EXPORTS CONTROLS: ARE WE PROTECTING SECURITY AND FACILITATING EXPORTS?

HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE

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EXPORTS CONTROLS: ARE WE PROTECTING SECURITY AND FACILITATING EXPORTS?

THURSDAY, JULY 26, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:07 p.m. in Room B–318, Rayburn House Office Building, Hon. Brad Sherman (chairman of the subcommittee) presiding.

Mr. SHERMAN. Greetings, we are honored by the attendance of the full committee chairman and before we proceed with further business, I would like to hear what he has to say.

Mr. LANTOS. Thank you very much, Mr. Chairman, I appreciate your courtesy.

Every year, U.S. companies deliver tens of billions of dollars' worth of weapons and defense systems to foreign clients. It is our Government's job—via the Departments of Commerce and State—to ensure that such military technology does not fall into the wrong hands.

This year, for the first time, the Comptroller General of the United States has designated the Government's regulation of this deadly trade as a "new high risk area" for U.S. national security. The agencies responsible for safeguarding our vital national security are now, themselves, a risk to that security.

What is the reason for this sorry situation? The GAO has been pointing out the problems for nearly a decade. In report after report, it has noted that the State and Commerce Departments are in a state of denial about the need to adapt to new threats and new global technological challenges. These issues are particularly acute at the State Department, which has been awash in unprocessed applications for licenses to ship military equipment overseas—a whopping 10,000 of them at one point last fall. The State Department is beset by so-called managers who are, in fact, unable to manage this process. Their recommendation: Throw more money at it. I certainly support increasing the resources at the State Department for this crucial job. It is absurd in the extreme that State has only 37 licensing officers to process nearly 70,000 applications, while Commerce boasts over 70 officers for a comparatively-paltry workload of 23,000 licenses.

But increased resources alone will not fix the problem of mismanagement. Simply put, the management of arms licensing needs sustained attention and commitment by the senior leadership of

the Department of State to fix the problems—attention that has been lacking for several administrations.

The Committee on Foreign Affairs will do its part in finding solutions with or without the administration's help. This hearing is an important part of that process.

Let me be clear on two further points: First, I am not an advocate of cutting corners on national security, either to boost exports or to reduce the long line built up at the arms licensing office. The recent treaty to exempt the United Kingdom from most arms licensing requirements may or may not be a good idea—the details of this treaty have yet to be worked out. I have long supported special consideration for our closest and most reliable ally. But these types of agreements are not a panacea for reducing State's licensing workload, which is increasing by more than 10 percent every year.

Second, I will do everything in my power to preserve and expand congressional oversight over this process. I understand that the administration is preparing changes to both munitions and so-called "dual-use" licensing procedures. I strongly advise the administration to reflect on past experiences and to consult with Congress this time around—especially the Foreign Affairs Committees of the House and the Senate—before finalizing these changes.

The executive branch must treat Congress as the co-equal partner in governance that the Constitution mandates we are. But if it refuses to do so, Congress will be forced to assert its authority by less friendly means. It is the administration's choice which path we take.

Thank you, Mr. Chairman.

Mr. SHERMAN. Thank you, Mr. Chairman, for coming to our subcommittee hearing.

Last Monday, the OPIC bill passed the full House. I want to commend all the members of the subcommittee for all the hard work on that, and especially thank the full committee chairman for his efforts and his entrusting to this subcommittee the trade jurisdiction of the full committee. And I hope very much that these hearings will also lead to legislation. It may be a bit more difficult because we are not reauthorizing, and thus it is not must-pass legislation in the legislative sense of the term, but I think these hearings will illustrate that we have must-pass legislation in the sense of making our Government work better.

The purpose of these hearings is to examine U.S. export controls; we must prevent the spread of weapons and sensitive technologies to the wrong hands while at the same time allowing defense trade with our allies and non-defense items to go to all of our trading partners.

Our current export control policy was designed decades ago. Since then technology has changed, the Cold War is over, and yet our export control regime remains pretty much unchanged.

The regime resides in two key Federal agencies. The first is the State Department's Directorate of Defense Trade Controls (DDTC). This agency licenses every U.S. purveyor of munitions whether that purveyor chooses to sell abroad or not, and then issues a license for every munitions export and a separate license for any follow-up contracts for repair maintenance or whatever.

The second agency is the Department of Commerce, we have the Bureau of Industry Security, BIS, if you will, which issues licenses for the exports of certain items, non-munitions, but dual-use items to certain countries. It also affects every export of this country because before you export a paper clip you have to think, is this a dual-use item. Fortunately for the vast majority of exports, you can easily look on BIS' Web site and realize you are not required to get a license.

If we are too quick to issue licenses, bad people will get stuff they can use to blow us up. That is the obvious side. But we should also be cognizant what happens if we are too slow to approve the licenses we ought to approve.

Obviously we lose exports and jobs. We also lose revenue coming in to our high-tech and munitions companies, which they can use to spread the cost of research and development and keep America first in technology, which is so critical for our national security. And if we are too slow to issue the right licenses, we hurt our allies and their ability to maintain their militaries and their economy.

Perhaps the greatest problem in not issuing the right license or not doing it quickly enough is we create a demand for the Not-Made-in-America label, that is to say we cause customers around the world to provide the critical sales necessary to build defense industries in countries that do not share our national security concerns.

We should begin by examining the growing number of export licenses that have been piling up at State. Last year, the backlog of unprocessed licenses at DTTC reached 10,000, a number unheard of in prior years. The Bureau of Industry and Security over at the Department of Commerce is not reporting the same problems, and the numbers point to the reason why.

If you look back at this chart, you will notice that BIS processed 23,000 export control applications with a staff of 351 people. By contrast, DDTC processed, as Chairman Lantos said, over 70,000 applications with a staff of 64 people. Moreover the State Department's numbers show that license applications have grown at the rate of 8 percent or more every year for the past 4 years.

It is growing even faster now. The department expects to receive some 80,000 applications this fiscal year, a 14.3 percent increase from last fiscal year. There has been some recognition of the problem, and I commend the State Department for taking the steps to streamline some of the paperwork to electronic submission forms. However, the median processing time for a license has doubled since 2002. The agency continues to have trouble recruiting and retaining personnel including senior management and has other problems that Chairman Lantos spoke of.

When you have a projected doubling of applications over a decade and don't have more staff, you raise the likelihood of two problems: First, national security can suffer because not everyone who should be applying for a license or required to apply for a license is investigated. When they are applying for a license and not getting the attention they deserve and it also becomes increasingly easy to violate the terms of licensing agreements.

Second, you make it unnecessarily difficult, as I mentioned before, for U.S. businesses to supply our allies. One aspect of the

problem is clear, there is simply not enough personnel to handle the problem and the State Department, administration, and Congress all must share some of this blame. The administration has not asked for the money to get the job done in a timely basis. The State Department then raids the general account so that DDTC doesn't get the money that Congress intends; Congress doesn't line item DDTC. So as to prevent that raid, I see a fair number of lobbyists in this room must share some of the blame for not using some of their lobbying muscle to solve these problems. Of course I share some of this blame—until we got trade jurisdiction in the subcommittee, I had not spent a whole lot of time looking at these issues.

DDTC obviously needs a dedicated independent funding source. History has shown, as I mentioned, that the State Department cannot resist raiding these funds for other functions.

One option for us as a subcommittee is to write the appropriators and urge them in conference to subdivide the general account and provide a specific line item for DDTC. But frankly we need to look at other solutions beyond that, including the possibility of a fee-generated source of revenue to add to the fee State is now getting in order to make sure that we are not holding up billions of dollars for want of a few personnel.

We also face turf battles between State and Commerce, as GAO will note in their testimony. For example, Commerce and State have not settled which agency has control over 47 missile-related items. There is an ongoing turf war over civil aviation equipment, even though Congress specifically laid out in the Export Administration Act the provision that places certified civilian aircraft parts and components under the jurisdiction of Commerce. Congress will be asking the State Department what part of the EAA they don't understand, or whether they think Congress should amend it and reinvest that control in the State Department.

I am concerned that we are placing U.S. companies on a playing field dominated by confusion, needlessly adding to our mammoth trade deficit, and in turn creating a perverse incentive to move development and manufacturing of defense technologies overseas.

The majority of our defense related items go to long-standing allies of the United States. Sixty percent of our defense items go to these seven countries: Japan, by far the largest; Germany; the United Kingdom; South Korea; Canada; Italy; and Israel. These exports do not consist of just tanks or aircrafts or major items that are physical, but also contracts to maintain, train with, and operate the U.S. equipment and technology.

We should carefully examine multiple options, including the establishment of guidelines for average processing times, and perhaps even more importantly, to make sure that the 10 percent of the toughest cases do get processed in some expeditious manner. We should examine the appropriateness of having the maintenance and service in training contracts be subject to a license that can be applied for at the same time as the export license—that is to say, applied for way in advance of when that servicing and repair work is going to be provided.

