

**Statement of**  
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**Before the**  
  
**United States Senate**  
**Committee on Appropriations**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
  
**September 6, 2018**

Mr. Chairman, Ranking Member Shaheen, and Members of the Subcommittee:

Thank you for the opportunity to appear before the Subcommittee today to address the role of the Bureau of Industry and Security (BIS) within the Department of Commerce.

BIS's mission is to advance U.S. national security, foreign policy, and non-proliferation objectives by ensuring an effective export control and treaty compliance system, and by promoting continued U.S. strategic technology leadership. As the Committee is well aware, current global realities continue to keep BIS at the forefront of supporting our national defense by protecting American technology and safeguarding the U.S. defense industrial base. BIS accomplishes this through authorities granted under the Export Control Reform Act, the Trade Expansion Act, and Defense Production Act, among others. There are significant policy initiatives underway or being planned under these authorities which I am happy to discuss this morning, especially with regard to their resource impacts on BIS.

Before I proceed, I would like to take this opportunity to thank the Committee for the reprogramming authorization that has been critical to the Section 232 steel and aluminum product exclusion process. Your support has provided essential resources to assist with the demands of this activity, and we look forward to keeping the Committee updated on our work.

I. Emerging/Foundational Technologies

BIS's paramount concern is the security of the United States. Congress recently passed, and the President signed, the National Defense Authorization Act (NDAA) for Fiscal Year 2019, which included in Title 17 the Export Control Reform Act (ECRA) of 2018. Congress enacted the ECRA in part to address concerns over growing threats to sensitive U.S. technology. The ECRA provides permanent statutory authority to better regulate U.S. exports, thus helping to ensure that the U.S. maintains its technological advantage in science, engineering, manufacturing and other industries critical to our national and economic security.

Most notably, ECRA provides new authority to identify and appropriately control critical emerging technologies. The President is to direct the Departments of Commerce, State, Defense, Energy, and other agencies as appropriate to lead a regular, ongoing interagency process to

identify “emerging” and “foundational” technologies that are essential to U.S. national security and that are not currently subject to multilateral export control licensing requirements. BIS, working with these other agencies, will assess whether more restrictive controls are warranted. Such license applications would be reviewed under the well-established interagency licensing process. In fiscal year 2017, BIS processed 4,993 classification request applications and 34,142 export license applications.

The U.S. export control system is uniquely designed to identify and classify emerging technologies. The emerging technology described in ECRA complements and augments BIS’s existing authorities to control technology for national security and other reasons.

BIS is reexamining our personnel needs to accommodate the significant new responsibilities associated with the passage of ECRA. Furthermore, BIS has requested additional full-time employees for FY 2019 to deal with workload increases in other areas which I will discuss.

## II. CFIUS

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that conducts national security reviews of foreign investments in U.S. businesses. The International Trade Administration (ITA) and BIS play important roles in Commerce’s review for CFIUS. The NDAA also enacted the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which updates and modernizes CFIUS’s authority by expanding the scope of transactions that the committee may review to assess any national security concerns. In CFIUS cases where technology transfer is of concern, BIS, as the administrator of the export control system under the Export Administration Regulations, is historically called upon to apply its expertise in this arena. BIS will play an important role as we implement FIRRMA, which expands the scope of CFIUS review and allows CFIUS to take into account technology identified in the emerging technology review process I described earlier.

For a host of reasons, including technological advances and growing national security concerns, it comes as no surprise that in FY 2017 CFIUS has experienced a 45% increase in caseload work compared to FY 2016. The average number of CFIUS cases per BIS analyst has risen from approximately 17 cases in FY 2010/FY 2011 to 30 per analyst in FY 2017. As of August 16, 2018, BIS has reviewed 204 CFIUS cases in FY 2018. The resources requested in the FY 2019 Budget are essential to ensure that BIS has the capacity to complete its comprehensive review of each transaction within the established statutory deadlines and provide expert support during policy deliberations on complex cases and rigorous CFIUS reviews.

