. Export controls are, of course, outbound focused. Given the elevated priority, national security significance, complexity, and scope of export controls, having better intra-government coordination is critical to the success of the Russia-specific and other controls. New rules without adequate enforcement are mostly meaningless. Thus, a simple structural change that could greatly enhance enforcement of export controls against Russia and other countries would be to house a significant number of experienced law enforcement agents in each allied export control agency with (i) sufficient training in export control regulations and issues, (ii) access to the applicable intelligence community information, (iii) investigative authorities, and (iv) resources to identify and assist in the prosecution of those that violate existing controls.

**Recommendation 4.4: There needs to be significantly more informal and formal coordination and information-sharing among allied export control enforcement officials.** My comments opened with a compliment for those who created the current plurilateral Russia-specific new controls. Other than ad hoc bilateral efforts, I am, however, unaware of any structures, formal or informal, to coordinate the information-sharing and capacity building that is needed among allied export control compliance and enforcement officials. Thus, I recommend that UK, US, and other allied country export control enforcement officials create robust plurilateral structures to share enforcement-related information, best practices, and resources. The benefits of such an effort to the ultimate objectives of all controls are so obvious that it is strange that it has not been done yet.

**Recommendation 4.5: Massively more funding is required for the allied export control policy and enforcement agencies.** The demands being placed on these agencies are dramatically more significant than has ever been the case. In particular, the licensing and enforcement issues are far more difficult than has ever been the case, as evidenced by your first set of questions. In both my government and industry experience, I know first-hand how underfunded the agencies are not only in the US, but also particularly in the allied countries. You are parliamentary committees with influence over recommendations for appropriations. If export controls and export control enforcement really are the priority we all believe they should be, as evidenced by your questions and this hearing, then the export control agencies need to be funded accordingly. Although this recommendation comes late in my written remarks, it is probably the most fundamental of all my comments. And I am not just referring to the usual cost-of-living adjustments to budgets. You and your counterparts in the allied countries should, respectfully, be thinking of massive increases of many multiples with entirely new visions of the agencies' abilities.

**Recommendation 4.6: Systems should be formalized to harmonize licensing policies.** Common licensing policies against Russia and other countries do little good if one ally would approve an export another would deny, all other things being equal. I am not calling for a revival of a COCOM-style requirement that allies need to get approval from one another to approve a license. That would not be practical or efficient. I am only saying that much more progress is needed among the allies at ensuring similar results for similar items, end uses, and end users.

**Recommendation 4.7: Significantly reduce unnecessary export controls among the**

**closest allies and radically simplify those that need to remain.** One of the core objectives of my time in government was the reduction of unnecessary export controls by and between close allies so that we, among other things, could focus on exports of concern to other countries of concern.<sup>7</sup> Although we largely succeeded in that effort, there are still too many unnecessary frictions on legitimate trade and investment by and among close allies. All the resources now focused on addressing outdated controls on trade among close allies should be re-directed toward addressing issues involving countries of concern, such as Russia and China.<sup>8</sup> Although a full description of what could be done next is beyond the scope of these comments, I would nonetheless bring to these Committees' attention the potential for AUKUS to be a vehicle for implementing some of these objectives. In my view, the controls by and among the US, the UK, Australia, Canada, and perhaps other close allies should be significantly fewer, harmonized, and – most importantly – radically simpler. The complexity of the current system among these countries discourages otherwise legitimate, mutually beneficial trade – even for sovereign programs. Moreover, the price and additional benefit for the creation of such a radically simpler system among the AUKUS, Canadian, and perhaps other allies could be the addition of significantly more resources to ensure that exports of controlled items from such countries to third countries would be regulated and enforced similarly.

**Question 5: What are your recommendations for how to address attempts by those in Russia and Belarus to circumvent export controls?**

I repeat my comments above about the need for dramatically more funding for allied export control policy and enforcement agencies. I do not want to be rude, but, as I have seen in both my government and industry experience, they are only a whisper of what they should be to have truly robust and effective export control systems. Do not complain about the inability of the allied export control agencies to identify and stop the diversions mentioned earlier unless the agencies are properly funded and staffed to do so. Do not complain that exporters see export control penalties just as a “cost of doing business” unless the penalties for violations are sufficiently steep and encourage robust compliance efforts. I know it may seem strange for someone now in industry who provides compliance advice to companies to call for more enforcement resources. To the contrary, greater enforcement levels the playing field between (i) the companies I work with that spend the time and money necessary to ensure as much compliance as possible and (ii) the competitors and others that do not.