And we should be looking, as I alluded to before, at the idea of calling upon the exporters to fund this system, so that we can have

a better-staffed system than we currently have. I realize that may not be the best approach, because every other country tries to subsidize its exports. Charging a fee to those who export is a second best solution, but it is certainly a lot better than enormous delays because that can kill a deal far more than a governmental fee.

As the GAO notes, neither Commerce nor State has made any fundamental updates to the export control systems in recent years, and each department has conducted ad hoc reviews that unsurprisingly determined there was no need to make fundamental changes. However, I believe that fundamental changes need to occur in the next few years.

I am eager to hear from all our witnesses how we can be sure we are not needlessly blocking exports and inadvertently focusing our resources on technologies that are already easily available in our international market. At the same time, I look forward to hearing whether there are times when the current system is letting deadly technologies get into the wrong hands.

I thank, for his patience, my ranking member and recognize him.

[The prepared statement of Mr. Sherman follows:]

PREPARED STATEMENT OF THE HONORABLE BRAD SHERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE

The purpose of this hearing is to examine U.S. export controls and how they are implemented. Our laws, regulations, policies, and practices in this area must effectively prevent the spread of weapons and sensitive technologies to countries, groups and individuals of concern, while at the same time allowing appropriate defense trade with our allies for their legitimate self-defense needs.

Our current export control policy was designed three decades ago in the middle of the Cold War. While subtle changes to our export control policy have been made since the fall of the Berlin Wall, there has been no concentrated effort to modernize the system to account for changing foreign policy objectives and the national interest.

We should begin by examining the growing number of export licenses that have been piling up at the State Department. Last year, the backlog of unprocessed licenses at DDTC reached 10,000[1]—a number unheard of in previous years. The Bureau of Industry and Security (BIS) at the Commerce Department is not reporting the same problems, and the numbers paint a clear picture as to why.

Last year, Commerce's BIS processed 23,673 export control applications with a staff of 351. By contrast, the State Department's DDTC processed 65,274 applications with a staff of 64.

Moreover, the State Department's numbers show that license applications have grown at a rate of 8 percent or more every year for the past four years.[2] In this fiscal year alone, the Department expects to receive more than 80,000 applications, a 23% increase from last year.

There has been some recognition of the problem, and I commend the State Department for taking steps to streamline some of the paperwork through electronic submissions forms. The median processing time for a license has doubled since 2002[3], and the agency continues to have trouble recruiting and retaining personnel, including its senior management.

Obviously, when you have a projected doubling of applications over the course of a decade and no more staff, you raise the likelihood of two problems. First, national security suffers because not everyone who should be getting a license does, and it become increasingly easier to violate the conditions of a licensing agreement. Second, you make it unnecessarily difficult for U.S. businesses to supply our allies.

One aspect of the problem is clear: there are simply not enough personnel to handle the growing demand, and the State Department, the Administration, and Con-

[1] Government Accountability Office
[2] Department of State, Budget Justification, FY 2008
[3] Government Accountability Office (GAO)

gress have either been unwilling or unable to commit the resources needed to address these challenges.

DDTC obviously needs a dedicated, independent funding source. History has shown that the State Department cannot resist raiding these funds for other functions, and it is time for Congress to take action.

There are also turf battles between State and Commerce. For example, Commerce and State have not settled which agency has control over 47 missile-related items.[4] There is also on ongoing turf war over the control of civil aviation equipment, even though Congress specifically laid out in the Export Administration Act (EAA)[5], a provision that places certified civilian-aircraft parts and components under the jurisdiction of Commerce.

I am concerned that we are placing U.S. companies on a playing field dominated by confusion, needlessly adding to our mammoth trade deficit, and creating a perverse incentive to move the development and manufacture of new defense technologies overseas.

The majority of our defense related exports are to long-standing U.S. allies like Japan (27%), Germany (8%), the United Kingdom (7%), South Korea (7%), Canada (4%), Italy (3%), and Israel (4%).[6] These exports are not just a single item like a tank or aircraft, they include the components and services necessary for our coalition partners to maintain, train with, and operate U.S. equipment and technology.

We should carefully examine multiple options including the establishment of guidelines for average processing times. We should also examine the appropriateness of bundling some of the anticipated servicing and repair parts to the initial license for a defense system.

As the GAO notes, neither the Commerce nor the State Department has made any fundamental updates to their export control systems in recent years. Each Department has conducted ad hoc reviews that, unsurprisingly, determined there was no need to make any fundamental changes.

I am eager to hear from all of our witnesses how we can ensure that we are not needlessly blocking exports and inadvertently focusing resources on technologies that are already easily available on the international market.

Mr. ROYCE. Thank you, Mr. Chairman. I think we all recognize that our enemies are conspiring to hurt us in many ways. We know hostile governments, including Iran and terrorist organizations as well, are quite determined to acquire United States military technology. Frustrating their attempts to do that is an urgent responsibility. This subcommittee has looked very closely at some real life examples of how that has been done in the past.

One case is the A.Q. Khan network. We have held a number of hearings in the last 2 years on this and we have heard about that network's sophisticated attack on export controls worldwide. They used front companies and false documentation. A.Q. Khan and his people used diversion and he ended up with the ability to sell the component parts to make an atom bomb.

Frankly, if you were Libya or North Korea or Iran at the time, this was a network to put on your payroll or trade clandestinely missile technology with and that is what happened at the time.

We can be sure from looking at that example that others out there are using similar means in seeking technology, including American technology to harm us. This makes it critical that we have in place an effective export control system. Unfortunately, we are not at that point.

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[4] Government Accountability Office, Briefing Paper Submitted to the House Foreign Affairs Committee on Terrorism, Nonproliferation and Trade, July 17, 2007

[5] Section 17 (c) of the Export Administration Act of 1979 states, in part, that "standard equipment certified by the Federal Aviation Administration (FAA), in civil aircraft and is an integral part of such aircraft, and which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under Section 28 (b) (2) [licensing requirements] of the Arms Export Control Act."

[6] Department of State, Budget Justification, FY 2008

The GAO has reported poor coordination between the Departments of State and Commerce as they control the export of military technology and dual-use items. There are persistent and problematic disputes over which export control lists particular items belong on. End-use monitoring is weak in many cases. We know it is weak in the case of China.

One expert had said, "The safety net here is full of holes." Indeed, as we will hear, the GAO has designated the effective protection of technology critical to national security as cause of immediate concern. So I commend the chairman for calling this hearing.

An effective export control system—while denying technology to those hostile—facilitates the exports of technology that poses little threat. Our national defense relies upon our technological edge. Maintaining that edge in the face of increasing global competition requires vibrant manufacturers, which requires robust exports and coordination with foreign governments and foreign companies, which is also important to our joint military operations.

At the State Department the number of export license cases are up, many of which are increasingly complex. So while we may need to commit adding resources to administrating our export controls, we have been upping those resources, filling more licensing positions. It would be more helpful to the system and reduce processing time, which have reached an unacceptable number of days, if key reforms were made. Resolving disputes over lists would be a start. We don't want to drive American manufacturers offshore because of inefficient bureaucracies.

The A.Q. Khan case also highlighted something else, the fact that many other key exporters of military use technology have weak and shoddily-enforced export controls. In this case, Europe. While some progress has been made internationally, the system is only as strong as the weakest country.

In this day of terrorism and weapons of mass destruction proliferation, it is critical that we work with others to bolster their controls of dangerous technology to minimize the chances of it falling into the wrong hands. This is a long-term project, which frankly, I think, on this subcommittee we should lead. Mr. Chairman, again, thank you for holding this hearing.

[The prepared statement of Mr. Royce follows:]

PREPARED STATEMENT OF THE HONORABLE EDWARD R. ROYCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Our enemies conspire to hurt us in many ways. We know that hostile governments, including Iran, and terrorist organizations are determined to acquire U.S. military technology. As at least one witness will testify, frustrating their attempts is an urgent matter.

This Subcommittee has looked closely at the A.Q. Khan network over the last two years. We have heard about its sophisticated attack on export controls worldwide, using front companies, false documentation and diversion. We can be sure that others are using similar means in seeking technology, including American technology, to harm us. This makes it critical that we have in place an effective export control system.

Unfortunately, we're not at that point. The GAO has reported poor coordination between the Departments of State and Commerce as they control the export of military technology and dual use items. There are persistent and problematic disputes over which export control lists particular items belong on. End use monitoring is weak in many cases, including in China. One expert has said that "the safety net is full of holes." Indeed, as we'll hear, the GAO has designated the effective protec-

tion of technology critical to national security as cause of immediate concern. So I commend the Chairman for calling this hearing.

An effective export control system—while denying technology to those hostile—facilitates the export of technology that poses little threat. Our national defense relies upon our technological edge. Maintaining that edge in the face of increasing global competition requires vibrant manufacturers, which requires robust exports and cooperation with foreign governments and companies, which is also important to our joint military operations.