BIS’s budget request for FY 2019 includes funding for four additional employees to assist with the expanded scope and number of expected BIS CFIUS reviews. This request was based upon the increase in CFIUS case volume and complexity that existed before FIRRMA was enacted.

### III. Defense Industrial Base & Section 232 Investigations

#### a. Section 232 Investigations

On March 8, 2018, President Trump issued Proclamations 9704 and 9705, imposing duties on imports of aluminum and steel. The Proclamations also authorized the Secretary of Commerce to grant exclusions from the duties if the Secretary determines the steel or aluminum article for which the exclusion is requested is not “produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality” or should be excluded “based upon specific national security considerations.” On March 19, 2018, the Secretary issued an interim final rule setting forth the requirements that any directly affected party located in the United States, including U.S. businesses, must satisfy when submitting exclusion requests. In a proclamation issued on August 29, the President also authorized the Secretary to grant exclusions from the quantitative limitations on aluminum and steel applicable to countries exempted from the duties.

Since March, Commerce has been diligently working to implement its exclusion process to ensure that duties and quantitative limitations imposed by the President protect our national security while minimizing undue impacts on downstream American industries.

The Section 232 investigations required significant BIS staff to support all aspects of the nine-month investigations, which recommended that the President find that both steel and aluminum were being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and to implement the product exclusion process created by the President in his proclamations imposing duties on the imports of these articles. In response to the exclusion process and surge in workload, the Commerce Department has worked to increase and organize staff. For instance, BIS has hired 15 contractors, with two more currently onboarding through the contracting process. Moreover, we have received considerable additional technical assistance and personnel support from our ITA colleagues. With this additional support we have been able to accomplish the following:

- The number of requests pending in the initial review stage decreased from 9,976 on June 25 to 1,218 on September 3.
- On a weekly basis, we have been reviewing and posting about 1,700 requests and 900 objections.
- To date, we have processed 10,380 steel applications (including decisions and rejected improper submissions) and are currently processing 25,045 active steel cases.
- To date, we have processed 784 aluminum applications (including decisions and rejected improper submissions) and are currently processing 3,610 active aluminum cases.
- To date, we have posted 4,051 steel and 222 aluminum decisions.

We anticipate that the addition of authority to provide relief from the quantitative limitations will lead to more exclusion requests, further increasing the workload on BIS and ITA.

## b. Defense Industrial Base Studies

The Bureau has experienced an increase in requests for enhanced BIS industrial base surveys and analysis from multiple U.S. government agencies including the Department of Defense, the National Aeronautics and Space Administration, and the intelligence community to help support informed national defense and technology policy decisions.

Under Section 705 of the Defense Production Act of 1950 (DPA) and Executive Order 13603, the Department of Commerce is authorized to assess the health and competitiveness of the U.S. industrial base, encompassing the various technologies and supply chains necessary to ensure military readiness, emergency preparedness, and critical defense capabilities. The Office of Technology Evaluation (OTE) within BIS carries out these assessments using mandatory data collection authority, which enables industry and government agencies to share data, monitor trends, benchmark industry performance, and raise awareness of diminishing U.S. manufacturing and technological capabilities.

BIS had requested an additional \$4.171 million in the FY 2019 President's budget for Defense Industrial Base studies and additional Section 232 investigations. With these additional resources, BIS can begin to meet the growing interagency demand for detailed defense industrial base supply chain assessments, utilizing BIS's unique data collection authorities. This will enhance our ability to gather data and analyze the workforce, financial, production, and competitive challenges facing U.S. defense and high technology sector.

## c. Section 232 on Uranium

On July 18, 2018, in response to a petition request, the Secretary of Commerce initiated a new Section 232 investigation into the effects of the imports of uranium on the national security. On July 25, 2018, BIS published a Federal Register notice seeking public comment on this investigation. While we are still in the process of collecting public comments, the future workload and resource impacts of the uranium investigation and the potential for further Section 232 investigations demonstrate the importance of the President's Budget request for additional resources in 2019.

Thank you, again for this opportunity to testify. I look forward to answering your questions.