**Responses of Rich Haddock,**
**Senior Advisor**
**Barrick Gold Corporation**

**Questions for the Record**
**Of the January 31, 2024 Legislative Hearing of the**
**Energy and Mineral Resources Subcommittee**
**House Natural Resources Committee**

**On H.R. 2925, H.R. 6862, H.R. 7003, and H.R. 7004**

**February 21, 2024**

The following are responses of Rich Haddock, Senior Advisor, Barrick Gold Corporation, to questions posed for the record by Members of the Subcommittee on Energy and Mineral Resources after the Subcommittee's January 31, 2024 legislative hearing on H.R. 2925, H.R. 6862, H.R. 7003, and H.R. 7004.

**Questions from Chairman Pete Stauber**

**Question 1:** Dr. Feldgus was asked if somebody located a mining claim and just after it was included in a national park, could the locator keep the claim from becoming part of the National Park? What would be the legal status of the claim, under existing law, and under H.R. 2925?

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**Response:** Dr. Feldgus answered that the claimant in this hypothethical would have "the right to use and occupy the claim." His answer is incorrect, under existing law, or pursuant to H.R. 2925. The opportunistic claim locator in this hypothetical could not keep her claim from being included in the newly created national park. Federal lands within national parks are withdrawn from location under the mining laws. *See* 43 C.F.R. § 3811.2-2 ("The Mining in the Parks Act . . . effectively withdrew all National Parks and Monuments from location and entry" under the Mining Law). The withdrawal is subject only to "valid existing rights." *Id.* This means that to keep the claim located just before the park was established, the claimant would have to prove that the claim was "valid," i.e., that she had discovered a valuable mineral on her mining claim ***as of the date of the Park's creation***. Proving a mineral discovery requires exploration and voluminous data. Typically, that takes years of work, and millions of dollars of investment. It would be impossible to prove a mineral discovery on a claim located just before the creation of a national park, because there would be little or no exploration data to support it. The claim would be void. BLM could extinguish it.

The claim described in this hypothetical also would be void if H.R. 2925 were enacted. The Mining Regulatory Clarity Act changes nothing about how such a claim would be regarded under federal mining laws, or laws governing management of national parks. Indeed, H.R. 2925 has nothing to do with claim location or the status of claims in areas withdrawn from entry under the mining laws. All it does is re-establish the longstanding pre-*Rosemont* law that if you file a plan of operations with BLM to build a mine, you can use the surface of any of your claims ***for mining-related purposes only*** without having to prove the validity of that claim as against the United States.

H.R. 2925's savings clause, especially as amended during the markup, places this matter beyond dispute. That language now provides (in relevant part): "Nothing in this subsection— (D) limits the right of the Federal Government to regulate mining and mining-related activities (including requiring claim validity examinations to establish the discovery of a valuable mineral deposit) in areas withdrawn from mining . . . .; or (E) restores any right (including a right of entry, use, or occupancy, or right to conduct operations) of a claimant that existed prior to the date that the lands were closed to or withdrawn from location under the general mining laws and that has been extinguished by such closure or withdrawal."

Further, any "valid" claims that do survive the creation of the national park would be governed by The Mining in the Parks Act, 54 U.S.C. 100732, and regulations promulgated by the National Park Service and codified at 36 C.F.R. Part 9. Those regulations impose additional procedural and substantive requirements on all mining claims in national parks. This means that a locator may be able to prove that his claim is "valid" and keep possession of it, but he cannot keep the claim from becoming part of the new national park. Further, even

patented claims – those claims for which title has transferred from the U.S. to the claimant – are subject to The Mining in the Parks Act. NPS regulations implementing the Mining in the Parks Act "control activities within units of the National Park System resulting from the exercise of valid existing mineral rights on ***patented or unpatented claims*** . . . ." 36 C.F.R. § 9.1 (emphasis added). In other words, the Act regulates activity on all land – private and public – within the boundaries of a national park. The Park Service rules provide:

> The purpose of these regulations is to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units is preserved for the benefit of present and future generations. ***These regulations apply to all operations***, as defined herein, conducted within the boundaries of any unit of the National Park System.

*Id.* (emphasis added).