At the State Department, the number of export license cases are up, many of which are increasingly complex. So while we may need to commit added resources to administering our export controls, we have been upping these resources, filling more licensing positions. It would be more helpful to the system, and reduce processing times, which have reached an unacceptable number of days, if key reforms were made. Resolving disputes over lists would be a start. We don't want to drive American manufacturers off-shore because of inefficient bureaucracy.

The A.Q. Khan case also highlighted the fact that many other key exporters of military use technology have weak and shoddily enforced export controls. While some progress has been made internationally, the system is only as strong as the weakest country. In this day of terrorism and weapons of mass destruction proliferation, it's critical that we work with others to bolster their controls of dangerous technology to minimize the chances of it falling into the wrong hands. This is a long-term project, which we should lead.

Mr. SHERMAN. Thank you, Mr. Royce. Let me now recognize the vice chair of this subcommittee, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman, and certainly welcome our distinguished panelists, we are certainly looking forward to your discussions. This is very, very important, our USS for control system.

As you may know, I represent one of the largest, and certainly the finest, rare aerospace defense technology companies in the Nation, certainly in the world, and that is Lockheed Martin in Marietta, Georgia, in my district. As such, the concerns of the industry certainly weigh heavily on my thinking on this issue. But that being said, I understand the need to keep a close watch on the items we export and to where we export them.

In the age of rapid technology development and with the numbers of dual-use items sky rocketing, we must keep items that can be turned into weapons out of the hands of potential terrorists who want desperately to kill us and destroy our way of life. That is the delicate balance that we face now, and that is why this hearing is so critical.

With that in mind, it is also important that we do not severely restrict the ability of industries to do business in a free market way. That also is extraordinarily critical.

I am concerned that any move toward a user fee to process a license might do just that. Any user fee would only create additional barriers to doing legitimate business and would almost certainly shut small companies out of the process all together and that we must not do, as these fees would be on top of already large registration fees, registration fees which recently tripled to almost $1,800.

Moreover, I feel that a fee for service system has the potential of tremendous corruption. We have all heard the horror stories about corruption in the user fee system of the FDA for drug approval. With scientists and regulators being in the pocket of pharmaceutical manufacturers. That is precisely the kind of situation we definitely want to avoid.

It would make more sense, it seems to me, to reduce the number of licenses a company has to apply for. And eliminate duplicative paperwork and registration requirements for simple things like change in a company's name.

As my time is running short, I will summarize by simply saying this, as we proceed in developing much needed reforms to the U.S. export control system, it is important that we proceed carefully, with well-thought out analysis, and in a calculated way, with all the players at the table, both industry and government, to find a mutually agreeable solution.

Finally, one fundamental issue I hope we get into today is the degree that licensing delays and the increasing backlog of pending applications, we need to determine what their impact is on the management of defense programs with our key allies and partners around the world.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. SHERMAN. I thank the vice chairman. I will just comment that any user fee is, at best, a second best solution and as the gentleman from Georgia points out may be fraught with other problems.

One problem with the existing registration fee is one flat rate for a large and small companies, and certainly any fees that come out of this subcommittee this year should be somehow a percentage of the sale, a tiny, tiny percentage of the sale, if we did anything at all, and certainly not a flat rate fee where the huge company and the small are paying the same amount.

Knowing of his advocacy for small business on this point and every other, I recognize, if he has an opening statement, the former chair of the Small Business Committee, Mr. Manzullo.

Mr. MANZULLO. Thank you, Mr. Chairman, for calling this important hearing on export controls and their impact on U.S. export control policy, the impact on U.S. national security and economic competitiveness.

As many of you know, I formed the Export Control Working Group with my distinguished colleagues, Joe Crowley and Eric Blumenauer, at the beginning of this Congress, because I was and I am still concerned that our Cold War era export control system is not working as envisioned.

I would like to speak more broadly about my concerns of our current system. I am going to focus my remarks on the area greatest for opportunity for improvement, defense trade license processing by the Directorate of Defense Trade Controls, DDTC, a concern that such an important function has historically received so little attention by the Department of State. The fundamental changes are necessary in processing licenses if our Government is to fulfill its core mission of promoting U.S. national security and foreign policy without sacrificing the defense industrial base in America's competitiveness.

These concepts are not mutually exclusive, I am not concerned about the number of licenses approved or not approved. My concerns are about the length of time it takes to process those licenses. If our allies in Europe are able to process licenses in 1 or 2 weeks, why does it take us 5 to 10 times longer?

I understand DDTC is working overtime to minimize the time it takes to process license applications, but more is necessary. Last year, there was a backlog of 10,000 licenses waiting to be processed by DDTC. It is my understanding that licensing officers worked day and night into the weekends to reduce the backlog back down to 5,000 pending licenses, which is still unacceptable. And now the backlog is back up to 7,000 licenses. Either the program is underfunded or major programmatic changes are necessary.

Currently license processing can be so slow and burdensome that U.S. suppliers are denied access to international trade opportunities because they had been seen as unreliable suppliers. Those are the losses that we can never set a dollar figure on.

Also I am concerned that scarce resources can be applied to low risk areas with particular items—particular sensitivity not receiving appropriate attention. Some of you may be wondering about the low risk areas I am referring to. One category that readily comes to mind is civil aircraft parts and components that have been certified by the Federal Aviation Administration. Aerospace manufacturers in the Northern Illinois Congressional District I am proud to represent have stated that DDTC has not applied 17C of the Export Administration Act consistently. I want testimony on that.

This provision explicitly states that all previously certified aircraft parts and components belong under the jurisdiction of the Department of Commerce. I would be interested in hearing from Mr. Padilla and Ambassador Mull regarding the Department of State's justification for not applying 17C, and therefore not following the law as intended.

This is just one example of the confusion associated with following the International Trafficking and Arms Regulations, ITAR, particularly for small manufacturers who don't have the resources to hire export compliance departments. There are many others. This lack of clarity could lead to incomplete application that can further over burden the licensing system.

Let me give you an example of the problems. This connecting cable is ITAR regulated. This one is not. The one on the left is not. This is the bad guy; the bad guy is 1 inch shorter. There has to be a way to export these things without going for a license.

These are two fasteners, the one on the right is ITAR regulated the one on the left is not even on the CCL list. This is absurd. This is why you have so many licenses. This is why there has to be a complete reorganization and restructuring of the system by which American manufacturers can be competitive, because if our guys have to go through all the licensing to sell this, foreign buyers will say. I can get that somewhere else.

In fact, we see today advertised ITAR free, come buy from us, U.S. is crazy. And we are doing it to ourselves. And so something has to be done, because I have a lot of manufacturing jobs in my district and, I just lost another plant yesterday.

As we become more and more recognized in the world as an unreliable supplier, people in Washington just look at each other and say, you know, we have got to do something about this licensing problem. Well, I want some answers today as to why this, if it falls into the hands of the enemy, I guess it could get me in prison, so I better put it in here so nobody comes around.

So if this falls in the hands of someone else, I guess I am okay with that. That is the position American manufacturers find themselves, especially the little guys, especially the little guys out there who make quality products and can't hire people to go through the weeds involved in export controls.

We have got some real enemies out there. One of the biggest enemies lies within all these regulations so that the people who made this country with their hands, the manufacturers are becoming so frustrated, some give up and many have and set up shop in Europe and in Asia. And so I look forward to the testimony.

I would also trust that the second panel would stick around and I will be watching to see if you do, to listen to the second panel of people who experienced the real life angst and grief, including the GAO people who I wish were seated with this first panel so GAO accountants could confront the people in the other agencies directly as to the inefficiencies involved and I look forward to the testimony.

[The prepared statement of Mr. Manzullo follows:]

PREPARED STATEMENT OF THE HONORABLE DONALD A. MANZULLO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Thank you, Mr. Chairman for calling this important hearing on export controls and their impact on U.S. export control policy and the impact on U.S. national security and economic competitiveness. I look forward to hearing from our distinguished panelists today.

As many of you know I formed the Export Control Working Group with my distinguished colleagues Joe Crowley and Earl Blumenauer at the beginning of this Congress because I was and still am concerned that our Cold War era export control system is not working as envisioned. While I could and would like to speak more broadly about my concerns with our current system, I am going to focus my remarks on the area of greatest opportunity for improvement, defense trade license processing by the Directorate of Defense Trade Controls (DDTC). I am concerned that such an important function has historically received so little attention by the Department of State.

I believe fundamental changes are necessary in processing licenses if the U.S. government is to fulfill its core mission of promoting U.S. national security and foreign policy interests without sacrificing the defense industrial base and America's competitiveness. These concepts are not mutually exclusive. Let me be clear, I am not concerned about the number of licenses that are approved or not approved. My concerns are about the length of time it takes to process licenses. If our allies in Europe our able to process licenses in one to two weeks, why does it take us five to ten times longer?