**Recommendation 5.1: Train more prosecutors in how to handle and bring export control cases.** To be blunt, most companies I know of do not fear as much as they should the consequences for violating non-US export controls. There is not a history of a significant number of prosecutions for violations of export controls outside the United States. Not coincidentally, there are few prosecutors outside the US experienced in bringing and winning export control actions. There are many reasons for this, particularly that export controls are complicated and sometimes esoteric. Also, export controls used to be boring. To address these limitations with respect to actual violations, and also to help create incentives for companies to spend the time and resources to ensure compliance, allied governments should

<sup>7</sup> An early description of the Export Control Reform objectives with respect to the allies is at: <https://www.bis.doc.gov/index.php/about-bis/newsroom/speeches/speeches-2011/1345-remarks-of-assistant-secretary-kevin-wolf-at-exportkontrolltag-2011>

<sup>8</sup> Examples of the types of unnecessary export control-specific frictions that exist between and among the US and the allies are at in the last sections of this comment: <https://www.akingump.com/a/web/da8PXpEZoaPekNsTPUmfmr/011422us-euttwolfkilcreasehelderfinal.pdf>

fund, develop, and train a much larger cadre of investigators and prosecutors focused just on export control and sanctions cases.

**Recommendation 5.2: Create resources and incentives for companies to create and enhance their compliance programs.** Exporters are on the front line of export control compliance. Governments cannot do it alone. Governments should work with industry more to train export control compliance professionals. Company leaders need to commit that export control compliance is a priority, and fund their compliance programs accordingly. Consistent with the previous recommendation, they need to know that export control violations cannot just be an acceptable cost of doing business. The full scope of this recommendation would need to be addressed separately.

**Recommendation 5.3: The US, the UK, and other allies should work together to create a standard structure of export control violations.** Not all violations are equal. Some are willful and should result in criminal penalties. Others are knowing violations, but not willful, which should result in civil penalties. Others are important, but only warranting administrative actions. Governments with serious, but flexible enforcement authorities, can motivate industry compliance and better tailor penalties to the seriousness of the violation.

**Recommendation 5.4: With expanded resources, spend more time studying how Russian companies are able to legally acquire items that warrant control, and then close those gaps.** Most of the Russia-specific controls are novel. With any new regulatory system, there are always fact patterns not contemplated by the drafters of the regulations. If regulators are mostly dealing with brushfires, it is hard to spend the quality time needed to identify what changes could be made to systems to close such gaps and to think creatively. In particular, the 37 members of the ad hoc coalition should each have dedicated well-funded resources to monitor their trade data. Governments should also work more with think tanks and academic institutions to help with the data mining and analysis.

Questions they should ask and answer include: Should the UK and the allies consider their own form of extraterritorial controls? Are there countries outside the group of 37 that could still be convinced to adopt their own Russia-specific controls, if properly lobbied? Have all intelligence community resources been fully mined to identify the non-Russian commercial inputs, direct or indirect, necessary for Russian military equipment to function? Are there any red flags visible in the data on what is being exported to Russia? Do the data suggest that items are going to be transshipped to Russia or persons of interest? Are there additional IT, AI, and other data analytic tools that could be used to identify actual or potential diversions that could then be the bases for regulatory changes?<sup>9</sup>

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<sup>9</sup> This study contains some clever and novel – and resource-intensive – ideas for how to use cutting-edge AI, IT, and data analytical tools to help with enforcement, particularly in the context of making the Russia-specific controls more effective: [Improved Export Controls Enforcement Technology Needed for U.S. National Security | Center for Strategic and International Studies \(csis.org\)](https://www.csis.org/analysis/improved-export-controls-enforcement-technology-needed-for-u.s.-national-security)



**Recommendation 5.5: I would encourage the US, UK, and other allied authorities to review their Iran-specific export controls and sanctions.** The US has had comprehensive sanctions and export controls against Iran for decades. Other countries have various forms of different Iran-specific sanctions and controls. There have been media reports of Iran providing support for Russian military equipment and UAVs. I am not an expert at non-US controls pertaining to Iran, but there are apparently gaps in them that warrant being addressed.