The legal status of mining claims within national park boundaries is not affected in any way by H.R. 2925.

**Question 2**: Dr. Feldgus was also asked if a nuisance claim were filed to interfere with a proposed solar project, wind project, or transmission line, could those projects be stopped or delayed under H.R. 2925 by the nuisance claim? Please explain the status of nuisance claims in this hypothetical, under existing law, and under H.R. 2925?

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**Response:** H.R. 2925 does not change the government's authority or ability to manage federal lands for solar projects, wind projects, transmission lines, or the legal status of mining claims as they may relate to these projects. Nuisance claims are already addressed under existing law, and H.R. 2925 would not make it easier or more difficult to establish a nuisance claim, or make it easier or more difficult for BLM to extinguish the nuisance claim. BLM regulations and H.R. 2925 define "occupancy" to require activities that are "reasonably incident" to prospecting, exploring, mining or beneficiating locatable minerals, and calculated to lead to the extraction and beneficiation of minerals. *See* 43 C.F.R. § 3715.2 *see also* p. 5 below. Nuisance claims cannot meet these requirements. Further, occupancy cannot occur until the miner submits a notice or plan of operations to BLM. 43 C.F.R. §§ 3715.3-1 - .3-6. H.R. 2925 does not invalidate or amend these regulations. Occupancy in contravention of these requirements would violate existing law, and the law as amended by H.R. 2925. Any claim that is not located in a good faith effort to develop a mine is void *ab initio. U.S. v. Zimmer*, 81 IBLA 41, 43 (1984). Where claims are located before lands are segregated or withdrawn, BLM can contest and extinguish such claims unless the claimant can prove he has discovered a valuable mineral on the claims. Nuisance claimants will not be able to make this showing.

- **Wind and Solar Projects**

BLM has taken specific action to address concerns about potential conflicts between mining claims and renewable energy projects. In 2013, BLM adopted rules allowing it to temporarily "segregate" lands included in a pending solar or wind energy generation right-of-way application. 78 Fed. Reg. 25204 (April 30, 2013) (regulations codified at 43 C.F.R. Part 2091). The preamble to the final rule noted that while such "situations are not common," the rule would prevent claimants from placing encumbrances on public land that might delay processing of right-of-way applications, so that no claims may be located. BLM has segregated hundreds of

thousands of acres for these purposes. See, e.g., 89 Fed. Reg. 7408 (Feb. 2, 2024) (Notice to Segregate Lands from Mineral Entry for the Proposed Libra Project in Mineral County, Nevada).

43 C.F.R. § 2804.25(f) also authorizes BLM to segregate such lands "if necessary for the orderly administration of the public lands." "Segregation" under these rules has the same effect as a withdrawal: it means that the lands segregated cannot be appropriated under the public land laws, including the Mining Law.[1] Other existing regulations allow BLM to withdraw lands in connection with various types of land disposals, including land sales, land exchanges, and transfers of lands to local governments and other entities. 43 C.F.R. Part 2300.

- **Transmission Lines**

Transmission lines – as a linear overhead feature – present a different management issue for BLM, but one that would not be affected in any way by H.R. 2925. Rights of way for transmission lines can be, and frequently are, granted to third parties over mining claims. BLM may authorize rights of way over the surface of any claims subject to "valid existing rights." 43 C.F.R. § 2805.14. Transmission lines and mining operations are compatible uses. Transmission lines may need to be moved if mineral deposits are identified and developed in an existing right-of-way. The cost of moving the transmission line would be borne by the mining claimant. We know of one gold mining project where transmission lines were moved at the miner's expense to facilitate mineral development.

With this context, it becomes clear that the question posed to Dr. Feldgus in the hearing on January 31 was not based on situations that arise frequently in the real world. And Dr. Feldgus' response – that nuisance claims could pose a real risk to renewable energy and transmission projects – reveals a lack of knowledge about his agency's experience with nuisance claims.