I understand that DDTC is working overtime to minimize the time it takes to process license applications, but more is necessary. Late last year there was a backlog of 10,000 licenses waiting to be processed by DDTC. It is my understanding that licensing officers worked day and night and through the weekends to reduce the back log down to 5,000 pending licenses—which is still unacceptable number for the backlog. And now the backlog is back up to 7,000 licenses. Clearly changes must be made in the processing of these licenses. Either the program is under-funded or major programmatic changes are necessary. I personally believe that it is both. Currently, license processing can be so slow and burdensome that U.S. suppliers are denied access to international trade opportunities because they have been seen as unreliable suppliers. Also, I am concerned that scarce resources could be applied to low risk areas with items of particular sensitivity not receiving appropriate attention.

Some of you may be wondering about the low risk areas that I am may be referring to. One category that readily comes to mind is civil aircraft parts and components that have been certified by the Federal Aviation Administration. Aerospace manufacturers in the northern Illinois Congressional district I am proud to represent have stated that DDTC has not applied 17(c) of the Export Administration Act consistently. This provision explicitly states that all previously certified aircraft parts and components belong under the jurisdiction of the Department of Commerce. I'll be interested in hearing from Mr. Padilla and Ambassador Mull regard-

ing the Department of State's justification for not applying 17(c) and therefore not following the law as intended.

This is just one example of the confusion associated with following the International Trafficking in Arms Regulations (ITAR) particularly for small manufacturers who don't have the resources to hire export compliance departments. There are many others. This lack of clarity can lead to incomplete applications that can further overburden the licensing process. If defense trade is truly a matter of national security, it is in everyone's best interest that all manufacturers understand and be able to comply with the law.

Mr. Chairman, I greatly appreciate the opportunity to issue a statement and I look forward to hearing from our witnesses.

Mr. SHERMAN. Thank you for overcoming your shyness. I also do want to point out the Export Administration Act, which both Mr. Manzullo and I cited, of course, has been allowed to lapse by Congress, but it is being kept alive in effect by Executive order, and the provisions that we both cited on civilian aircraft, I believe, are still enforced through Executive order.

With that, let me check with the gentleman from Colorado—who has just indicated that he does not have an opening statement.

We have before us three agencies, I mentioned two, the third is the Department of Defense which plays a more modest role, such a modest role that I haven't heard any criticism of the role of the Department of Defense.

I point out as we talked about turf battles, I wouldn't want to give the President any advice, but I would hope since you both work for the President, that he would get somebody in there as a referee to deal with these turf battles, and one department that has the qualifications to do that is the Department of Defense, but frankly, however, the President wants to carry out or deal with these turf battles, he ought to be doing so.

Let me introduce the woman from the not-yet-criticized agency, the Department of Defense, Mrs. Beth McCormick, Acting Director of the Defense Technology Security Administration. In this capacity, she is responsible for developing and implementing DoD technology security policies for international transfers of defense-related goods, services and technologies. Mrs. McCormick.

STATEMENT OF MRS. BETH M. McCORMICK, ACTING DIRECTOR, DEFENSE TECHNOLOGY SECURITY ADMINISTRATION, U.S. DEPARTMENT OF DEFENSE

Mrs. MCCORMICK. Thank you, Mr. Chairman. I appreciate the opportunity to be here today to talk about my role and leading my agency and the Department of Defense's role in export control.

Simply stated, the role of the Department of Defense in this regard is to support the two agencies represented to my right, Department of State and Department of Commerce. But I think my agency and the Department of Defense possess some unique capabilities to provide technical expertise, to develop and validate coalition and interoperability requirements and to provide program insight, which is necessary to insure export controls, protect national security interest, while at the same time, facilitating exports and trade, and that is an important balance that we all have to do in the job we perform.

The ultimate goal for the Department of Defense in this regard and in this process is to protect the U.S. war fighter and the coalition forces that also join us in military operations.

Within the Department of Defense, the Under Secretary of Defense for Policy has delegated to the Defense Technology Security Administration this responsibility. A couple of years ago when we had a new charter from our organization signed back in 2005, we had a new set of responsibilities laid out, I think they are a really good set of responsibilities that my agency is charged with. The first one is to preserve critical U.S. militarily technological advantages. This is important because as we go in the battlefield, we want to make sure that our coalition forces have the best equipment to fight the enemy that we face.

Secondly, we need to support legitimate defense cooperation with foreign friends and allies because, obviously, having similar equipment and working with people who are fighting with us alongside with us in the global war on terrorism is incredibly important.

Third, it is important that we assure the help of the defense industrial base.

Fourth, we need to prevent proliferation and diversion of technology that can prove detrimental to U.S. national security. So those goals of my agency, I think, it sort of shows the different balance that we have to do everyday and I take very seriously the fact that I have to try to meet each one of them. Sometimes there is inherent tension in them, but we need to do our best job to balance those goals.

My agency's contribution to technology protection comes at two ends of the export control process. First, through our participation in making recommendations to the Department of State and Commerce on what our position about licenses should be; and also, through continuous work on both national and international regimes, this is an area particularly in the international regime front is particularly important, it is important that we work with other countries to be sure we have sort of a similar, at least a harmonized approach, to export controls because obviously individuals out there are going to acquire technology where they can. It is very important that we do that, it is also important to ensure that our industry is operating on a level playing field.

So I thank you again for the opportunity to be here and I look forward to working with this committee and discussing this matter, because I think it is an area where it is important that we have a very constructive dialogue between the executive branch and legislative branch. Thank you.

Mr. SHERMAN. Thank you. And thank you for pointing out that when we do make a good export of military goods, not only do we make our allies stronger, but interoperable with us and with each other.

As I move to the second panelist on our first panel, let me point out that we are going to combine the second and third panels to try to get through by not too much after 4 o'clock p.m. today. With that, let's move to Ambassador Steven Mull. He is acting Assistant Secretary of State in the Bureau of Political Military Affairs. He is a career Foreign Service Officer who has served as U.S. Ambassador to Lithuania.

STATEMENT OF THE HONORABLE STEPHEN D. MULL, ACTING ASSISTANT SECRETARY, BUREAU OF POLITICAL–MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE

Ambassador MULL. Thank you very much, Mr. Chairman. Thanks to you and to all the committee for giving us the opportunity to come down as a group and talk about this critically important topic.

My bureau's most important job is to manage the export of our Nation's sensitive technology and equipment in a way that both protects America's national security interest and our military preeminence, but also insures a rapid military supply to our allies and partners in defending our common interest around the world, also supporting America's industrial base and economic prosperity.

This is a very fine and difficult line to walk, because these goals are often in opposition to one another. I am proud to do this job with a tremendous team of colleagues at the Directorate of Defense Trade Controls. They are an extraordinary group of people from the ranks of the civil service and foreign service and as well as some active duty military officers who the Defense Department lends to us to help carry out of this job.

Jammed, crowded, overcrowded cubicles, this team of patriots works very long hours to do its best to protect and promote America's interest. I think they have a good record of success. Our team has flagged legal diversion to sensitive night vision equipment, Black Hawk helicopter engines and unmanned aerial vehicle technologies from potential adversaries around the world. We supported very successful criminal prosecutions of these cases.

But despite this proud record, when I became acting Assistant Secretary earlier this year, it was very clear to me that our operations faced enormous and growing challenges and that continues to be true today.

Those challenges include, as you mentioned, a rapidly escalating caseload both in numbers and complexity combined with years of operating within a very tight physical environment. That has contributed to a significant increase, and to my standard, an unacceptable length of processing time in each of these cases. This increased workload has also cramped our ability to adjudicate disputes over commodity jurisdiction sufficiently quickly to assist U.S. businesses in their planning.

We have also had software problems in attempting to computerize our operations. Those problems have significantly delayed the new efficiencies that we had hoped to achieve by now. We faced gaps in the directorate senior management with the departure of one official for service in Afghanistan and the retirement of another.

And also, as you all know, the Government Accountability Office has identified the issue of export control of sensitive technology as a high risk vulnerability for the United States.

Now, in developing a strategy to respond to these mushrooming challenges, my colleagues and I have undertaken a number of measures. First, and this may sound odd coming from the lips of a government official, but we warmly welcomed the GAO investigation into our operation earlier this year. We very much look for-

ward to benefiting from the thoughtful insights and advice that I expect that Ms. Calvaresi Barr to provide in the next panel.

Internally, I also invited a team of State Department management experts who were veterans, well respected, to study our operation and to make recommendations on how we can improve our management.

Further, the directorate senior management is surveying other licensing operations in the U.S. Government for best practices. We have already greatly benefited from starting Mrs. McCormick's office at the Defense Technology Security Administration.

I have also asked my staff to begin work with the Office of Management and Budget on the possibility of using OMB's program assessment rating tool as a means of systematically addressing how we can best improve. In the meantime, we have begun implementing a number of measures that I think will significantly improve our ability to protect America's security in a more transparent, a more efficient and a more customer friendly way.

I want to extend my appreciation to the Coalition for Security and Competitiveness for its constructive suggestions which have greatly helped us in our internal review. These are the measures that we are in the process of implementing now. We are set to introduce a case management review mechanism that will immediately identify high priority cases for expedited handling, and reject those at the start of the process that pose a clear threat if approved to America's security interests.