**Question 6: Should the UK and other nations have done more in 2014 following the annexation of Crimea?**

Time travel episodes are always the most difficult ones. I was not a lead in the US Government's 2014 efforts. I was, however, involved at a sufficient enough level to conclude that we accomplished as much as possible that would be effective given the allied positions at the time. Russia did not proceed further. It agreed to the Minsk accords. By 2016, however, it became clear that the Russians were not going to abide by the agreements and would drag out implementation to buy time. So, perhaps, there should have been a second round of actions in 2016, but I am not sure if it would have made much of a difference, or if we would have had any material allied cooperation. Crimea was too distant. Also unknown is whether pushing harder then would have provoked the Russians to invade further earlier when Ukraine was not as ready to respond as it was this year.

From the US side, in addition to the plurilateral sanctions, we already essentially had an arms embargo against Russia and extremely strict dual-use licensing policies. For example, even if an item was for a civil end use, we would deny the export if the end user was involved in military activities, even indirectly. We created new unilateral Russia-specific military end-use and end-user rules for otherwise uncontrolled items,<sup>10</sup> including one specific to otherwise uncontrolled low-end semiconductors not on any regime lists.<sup>11</sup> I do not think any allies would have at the time agreed to such new military end-use and end-user controls, even if they would have had the legal authority to impose them. Later, the US also expanded a series of export controls against Russia in response to the Russian government's use of a Novichok nerve agent in the UK against a former Russian military officer and his daughter.<sup>12</sup>

In retrospect, I could have pushed harder with the allies to convince them to change their domestic laws so that they had the authorities to adopt similar military end-use and end-user catch-all controls for otherwise unlisted items and to address all the points in Questions 4 and 5. Particularly with the change in Chinese investment and civil-military fusion policies, I could have also begun to advocate then more loudly that the role and purpose of export controls needs to fundamentally evolve beyond the system created in the 1990's. I, however, left government service on January 20, 2017 with the change in administrations.

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<sup>10</sup> See, e.g., <https://www.bis.doc.gov/index.php/documents/regulations-docs/federal-register-notices/federal-register-2014/1064-79-fr-55608/file> and <https://www.bis.doc.gov/index.php/documents/regulations-docs/federal-register-notices/federal-register-2014/1032-79-fr-45675/file>

<sup>11</sup> <https://www.govinfo.gov/content/pkg/FR-2014-12-17/pdf/2014-29450.pdf>

<sup>12</sup> See, e.g., <https://www.commerce.gov/news/press-releases/2021/03/us-department-commerce-expand-restrictions-exports-russia-response>

**Question 7: Have lessons been learnt, for example around the EU sanctions exemption for contracts signed before 2014?**

Yes, those were a mistake, but the allies insisted upon them. An item of strategic significance is an item of strategic significance, regardless of when a contract was signed to export the item. This is yet another reason for my recommendation above that allied export control authorities need broad authority to create and impose new unilateral and plurilateral types of list-based, end-use, and end-user controls outside of sanctions authorities, the multilateral regimes, or the need for new legislation for each change. In retrospect, an idea could have been at the time that we would agree to more limited grandfathering provisions if we had commitments of significant new European resources being devoted to enforcing the existing controls.

**Question 8: What are your thoughts on the gifting of equipment to Ukraine, particularly with respect to transparency and governance? Also, are there sufficient mitigations in place to stop them falling into Russian hands?**

Diversion of weapons, of course, is always an area of concern, but I am not an expert in this Ukraine-specific topic. I do, however, have high confidence in the US State Department's Bureau of Political-Military Affairs and its counterparts at the Department of Defense to study and address such issues in the most effective ways possible.<sup>13</sup> I would refer you to this office for expert commentary. Remember though that, unlike other potential diversion- and proliferation-related issues when military items are sent for stockpiling, the situation here is fundamentally different given the massive rate at which the Ukrainians are clearly using the weapons provided as intended. It is not in the Ukrainian government's existential interest to allow the weapons they receive to be diverted. Also, what matters most is that the Russians are defeated on the battlefield and driven out of Ukraine. Nonetheless, I would counsel the UK, the US, and other governments to work with allies and partners in border countries to enhance border security to address such issues as they may evolve over time.