As documented above, BLM has concluded that conflicts between mining claims and renewable energy projects "are not common," but BLM nonetheless has addressed how it will deal with such conflicts. And transmission lines and mining claims clearly are compatible uses in the vast majority of cases. A nuisance claimant could not block a right-of-way grant for a transmission line. Additionally, the federal government knows for the most part where transmission lines are likely to be sited. Most of the major transmission line corridors on public and other federal lands in the western United States were designated by the government in 2009 pursuant to Section 368 of the Energy Policy Act of 2005. 42 U.S.C. § 15926. BLM, in consultation with other federal agencies, has recently conducted a review of these energy corridors and is in the process of amending resource management plans and preparing an environmental impact statement evaluating adjustments to the corridors. 88 Fed. Reg. 83959 (December 1, 2023).[2]

H.R. 2925 grants no new rights to a mining claimant. It *restores* rights by reversing the *Rosemont* decision, no more and no less.

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[1] BLM explained the distinction between segregations and withdrawals in the 2013 final rule preamble: "Segregations under this rule are not withdrawals. Temporary segregations are different from withdrawals in that segregations prevent certain uses of public lands for a short period of time, not to exceed four years for any type of segregation, while withdrawals are generally for longer terms (generally 20 years) and must be approved by an Assistant Secretary or a higher ranked position within the Department." 83 Fed. Reg. at 25209.

[2] More information about the corridors and the ongoing planning effort is available at BLM's landing page for the "West-Wide Energy Corridor. *See* https://corridoreis.anl.gov/, last visited on February 15, 2024.

**Question 3**: Dr. Feldgus was also asked if the holder of a group of nuisance claims could extract large sums of money from the federal government. Please explain the status of nuisance claims, under existing law, and under H.R. 2925?

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**Response:** An opportunist could locate mining claims under existing law and attempt to extract a payout from the U.S. to relinquish them, but the attempt would not be successful. The law as amended by H.R. 2925 would not change the outcome in any way. In my 30+ years working in the U.S. mining industry, I am unaware of anything like this ever happening. And H.R. 2925 does not make any changes to the law that would suddenly bolster opportunities for nuisance claimants to extract large sums of money from the federal government. All H.R. 2925 does is reverse *Rosemont* and reinstate the *status quo ante*: when a miner has progressed a mineral discovery on public lands and obtained approval of its plan of operations, the approved plan of operations can authorize use of the surface of the mining claims for mining related purposes without having to prove the validity of every claim.

We have been unable to locate any circumstance where the federal government has compensated nuisance claimants to remove them from federal lands. As noted above, any claim that is not located in a good faith effort to develop a mine is void *ab initio*; BLM can contest and extinguish it. By definition, nuisance claims are not located in a good faith effort to develop a mine. The supposed concern underlying the question to Dr. Feldgus is not rooted in any real-world scenario.

On very rare occasions, the federal government has purchased ***valid*** claims to address a particular national interest. For example, in the late 1990's the government acquired mining claims from Crown Butte Mines, Inc. near Yellowstone National Park to foreclose future mining activity near the Park and facilitate cleanup of historic mine wastes from 100+ years of past mining.[3] These were not nuisance claims; Crown Butte had invested $65 million in the New World Mine, and was moving towards production.

There also have been circumstances where the owner of mining claims sought compensation under the Fifth Amendment when lands were withdrawn and mining prohibited. However, the U.S. typically challenges such attempts, and overcoming any such challenge imposes a heavy burden on claimants. The recent (2009) segregation and withdrawal of more than one million acres of federal land around Grand Canyon National Park has generated a number of administrative and judicial challenges that illustrate how federal land managers proceed in these circumstances. One of those is the case of Vane Minerals. Vane held 678 uranium mining claims in the withdrawn area and had invested more than $8.5 million in uranium exploration. Vane brought suit in the Federal Court of Claims seeking compensation for its claims. The Court found that it could not hear the case until Vane: (1) proposed a plan of operations for uranium mining, and (2) completed a mineral examination confirming the validity of any claims. *Vane Minerals (US) LLC v. United States*, 116 Fed. Claims Rptr. 48 (2014). Doing all the work necessary to prepare and submit a plan of operations and complete a mineral examination would involve years of work and millions of additional dollars beyond those Vane already spent. That is a burden of time and expense that only viable mining projects could or would bear. No nuisance claimant would spend millions of dollars to drill and collect data trying to prove a discovery to extract money from the U.S., when the work and investment likely would demonstrate the opposite: that no mineral discovery existed and the claims were not valid. The Vane Minerals example demonstrates that even where a company

[3] William J. Clinton, Statement on Acquisition of the New World Mine (August 7, 1998) ("Today's action culminates an extraordinary collaboration by the administration, the State of Montana, Crown Butte, and conservationists to protect both Yellowstone and the economy it sustains"), available at The American Presidency Project, https://www.presidency.ucsb.edu/node/224378.

makes a significant and legitimate investment in developing a mineral deposit and seeks compensation, it must meet a high burden to overcome U.S. opposition.