Second, we will implement benchmarks for our case management process to adjudicate cases within 45 days, with exceptions for national security or congressional notification requirement.

Third, the Deputy Assistant Secretary for Defense Trade Controls will immediately and personally review any case related to military operations in Afghanistan and Iraq that is not completed within 7 days.

Fourth, we are about to fix the software to bring our new system on-line and that will be up and running in October, and I am very confident that that will immediately lead to increased efficiency.

Fifth, we will work with colleagues in the Commerce and Defense Department to institute a more efficient jurisdictional dispute mechanism that will need to establish deadlines.

Finally, we will continue to update our policy to reflect the changes that are underway in the global economy. Notably we will initiate a policy change, authorize employees of foreign companies for nationals of NATO and EU countries, Japan, Australia and New Zealand, to operate within the terms of licensing without having to go through further red tape and additional documentation.

We also hope that we will diminish our licensing workload and improve efficiency with Senate's ratification of the treaty President Bush recent signed with Prime Minister Blair on defense cooperation with the United Kingdom.

Finally, I want to pay special tribute to the extremely valuable partnership in Congress in managing export controls, particularly this committee's talented staff whose insight greatly informed and assists our work. In the months ahead, we hope to work with you in exploring such ideas as alternative financing mechanisms for our

operations and whether we can work together to make the notification process more transparent and more efficient for both sides.

We have a tough job in balancing America's security, alliance and commercial interest. The American people have the right to expect the very best efforts in responding to that challenge. With Congress' help, I pledge to you that is exactly what we will do, and I look forward to answering your questions, specifically about the ITAR issues that Congressman Manzullo raised as well as the EAA items about the aircraft. Thank you.

[The prepared statement of Mr. Mull follows:]

PREPARED STATEMENT OF THE HONORABLE STEPHEN D. MULL, ACTING ASSISTANT SECRETARY, BUREAU OF POLITICAL-MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE

The Department of State has been responsible for regulating defense trade since 1935, with the objective of ensuring that defense trade supports U.S. national security and foreign policy interests. The Department's primary mission in this regard is to deny our adversaries access to U.S. defense technology, yet permit appropriate defense trade with our allies and coalition partners to allow for their legitimate self defense needs and to fight effectively alongside U.S. military forces in joint operations.

This function is vested in the Bureau of Political Military (PM) Affairs' Directorate of Defense Trade Controls (DDTC), headed by a Deputy Assistant Secretary and consisting of the Offices of Policy, Licensing, Compliance, and Management. The Arms Export Control Act (AECA) and Foreign Assistance Act of 1961 are the basic legal authorities, implemented by the International Traffic in Arms Regulations (ITAR), including the U.S. Munitions List (USML). The USML covers items specially designed for military applications, and its 20 categories extend from firearms to the Joint Strike Fighter.

The administration of U.S. export controls has become increasingly complex in the post-Cold War era, particularly since the terror attacks on September 11, 2001. The emergence of a significant transnational terrorist threat using unconventional methods, coupled with globalization of the world's economies, presents challenges to export control practices developed in simpler times.

The revolution in international finance, transportation, and communications have reduced significantly the cost structure of international trade and transformed the global economy. U.S. companies are now global in nature, manufacturing an increasing amount of goods overseas and deriving an increasing percentage of revenue through overseas operations and sales. The defense industry is not immune to these changes. Globalization also is fueled by the increasingly unfettered movement and immigration of human capital across national boundaries. In the EU, for example, nationals can move freely to seek employment throughout the community. Such changes have made industry and trade more complex to understand and difficult to regulate.

Unfortunately, these same globalization trends are being distorted by international terror organizations to conduct attacks in the United States and against our friends and allies on their soil. This fact was evident on September 11, 2001 and equally linked to terror attacks in London, Madrid, and Bali. Terror organizations such as al-Qaeda and Hezbollah also seek to acquire sensitive U.S. military hardware and technology, including sophisticated night vision devices, MANPADs and components for crude weapons of mass destruction.

To combat this international terror threat, the United States has put together a coalition of nations to take the fight to the terrorists. The United Kingdom, Australia and other coalition partners are critical to U.S. efforts in Iraq, Afghanistan and against terror targets internationally. Building the partnership capacity of these nations is now a primary U.S. foreign policy and national security objective, both to allow these countries to control their territory and to ensure our partners can operate with us on the battlefield, alleviating the need for additional U.S. forces. From an export control perspective, we have no higher priority than approving licenses for coalition forces in the field in Iraq and Afghanistan.

At the same time, more traditional national security and foreign policy challenges continue to exist in terms of export control policy. China's rise as an economic powerhouse coupled with its increased military spending and recognized efforts to acquire sensitive U.S. military technology require U.S. diligence to halt U.S. military technology from fueling these trends. From a regional security perspective, the

United States also must continue to seek to restrict sensitive technology from going to Iran, other state sponsors of international terrorism, Venezuela and others.

In a June speech, the Attorney General noted the critical importance of export control enforcement to combating these threats and to counter the proliferation of nuclear weapons, their delivery systems and related technologies. The Department of Justice recently announced the appointment of the first National Export Control Coordinator to support a nationwide export enforcement initiative. The scope of the threat and the importance of this work are seen in the growth in export enforcement cases in the past few years. In FY 2006, law enforcement actions (DHS–ICE) pursuant to the AECA and the ITAR resulted in 119 arrests, 92 indictments, and 60 convictions. Many of these cases involved efforts to illegally export defense technology to China or Iran or to terrorist groups. Export controls and the Department play a key role in preventing the illegal export or diversion of militarily sensitive items to rogue states and terrorist organizations.

All of these international trends—globalization, the war on terrorism, and the shifting balance of power in Asia and other regional hot spots, are reflected directly in the export control work of the Department of State's Bureau of Political-Military Affairs. Specifically, these trends are reflected in the increasing number of licenses received by the PM Bureau and the value of overall licensed trade. In FY 2007, the PM Bureau expects to license up to $100 billion in authorized exports. On a year-to-year basis, the number of application received have increased at an eight percent pace, with total licenses completed by the Bureau anticipated to rise from 66,000 in FY 2005 to up to an estimated 80,000 in FY 2007.

Not only is the licensing volume and dollar value rising, the complexity of license applications also is increasing, particularly in the area of Technical Assistance Agreements (TAA)—the export of defense technology and services, which includes furnishing assistance to a foreign person in the design, development, and production of defense articles. Such agreements reflect the complexities inherent in globalization, with such applications including multiple countries and third country nationals, as well as complex flows of technology transfers. In FY 2006, more than 7,000 TAAs were received and the value of defense services provided with such agreements is roughly equal to or greater than the value of hardware exports. We refer nearly all such agreements to the Department of Defense's Defense Technology Security Administration for review to ensure the proposed activities are consistent with our national security interests.

This added complexity and increased volume of licenses has led to an increase in the number of license application the PM Bureau is working. At the beginning of FY07 DDTC had over 10,000 pending applications, but by January 2007 the number was reduced to approximately 5,200. We currently have approximately 7,200 pending applications, with 567 over 60 days old. It should be noted there always will be a significant number of cases in the processing pipeline (this simply reflects the hundreds of new applications we receive daily) and some cases will be difficult from a national security and foreign policy perspective.

To deal effectively with the increasing license volume, the Department is exploring policy initiatives to manage the risk of more expeditiously licensing military hardware to U.S. allies, as well as taking internal steps to facilitate the processing of licenses. We expect these efforts to allow us to use our resources more efficiently to focus on restricting U.S. military technology from potential U.S. adversaries.

A prime example of the former is the U.S.–UK Treaty on Defense Cooperation, which was signed by President Bush and Prime Minister Blair in June 2007. This treaty recognizes the UK as our closest ally and one of our largest defense trade partner and will permit without prior written U.S. authorization the export of USML items, with certain exceptions, to the United Kingdom for the following purposes: (1) combined U.S.–UK military and counter-terrorism operations, (2) joint research, development and production projects, (3) UK only projects for end-use by the UK military and (4) items for the end-use of the U.S. military. The department will maintain its authority of which end-users can have access to USML items under the treaty in the UK by vetting and approving an approved community in the UK. In addition, the UK has agreed to make USML items exported under the treaty subject to the UK Official Secrets Act, which will prevent re-exports and re-transfers of such items outside the approved community without U.S. approval. The Administration is preparing to provide the Treaty to the Senate for advice and consent, and hopes that the Congress will strongly support this initiative.

The U.S.–UK Treaty is a good example of the Department managing risk to fulfill its dual obligations to build partnership capacity and to protect U.S. military technology via exports controls. In the past two years the Department has processed roughly 14,000 license application for the United Kingdom, with only 18 licenses denied, none of which were for exports to the UK government. Given these facts, we

are comfortable with creating a license free zone for mutually agreed projects with the UK. Among the benefits we expect to see from implementing this Treaty is a reduction in the overall growth rate in license applications received.

The Administration also is reviewing the recommendations put forward by the Coalition for Security and Competitiveness.