**Question 9: What are your thoughts on export control coordination with other nations, especially after the UK's withdrawal from the EU?**

The issue is not about, or affected by, whether the UK is or is not part of the EU. It is about whether allied democracies can have robust, *well-funded* formal and ad hoc systems, with sufficient domestic authorities, to create, coordinate, and enforce controls over items, end uses, and end users outside the scope of the multilateral regimes to accomplish both classical non-proliferation objectives as well as contemporary strategic objectives pertaining to Russia, China, and other countries of concern.

Unreported in the non-trade media was the almost complete failure of the Wassenaar Arrangement last week to advance either objective. In this year of all years when there should have been significant new controls on microelectronics, emerging and foundational technologies,<sup>14</sup> and other items of strategic concern, the Wassenaar Arrangement announced

<sup>13</sup> For public information on the US Government's efforts in this regard, please see:

<https://www.state.gov/securing-and-safeguarding-arms-in-ukraine/>;  
<https://www.defense.gov/News/Newsroom/Tag/215492/>; and <https://www.state.gov/latest-ukraine-updates/>

<sup>14</sup> For background on the US statutory authorities pertaining to identifying and controlling emerging and foundational technologies, see: <https://www.banking.senate.gov/imo/media/doc/Wolf%20Testimony%2006-4-19.pdf>

little more than a few grammatical changes.<sup>15</sup> You should review, in particular, the absence of changes to Category 3 (electronics) and ask your ECJU why there were so few changes – and what happened to all the other proposals the allied producer countries had informally agreed to, but which were not implemented. Remember that consensus is required by all 43 members for any changes to be announced. Although the proceedings and the votes are confidential, my guess is that the Russian delegation vetoed all the material changes.

For those who were waiting to see what would happen with the 2022 Wassenaar Arrangement Plenary session to determine whether Russia would really block progress, we now have our answer. If I were on a congressional or parliamentary oversight committee, I would cite last week's failure of the system created in the 1990's, which brought Russia into the group of countries dedicated to non-proliferation objectives, as a catalyst to create a new regime without Russia to address both (i) classical non-proliferation objectives and (ii) contemporary strategic national security objectives that are not limited to addressing the inputs for specific types of weapons. I would also add in that the new regime's mandate should include addressing contemporary human rights issues that could be addressed by export controls. (There is no regime of any sort to address human rights issues.) Although addressing China-and Russia-specific issues would be a big part of the new regime's work, it would not be solely targeted at China or Russia. The issues really are broader. In any event, to repeat – success of any sort requires the legislatures and the parliaments of the allied countries to give their export controls agencies the legal authority to create unilateral and plurilateral controls outside the scope of the current multilateral regimes.

Also, to be clear, I am not advocating that the four existing regimes be abandoned. They have had and will still have some purpose, particularly the other three. Also, most of the domestic export control regulations of the allies are based, via cross references, on the existence of the four regimes. I am also not advocating that the UK, the US, and other willing techno-democracies get sidetracked now on the details of creating a new regime, such as creating a secretariat, deciding whether the table should be round or square, or finding cities with names easier to spell than “Wassenaar.” Rather, I am strongly advocating that a small group of techno-democracies work within the ad hoc Russia-focused plurilateral arrangement that was created earlier this year to advance the issues described above – but with an eye toward formalizing a new, fifth regime system so that the benefits of the current and needed arrangements can be made more durable. As I wrote after the allied response to the invasion, the need for creating such a new regime is urgent.<sup>16</sup>

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*5 December 2022*

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<sup>15</sup> See <https://www.wassenaar.org/app/uploads/2022/12/Summary-of-Changes-to-the-2021-List.pdf>

<sup>16</sup> For more detail on the reasons for the need to create a new fifth regime among a smaller group of techno-democracies, see: <https://cset.georgetown.edu/wp-content/uploads/WorldECR-109-pp24-28-Article1-Wolf-Weinstein.pdf>