In short, it is unreasonable to think that the federal government would pay for nuisance claims. We have not been able to identify any such circumstance. As the savings clause of H.R. 2925 makes clear, nothing in that legislation changes the law relative to claim location or land withdrawals in such a way as to allow or encourage nuisance claims. The status of nuisance claims remains the same under H.R. 2925.

**Question 4**: Dr. Feldgus was asked if H.R. 2925 would allow a claimant to build a house on a mining claim, occasionally pan for gold, and claim that her occupancy was part of her operation? How would this activity be treated under existing law, and under H.R. 2925?

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**Response:** Under existing law, the occupancy would be illegal and would be extinguished. BLM has the tools – and uses them – to address illegal occupancy. Under BLM's mining surface use regulations, anybody building structures (including living quarters), storing equipment, or taking any other action that disturbs the surface of the public lands must first seek and obtain BLM approval. H.R. 2925 does not change those requirements.

In 1996, in response to concern over unauthorized uses of mining claims, the Bureau of Land Management (BLM) adopted new rules addressing use and occupancy of claims under the Mining Laws. 61 Fed. Reg. 37116 (July 16, 1996) (rules codified at 43 C.F.R. Subpart 3715). In order to occupy public lands under the mining laws for more than 14 calendar days in any 90-day period, a claimant must be engaged in activities that:

1) Are reasonably incident to mining;
2) Constitute substantially regular work;
3) Are reasonably calculated to lead to the extraction and beneficiation of minerals;
4) Involve observable on-the-ground activity that BLM may verify; and
5) Use appropriate equipment that is presently operable.

43 C.F.R. §3715.2. In addition to these requirements, the occupancy must involve one or more of the following:

1) Protecting exposed, concentrated, or otherwise valuable minerals from theft or loss;
2) Protecting from theft or loss equipment which is regularly used, is not portable, and cannot be protected by means other than occupancy;
3) Protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety;
4) Protecting the public from surface uses, working, or improvements which, if left unattended, create a hazard to public safety; or
5) Being located in an area so isolated or lacking in access as to require the claimant or operator to remain on site in order to work a full shift (ordinarily 8 hours).

43 C.F.R. §3715.2-1.

Most importantly, under BLM's current regulations, the occupancy described in the hypothetical would be illegal unless the claimant first consulted with BLM explaining the need for and scope of the proposed occupancy, and then submitted either a notice or plan of operations for BLM review and approval. 43 C.F.R. §§

3715.3, 3809.11, 3809.21. The operator must also submit a reclamation plan (including removal of any structures) and post financial assurance to guarantee that the reclamation plan is implemented at the miner's expense.

Notably, the use and occupancy rules also include expedited enforcement measures. BLM may issue an immediate suspension order if use and occupancy is not reasonably incident to prospecting, mining, or processing operations; if the operator is not in compliance with all applicable Federal and State standards, including obtaining all required permits; or an immediate, temporary suspension is necessary to protect health, safety, or the environment. 43 C.F.R. § 3715.7-1. Operators who fail to comply with such an order may be subject to a civil action in federal court and BLM can demand monetary compensation for damages. 43 C.F.R. § 3715.7-2. BLM has issued 89 suspension orders since 2000 under the 3809 regulations, and 12 immediate suspension and 10 cessation orders under the 3715 regulations.[4] The data demonstrate that BLM has the authority and enforcement tools it needs to deal with unauthorized use of mining claims.

Unauthorized occupancy of claims would be treated no differently under H.R. 2925 than it is under current law. H.R. 2925, as with existing rules, allows surface occupancy only for mining-related purposes. Claimants would still have to consult with BLM before any occupancy happened, and would have to justify their proposed activities as "reasonably incident to mining" and "reasonably calculated to lead to the extraction and beneficiation of minerals." Occasional panning for gold does not meet the regulatory standard.