In the Department's continuing review of export control policy, the PM Bureau also is initiating changes to manage export control risk. Let me briefly mention three of these. First, I have asked the Deputy Assistant Secretary for Defense Trade Control to institute a mandatory DAS-level review of any OIF or OEF case that is pending for greater than seven days. Second, we will shortly commence with the concurrent review of TAA applications with DOD, which we expect to expedite the review of such items. Third, we are set to initiate a policy change that will permit employees of foreign companies who are nationals from NATO or EU countries, Japan, Australia and New Zealand to be considered authorized under an approved license or TAA. This will alleviate the need for companies to seek non-disclosure agreements for such nationals and recognizes the low risk to of transferring technologies to nationals of these countries under an approved license or TAA.

The Administration values Congress's role in the consideration of U.S. munitions exports. The AECA requires advance notification to Congress if a proposed license exceeds a certain value. For NATO, Japan, Australia and New Zealand, the thresholds are $25 million for Major Defense Equipment (MDE) and $100 million for all other defense articles and services, and the notification period is 15 days. For all other countries, the thresholds are $14 million for MDE and $50 million for all other exports, and the notification period is 30 days. Small arms exports over $1 million must also be notified to Congress, as well as all overseas manufacturing agreements for Significant Military Equipment, regardless of value. The AECA allows both houses of Congress to enact a joint resolution prohibiting the export within the 15/30 day notification period.

The Department would ask the HFAC and other committees of jurisdiction take a close look at several areas that would help the Executive Branch manage the risk of facilitating defense trade with partners and allies, while continuing to restrict U.S. military technology from reaching potential competitors and enemies. For example, the Congress may wish to consider raising the dollar reporting threshold for Congressional notifications.

In the end, U.S. export control policy is designed to enhance our national security and foreign policy interests, which of course include protecting sensitive technology and preserving our economic strength and industrial base. Those two standards are sometimes in conflict. What we as your government owe the American people is designing a system that adjudicates such conflicts efficiently and transparently. We hope, with your help and support, to reform our system with that goal in mind in order to protect our national interest.

Mr. SHERMAN. Ambassador Mull is not only a wildly fun experience for a State Department official whose office has a huge backlog to come testify before our committee. Just thank God you are not involved with passports.

Finally, we have the Honorable Christopher A. Padilla, the Assistant Secretary of Commerce for Export Administration. He is responsible for developing and implementing U.S. policies governing the export of items controlled for national security, foreign policy and nonproliferation reasons, except for, of course, those items subject to the State Department. Mr. Padilla.

STATEMENT OF THE HONORABLE CHRISTOPHER A. PADILLA, ASSISTANT SECRETARY, BUREAU OF INDUSTRY AND SECURITY, U.S. DEPARTMENT OF COMMERCE

Mr. PADILLA. Thank you, Mr. Chairman, Mr. Royce, members of the subcommittee, I very much welcome your interest in this topic. Your hearing today asks an important question, do our export controls protect our security while facilitating exports, and I believe the answer is yes, and I am pleased to explain the Commerce Department's role in that process. The Commerce Department is responsible for the control of the export of dual-use goods, which are

those that are primarily for civilian uses but that could be used for military purposes.

Now, a prime example of that is this product, which is a triggered spark gap—it looks like an oversized spool of thread that used to go on my mother's old sewing machine. In fact, it is a high speed electrical switch capable of generating synchronized very high voltage electronic pulses. It can be used in medical devices to help break up kidney stones; it can also be used to detonate nuclear weapons.

The Commerce Department's role in controlling the export of products like this is primarily implemented through a licensing system. In fiscal year 2006, we processed nearly 19,000 export licenses and an additional 4,700 requests for commodity classifications valued at $36 billion. That is the highest number of applications that we reviewed in over a decade. Nearly all of those applications were referred for review to the Departments of State, Defense and, in some cases, the Department of Energy and the intelligence community for review. But even with all of this careful review, we are reaching, I believe, in the Commerce Department system, new heights of efficiency.

Through June 30th of this year, the average license processing time has dropped from 34 days, which we had in the last fiscal year on your chart, to 29 days. And we certainly hope to maintain the 29 or 30 days at the conclusion of this fiscal year. That is down from 40 days in fiscal 2001. So while the number of export license applications at the Commerce Department is up 74 percent since the beginning of Bush administration, our processing time, on average, is down 28 percent.

I think, Mr. Chairman, if you ask the exporting community you would find that the opinion of our process is that it generally is adequately staffed, that it works with relative efficiency, a clear dispute resolution process and a focus on customer service through extensive training programs and on-line services.

Although the dual-use system operates reasonably effectively, it was designed for the Cold War, as Mr. Manzullo said, and it needs updating.

First, we need to focus our controls not just on countries of concern, but now also on customers of concern, and that is because terrorists and proliferators don't operate conveniently within the borders of certain countries, they operate across borders. And export controls focused on customers of concern will help us keep dangerous products out of their hands.

Another challenge we face is that our relationship with emerging powers are not as simple or black and white as our relationship was with the Soviet Union. There is no better example of this than China, which is neither our adversary nor our ally. And to reflect this, our export controls on China seek to permit legitimate civilian trade while prudently hedging against the uncertainties of a significant Chinese military expansion.

In response to these challenges, the Commerce Department is making a number of changes. First, we are moving away from looking at only countries of concern toward customers of concern. And to do that we have to tell exporters more about who the good guys and the bad guys are. We are doing that for things like the vali-

dated end-user program, which will tell exporters who the trusted customers are in certain countries, and we are also expanding our entity list, which is our bad guy list and expanding our ability to put companies on there if they are engaged in terrorism-related activities or conventional arms proliferation.

We also need to continue to make improvements in our licensing process. We recently deployed a simplified on-line export application system so that now everything can be submitted electronically; we are about to completely phase out paper-based licensing at the Commerce Department.

Finally, Mr. Chairman, we need to make sure that controls keep up with technology. An excellent example I brought with me today are these thermal imaging cameras, these cameras take a thermal image of whatever you point them at. This one seems to be reading only red at the moment, which is because the cap is on. I can see Ambassador Mull here, he is looking relatively warm.

Mr. SHERMAN. We will monitor his temperature through the hearings. Whichever Member of Congress creates the highest temperature gets the award for today.

Mr. PADILLA. This is a product that actually is a commercial product. These are used in firefighting, to look for fires in buildings, they are used in search and rescue to search for children lost in the woods, or preventive maintenance—you point them at a boiler to see where steam might be leaking. Yet this product requires a license from the Commerce Department to go to any country virtually in the world. We export these principally to Europe, Japan and Australia. We issue more licenses every year from the Commerce Department for this commodity than for any other single item on the Commerce Control List.

Yet this camera, which also has the lens cap on does the same thing, made in China, with French parts and components and it has the same, actually slightly more advanced technological capability than this one. Chinese product can go anywhere in the world without a license, and we are issuing about 2,500 licenses a year for this one. We know that is a control that needs to be updated. We have agreed among agencies that controls on these types of very low level cameras do need to be updated.

Now we are working to finalize how we do that without releasing higher level technology that could be used by terrorists as night vision devices.

So to sum up, Mr. Chairman, this is not easy, it is an exercise in drawing lines, we could certainly use a renewed Export Administration Act in helping us to draw those lines, bringing clarity to things like the control of civil aircraft. We welcome the recent recommendations of the industry coalition on security and competitiveness. We appreciate the Export Control Working Group with Mr. Manzullo, Mr. Crowley and Mr. Blumenauer. I have met with them a couple of times. The task is complex but I believe working with Congress we can continue to update our controls to meet the security needs of the 21st Century. Thank you.

[The prepared statement of Padilla follows:]

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER A. PADILLA, ASSISTANT SECRETARY, BUREAU OF INDUSTRY AND SECURITY, U.S. DEPARTMENT OF COMMERCE

Chairman Sherman, Ranking Member Royce, Members of the Subcommittee:

The title of today's hearing asks an important question: are our export controls protecting security and facilitating exports? I believe that the answer is absolutely yes, and I am pleased to have the opportunity to appear before you today to discuss this critical role that export controls play in America's national security and economic well-being.

America's future security and prosperity depend on our ability to control the proliferation of sensitive technologies that can be used for nefarious purposes while ensuring continued U.S. competitiveness in the global economy. The Commerce Department's Bureau of Industry and Security (BIS) plays a key part in this effort by maintaining and strengthening an effective dual-use export control system. Dual-use technologies are those items—commodities, software, and technologies—that are primarily for civilian uses, but that also can be used for military purposes or to build weapons of mass destruction. A good example is this triggered spark gap. Triggered spark gaps, which resemble empty spools of thread, are in fact high-speed electrical switches capable of sending synchronized, high-voltage electronic pulses. They have two principal uses: to break up kidney stones and to detonate nuclear weapons.