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The questions posed to Dr. Feldgus in the January 31 Subcommittee hearing embody some of the most extreme allegations made by opponents of the Mining Regulatory Clarity Act. Opponents complain that H.R. 2925 would open the floodgates, allowing mines in National Parks, and proliferating nuisance claims, frustrating the ability of federal land managers to protect parks and other protected places. However, when the questions are examined closely, it becomes clear that the conduct they hypothesize has nothing to do with H.R. 2925. The legislation does one thing: it reinstates the law regarding mining-related uses of mining claims on public lands that existed prior to the *Rosemont* litigation. It does not enable or incentivize nuisance claims. It does not authorize or legitimize new mining claims in national parks or other lands withdrawn from mineral entry. It does not change the fact that pre-existing mining claims in withdrawn lands survive the withdrawal *only* if the claimant can prove the claim is "valid," i.e., that it contains a discovery of a valuable mineral.

To address the concerns raised by critics, the H.R. 2925 savings clause was extensively amended at the Committee markup to make clear that the bill does not change the Mining Law's provisions regarding claim location, or authorize new mining activity in lands withdrawn from mineral entry. The savings clause should resolve concerns about abuse of H.R. 2925. It seems clear that those who continue to oppose H.R. 2925 do so because they do not want the permitting disruptions caused by the *Rosemont* case to be resolved.

**Question from Congressman Doug Lamborn**

**Question:** Mr. Haddock, Barrick Gold mines gold and copper at this time, can you talk about the hardrock mining industry and perhaps opine a little on where these minerals are going? Are they for national security assets, do they help us secure the supply chain? Are they even in support of clean energies?

[4] Interagency Working Group, Recommendations to Improve Mining on Public Lands, Sept. 2023 at p. 32.

**Response:** As you point out, Barrick produces copper and gold.

- **Copper**

We produce both copper concentrates and cathode copper. Copper concentrates are crushed rock, still in mineral form, processed to separate and concentrate the copper bearing minerals. Copper cathode is produced by leaching elemental copper from the crushed rock and then passing an electrical current through the solvent to remove the copper. Barrick sells its copper concentrate to smelter operators that are typically part of metals trading companies. Barrick sells its cathode to metals trading companies and to end users who fabricate piping, wire, and other copper products. The metals trading companies sell the copper product from Barrick's mines onward into the global copper market.

Copper produced by Barrick and sold into the market is used for all of the traditional uses of copper as well as the uses that support the transition to clean energy. Put simply, copper is the "metal of electrification." Its traditional use includes the wiring in all buildings and infrastructure, including our homes, and virtually everything that uses electricity, including automobiles and, of course, military vehicles, aircrafts, and weapon systems, making copper an obvious national security asset. It is also important to recognize that in the next 25 years, the world will need to produce the same amount of copper that has been produced over the last 5,000 years just to meet global demand.[5]

The predicted spike in copper demand – if not an immediate emergency – should be a wake-up call for U.S. policymakers. Current U.S. mineral policy is not promoting the increased development of domestic copper supplies. Copper mines, like other mines and other major infrastructure projects, suffer from lengthy, multi-layered permitting processes, policy uncertainty, and inevitable delays from litigation. There appears to be growing bipartisan agreement in Congress that permitting reform is needed, but that emerging consensus has yet to produce permitting reform legislation. These hurdles lead to uncertainty for investors about the climate in the U.S. for mine projects. The U.S. Geological Survey's recent Mineral Commodity Summaries for 2024[6] indicated that last year, the U.S. was 46 percent reliant on foreign sources of copper, which is the highest level recorded amount in the last decade. Without new domestic sources of copper, the percentage of foreign copper reliance is likely to grow.