BIS carries out its critical mission primarily through the regulation and licensing of dual-use exports from the United States. In Fiscal Year 2006, BIS processed 18,941 export licenses valued at $36 billion. This marked a 13 percent increase over Fiscal Year 2005 and represents the highest number of applications reviewed by the Bureau in over a decade. Yet even as the Commerce Department reviews more license applications, we are doing so more efficiently. In Fiscal Year 2006, average processing time for dual-use licenses—including full interagency review—was 33 days. Through June 30 of the current fiscal year, the average licensing processing time has dropped to 29 days. That's down from 40 days in FY 2001. So while the number of license applications is up 74 percent, processing time is down 28 percent since the beginning of the Bush Administration.

One reason for this efficiency is a well-understood process, well-administered under the terms of a 1995 Executive Order. The vast majority of license applications received by the Commerce Department are referred to the Departments of State, Defense, and Energy and the Intelligence Community for review. This system ensures that the relevant agencies review and provide input into the licensing process, and that the Intelligence Community provides critical intelligence on end-users and uses. Guided by the 1995 Executive Order, this licensing system has worked well. We operate under clear time frames for reviewing and referring licenses and have a clear escalation and dispute resolution process when agencies disagree.

CHANGING NATURE OF THE INTERNATIONAL SYSTEM

Although the dual-use regulatory system operates effectively, the system itself was designed to meet the challenges of an earlier era when there was a clear international consensus on the security threat facing the United States and its allies. During the Cold War, it was sufficient for export controls to focus almost exclusively on countries: exports to the Soviet Union and Warsaw Pact were broadly restricted, regardless of the customer.

Today, the threats are different and, in many cases, more diffuse. As a result, our current export control system must now cope with four broad challenges:

First, states no longer constitute the sole threat to our national security. Today, we face sub-state actors such as terrorists and proliferators who are capable of inflicting great harm on our country. These terrorists and proliferators do not wear uniforms, do not advertise their intentions, and are not limited in their quest for deadly weapons—including WMD—by a country's borders. They operate within and across states, even within the open societies of friendly nations, as recent events in Britain, Canada, and Spain clearly indicate. As the recently released National Intelligence Estimate noted, terrorists have shown continued strong interest in attempting to acquire chemical, biological, radiological, or nuclear materials. Export controls are an important tool in the fight against terrorism.

Second, America's relationships with emerging powers are more complex and multifaceted than ever before. With only a few exceptions, the United States can no longer broadly restrict all trade to targeted countries. Instead, our export control system must be able to promote trade and peaceful development, while at the same time addressing the national security issues posed by rapid foreign military buildups. Nowhere is this more evident than in the case of China. As President Bush has said, the United States welcomes the growth of a peaceful and prosperous China, and our policy is to encourage China to become a responsible stakeholder in

the international system. This means working to expand and promote legitimate civilian trade, while prudently hedging against the uncertainties of a significant military expansion program in China. Our export controls must therefore distinguish between civilian and military customers within the large and diverse Chinese economy.

Third, the globalization of research and development and the rise of new economic competitors challenge U.S. competitiveness. As a result of an unprecedented increase in the cross-national flow of goods, services, capital, and technology over the last three decades, U.S. companies now have access to billions of new customers. At the same time, our companies face the ever-growing challenge of operating profitably in a competitive global market. Export controls must not place an undue burden on U.S. companies, thereby undermining America's economic and technological competitiveness.

Finally, national perceptions of security risks are no longer as consistent among the United States and its partners as they were during the Cold War. At that time, under the Coordinating Committee on Export Controls, or COCOM, the United States and its allies broadly restricted most exports to the Soviet Union and Warsaw bloc. Any member of COCOM could veto the sale or export of dual-use items by another COCOM member. Today, while members of the multilateral export control regimes coordinate on common control lists and on certain regulatory policies, there are disparities between the implementation of U.S. export controls and those of our allies.

The Commerce Department continues to effectively administer and enforce the dual-use export control system. However, we must at the same time address these four challenges by adapting and updating the dual-use export control system. An important part of this is renewal of the Export Administration Act (EAA). The Administration has been working with Congress to renew the EAA since its lapse in 2001. The Administration recently proposed legislation, the Export Enforcement Act of 2007, to renew the EAA and to address a few key enforcement issues vital to national security. This bill would give BIS the solid legal and statutory basis to oversee the dual-use export control system and strengthen its ability to punish violators, while laying the groundwork for more comprehensive reform in the future.

The Administration recognizes, however, that EAA renewal is not a substitute for comprehensive reform and has already begun talking with Congress and the private sector on ideas to update export controls for the 21st Century. Indeed, we at the Commerce Department welcomed the recent recommendations from the Coalition for Security and Competitiveness, and are working with our interagency partners to implement many of its suggestions, such as creating a Validated End-User program to remove license requirements for trusted civilian customers, and beginning a comprehensive review of the Commerce Control List. In addition, we have worked closely with the recently created Congressional Export Control Working Group, co-chaired by Congressmen Manzullo, Blumenauer, and Crowley, and have benefited enormously from its leadership on issues important to the export community.

I believe that any new system must have three defining features:

DEVELOPING AN END-USER BASED EXPORT CONTROL SYSTEM

First, the dual-use export control system must become more end-user focused. As I just noted, the changing nature of the international system means that we can no longer rely solely on country-based controls. In an increasingly complex world in which the same economy may harbor legitimate customers and terrorists or proliferation networks, we must actively seek to facilitate trade in controlled items to trusted customers, while denying sensitive technologies to end-users engaged in WMD activities, conventional arms proliferation, support for terrorism, or other activities detrimental to U.S. national security.

To manage this shift, the Commerce Department has developed a number of new initiatives that will make export controls more effective in identifying legitimate and potentially dangerous end users throughout the world. On the "legitimate customer" side, Commerce recently published a regulation creating the Validated End User Program, a new and unprecedented initiative in the world of export controls. The program is simple: for customers who have demonstrated their ability to use controlled items responsibly, fewer export licenses will be required. In the past, the world of export controls was one of many sticks and few carrots. The Validated End User Program is a step in a different direction. For the first time, we will create an export authorization that will act as a market-based incentive for firms to demonstrate good export control behavior. Customers who act responsibly with sensitive products would have better access to such technology than would their domestic

competitors. And U.S. exporters would be able to sell more efficiently to their best civilian customers.

On the "suspect customer" side, the Commerce Department is strengthening its ability to target and sanction proliferators, terrorist networks, and front companies. We recently published a regulation that would expand our current Entity List to target end users who are engaged not only in WMD-related activities, but also other activities contrary to U.S. interests, including conventional arms proliferation and support for terrorism.

We are also considering a possible new regulation to target countries of diversion concern. This proposal—for a Country Group C—"Destinations of Diversion Concern"—is one possible way to address the threats to national security posed by the illicit transshipment and diversion of sensitive dual-use technologies to end users and countries of concern.

To aid America's exporters, we are providing more information about end users around the world that raise concerns. As I just mentioned, we recently published criteria for an expanded Entity List. We are also planning a draft proposal that would introduce a standard format for all U.S. Government screening lists. Our goal is to have a more complete continuum of information—from the Unverified List through the Entity List to the Denied Persons List—available for exporters to use in screening potential customers.

Let me especially emphasize that continued participation in the licensing process by the Intelligence Community will be critical to the effectiveness of an end-user based export control system. The Intelligence Community plays a key role in the export control process by providing timely, relevant, and in-depth analysis of end-users and technologies of concern to licensing agencies. These finished intelligence reports are a crucial factor for our licensing officers and foreign policy analysts when deciding whether a proposed export will be contrary to U.S. national security and foreign policy interests. The need for such support will increase as we continue to move toward more end-user focused controls.

IMPROVING THE DUAL-USE LICENSING PROCESS

Second, the system must be further improved to ensure America's exporters are able to apply for and receive licenses in a timely, transparent, and efficient way. Although the majority of our controls are based on obligations under the four multilateral export control regimes and are thus shared by many of our allies, implementation of these controls among countries differs considerably. A French exporter, for example, may be able to receive blanket permission to export a certain technology controlled under the Wassenaar Arrangement in a matter of days, whereas a U.S. exporter may have to wait weeks before receiving permission to ship under strict conditions.

To ensure that U.S. companies are not put at a competitive disadvantage, the Commerce Department is working to further improve the licensing process. We recently developed and deployed the Redesigned Simplified Network Application Process (SNAP–R) that now enables exporters to submit export license applications, commodity classification requests, and associated documents to Commerce via the Internet. SNAP–R significantly improves security and ease of use for our exporters, and assists the Bureau in receiving and processing licenses in a more efficient and effective manner.

Commerce also conducts an extensive outreach program through which we provide timely information to U.S. industry regarding export controls. In 2006, we conducted 52 domestic export control seminars in 19 states. In addition, staff in our Office of Exporter Services assisted more than 54,000 people in one-on-one counseling sessions. Not only do these outreach efforts assist U.S. exporters in understanding and complying with our regulations, they allow Commerce to hear directly from companies and individuals directly impacted by the dual-use licensing system. This valuable feedback is critical to our efforts to further streamline the system.