Daniel Yergin, the Vice Chairman of S&P Global, recently summarized the increasing demand for copper, including "energy transition demand" in testimony before the Senate Energy and Natural Resources Committee.[7] A few key facts from his testimony are as follows:

1) Each electric vehicle uses two and a half times more copper than a combustion car.
2) The global demand for copper will double over the next 12 years. U.S. demand will more than double in order to meet both traditional demand and energy transition demand over the same period.
3) The U.S. energy transition demand alone will be for 2.6 million tons of copper in the year 2035.
4) The US currently relies on Chile for 60% of its copper imports. The U.S. competes with China for sourcing copper from Chile.

[5] https://www.worldbank.org/en/news/infographic/2019/02/26/climate-smart-mining
[6] https://pubs.usgs.gov/periodicals/mcs2024/mcs2024.pdf
[7] Prepared Testimony of Daniel Yergin, U.S. Senate Committee on Energy and Natural Resources, September 28, 2023.

5) There is a serious gap between projected worldwide copper supply and projected demand necessary to meet 2050 climate targets.

Other researchers have reached similar conclusions.[8]

- **Gold**

By various processes that are customized to each of our precious metals mines, Barrick produces a product called gold "doré" (pronounced "door-A."). Gold doré is a brick of gold about the size of a loaf of bread. The doré, though relatively pure, is then sent to a refinery where it is refined to 99.9% fine gold. The resulting gold bullion is sold on a global market. While major uses of gold over recent decades include use as a financial product to central banks, ETF's and similar investment mechanisms, bullion investors, or in jewelry, it is an increasingly important component of technologies that are the foundation of modern life.

Like copper, gold is one of the primary metals used as a conductor of electricity. All computers, cellphones, cars, and anything else that runs on a chip contain some amount of gold. Because gold does not corrode it is used in those connections where reliability and durability are critical. Accordingly, gold is used in various applications in spacecraft because of the extreme conditions encountered in space along with limited ability to repair/replace nonfunctioning wiring and equipment. The U.S. Space Force relies on it. Our nation's advanced weapons systems all use chips and therefore all use gold.

Gold is also increasingly used in cutting edge battery and fuel cell research and production because in certain alloy configurations it has been found to enhance battery life. Gold is used in medical technology, not just in instruments and dental applications, but in new nano-procedures for early detection and treatment of diseases, including cancer. Finally, advanced computing technologies, such as quantum computing and artificial intelligence, do and will continue to rely on gold in chips for superior conductivity, reliability, and durability.

- **Copper and Gold as National Security Assets**

As surveyed above, both copper and gold have critical uses in defense, computing, and aerospace technology, making them important as national security assets. Although gold bullion is sold on global markets, the domestic gold mining industry is an advantage and benefit to the United States. The U.S. is the fifth largest global producer, behind China, Australia, Russia, and Canada, and the Nevada Gold Mines complex in northern Nevada is the largest gold-mining complex in the world. In an emergency, the U.S. would be able to produce enough gold to meet defense and other demands.

The U.S. also has significant copper reserves, but the difficulty in permitting new copper mines, along with the predicted dramatic increase in global demand, should be a warning signal to U.S. policymakers. As copper demand rises for energy transition, economic growth, and other needs, competition for global supplies will increase, along with prices. The U.S. needs its own domestic copper supplies.

I am not an expert with respect to why, when, and how much gold central banks buy and hold to support their currencies and economies. However, I can say that historically, gold has functioned as a currency and a store of wealth, and nations – including the U.S. – continue to own gold to support currencies. Despite currencies no longer being tied to a gold standard, gold remains very attractive compared to other reserve assets. It has no

[8] *See*, McKinsey & Company, The net-zero materials transition: Implications for global supply chains. July 2023.

political risk, it cannot be debased, and it cannot be talked down in a currency war of words. Gold is not subject to cyber-attacks. Gold remains an important reserve asset – valued for its performance in times of crisis, its long-term store of value, and lack of default risk.

The current high gold prices – even as the U.S. economy grows and stock markets reach all-time high values – speak to rising global uncertainty about the future. As the U.S. Department of Commerce has recognized, "Economic security is national security."[9] Being able to produce such an important asset domestically in times of uncertainty and when global markets might be disrupted is therefore obviously important.

[9] U.S. Department of Commerce, Strengthen U.S. Economic and National Security, https://2017-2021.commerce.gov/about/strategic-plan/strengthen-us-economic-and-national-security.html, last visited February 19, 2024.