UPDATING U.S. CONTROLS

Finally, the export control system must limit the export of sensitive products while still ensuring that controls do not unduly restrict the vast majority of legitimate, civilian high-tech trade. The Commerce Department is working closely with Congress, interagency partners, and the private sector to ensure that U.S. companies are not precluded from participating in global markets open to foreign competition. We are working to create a more formal process to take foreign availability into account in licensing and control decisions. For example, foreign availability assessments should consider the availability of foreign items and the relative controls

placed on these items not only from "controlled countries," but also from multilateral export control regime members.

Moreover, we recently published a notice in the Federal Register calling for public comment on ways in which the Commerce Control List can be revised. A systematic review of the CCL will help ensure that the regulatory regime is deliberative and incorporates all relevant data, including the competitive nature of the global marketplace and the changing nature of national security threats. We are also actively working with our Technical Advisory Committees to develop recommendations for updating and refining the CCL in institutional and standardized way.

These steps are critical to ensuring that we strike the right balance. An excellent example of changing technology and foreign availability is the U.S. imaging and sensors industry. Thermal imaging cameras are used in the medical and automotive industries, for fire-fighting and search-and-rescue, and for preventative maintenance. This industry plays a critical part in the U.S.-high technology and defense industrial base. But Commerce recently conducted an industrial base assessment of the industry and found that, while U.S. exports of all imaging and sensor products have increased steadily over the last six years the total U.S. share of global exports for imaging and sensors products has declined since 2001. In one area—uncooled infrared (thermal) imaging cameras—U.S. exports declined a disturbing 64 percent. Industry cites export controls as the reason.

So the Commerce Department is working with its interagency partners to develop a regulation that will ease controls on low-end cameras being exported to Japan and the EU, while ensuring that adequate controls remain on more sensitive cameras. These types of regulations are a key part of our efforts to ensure that we control only the most sensitive items while minimizing the impact of these controls on U.S. economic competitiveness and innovation.

CONCLUSION

Adapting the dual-use export control system for the 21st Century will be difficult. But a more focused, customer-based system tailored towards new threats, and taking into account technological and economic changes, will help ensure that we are able to maintain export controls that enhance security for the United States. The task is complex, but I am confident that working together with Congress, we will be able to develop technology controls that meet the security needs and economic imperatives of the 21st Century. Together, we can help ensure that in this era of globalization, our continued prosperity and well-being will not be jeopardized by those who would do us harm.

Thank you Mr. Chairman. I welcome any questions which you and the subcommittee may have.

Mr. SHERMAN. Thank you. I know that Ambassador Mull has pointed out that he is seeking outside advice; he has got it from a number of sources. He ought to get it from you, Mr. Padilla, as to how you got three times the budget. If you give him that advice, he would be very grateful.

I am going to do my questioning last and turn it over for questioning to Mr. Royce.

Mr. ROYCE. Thank you, Mr. Chairman.

I remember back in 2004 registration fees were tripled, and I wanted to just check and see what happened to licensing processing time as a result. I think the fees went up at the time from $600 to $1,400-some.

Ambassador MULL. $1,750.

Mr. ROYCE. What was the consequence in licensing processing time?

Ambassador MULL. Well, over that period our licensing processing time has increased as the statistics have shown. So the bulk of the money that we put, that we gained from the increasing licensing fees we did put into infrastructural investments to develop computerized so we can move to a paperless licensing operation. As I mentioned, we have had some development problems that I ex-

pect we will have resolved by October, but the processing time has gone up.

Mr. ROYCE. One of the most critical questions is doing this in real-time, quick turnaround and getting from you exactly what we can do to make sure that happens.

Another question the International Relations Committee report from 2004 suggested was that the administration then was working on a grand bargain with other countries in which we relax some of the export controls that we are talking about here in exchange for them tightening theirs.

I wondered what type of focus and results came from that effort where we stand today vis-à-vis that concept.

Ambassador MULL. The effort in 2004 we had to shelf because of opposition within the Congress at the time. We do have a number of initiatives underway to work with our partners around the world. One of the most significant ones is the proliferation security initiative where over 80 countries have now signed up. We work with these countries to make sure we have uniform strict export controls in place. In every foreign trip I make on this job, it is a topic I discuss. We look to provide technical assistance to those countries that require it. We need to do better and it remains a continuing high priority for the administration.

Mr. ROYCE. We might look at reraising that bargain given the circumstances we find ourselves in today.

I was going to ask Mr. Padilla; the GAO report says that China limits the United States Government's access to facilities where dual-use items are shipped. Now, I don't know how you do enforcement given that lack of access and I would ask you how you respond on that point?

Mr. PADILLA. We have a continuing dialogue with the Chinese and an agreement with the Chinese that allows us to conduct end-use visits in China and we conducted I believe about 35 such visits last year. We have an export control attaché at our Embassy at Beijing. We are looking at finding additional resources to provide more help, because that is an important aspect of building trust. What we have explained to the Chinese is that for certain very sensitive items, if we are not able to do an end-use visit, we won't issue a license for the product.

So if Chinese will work with us to provide access to certain of these facilities, then we could possibly consider those licenses, that has been our approach.

Mr. ROYCE. I did want to ask you, Mr. Padilla, you mentioned in your testimony that the intelligence community provides critical information on these end users. Within the parameters of what is appropriate here, it might be helpful if you tell us a little bit more about the strengths and weaknesses of that process, whether you have enough resources to monitor end usage of dual-use technology. I think it would be very important to us to know that. And to me, I would like to know the extent of the violations you uncover, because Ambassador Mull reported a little bit about the extent of that problem in China.

Mr. PADILLA. Thank you, Mr. Royce. As we move toward a system that focuses on individual customers of concerns, not just countries of concern as I mentioned, it will be vital for the intelligence

community to play a key role in that in telling us who the trusted and not-so-trusted customers are. We have had a good relationship with the intelligence community; they review upwards of 85 percent of all the licenses we receive.

Mr. SHERMAN. Mr. Padilla, if I could ask all witnesses to speak into the microphone. We are able to hear you in this room, but there is an overflow room that is also listening.

Mr. PADILLA. I hope that works a little better.

Mr. ROYCE. But certainly some of this is done with Chinese Government involvement. I think that is the part that really compounds the problem here vis-à-vis other countries.

Mr. PADILLA. I couldn't agree more. We need more help from the Intelligence Community, not less. We have had, my colleagues and I, a vigorous discussion with our colleagues at DNI to urge them to devote the resources necessary to this critical function, because otherwise our licensing officers in both agencies would be flying blind.

Mr. ROYCE. Ultimately Iran was the most active customer in the international black market, at least according to the International Institute for Strategic Studies; would you agree with that conclusion? Lastly, how closely focused are you on denying Iran sensitive technology given them coming out number one?

Mr. PADILLA. Iran is a major source of concern with regard to illegally transshipped goods. I don't know if they are the number one in terms of enforcement. We have a total embargo on Iran, which is actually maintained by the Treasury Department. And we vigorously, however, in the Commerce Department enforce that embargo on Iran, whether it is for commercial aircraft or the transshipment of parts that could be used for IEDs being sent through transshipment points like Dubai.

Mr. ROYCE. Thank you, Mr. Padilla.

Thank you, Mr. Chairman.

Mr. SHERMAN. Thank you.

Let me now recognize our vice chairman, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Ambassador Mull, I want to ask you about the licensing delays. How have licensing delays and increasing backlog of pending applications affected the management of defense programs with our key allies and partners?

Ambassador MULL. Well, they have contributed to a number of complaints from our key partners that we have moved to address in a number of ways. As you may know, since 2004, it has been the law to provide expedited licensing to our British and Australian partners, and that system, we believe, is working. We are constantly trying to improve it to reduce the number of referrals that we need to make to the Defense Department and other agencies in administering that part of the program.

We have also run into problems. For example, we have for many years had a general exemption for countries that are participating in the Joint Strike Fighter program. That has not worked very well, though, because the primary users to whom we issued the licenses have been unwilling or unable to guarantee that their subsidiaries and their contractors whom they employ would be able to—would also respect the restrictions that we put on.

Mr. SCOTT. Do you have any examples of that?

Ambassador MULL. A specific example within the Joint Strike Fighter?

Mr. SCOTT. Yeah, with the subsidiary, who they might be.

Ambassador MULL. I can't remember a specific example of a specific country right now, but I could get that for you and provide that to you or your staff, sir.

[NOTE: The information referred to was not received prior to printing.]

Mr. SCOTT. Who would you refer to as our key U.S. allies and partners? What nations fall into that category?

Ambassador MULL. Certainly Great Britain, Australia, Japan, all of the members of NATO as our primary alliance. Members of the European Union who are not in NATO, many of those are partners as well.

Mr. SCOTT. We have as a requirement a prohibition against selling certain of our materials, information, our platforms to foreign governments; for example, like our F–22s. What are your thoughts on that? There is one side that says we do not want anything to jeopardize our air superiority, our superiority. There is certain of our platforms that we don't need to put on the market. And then there is the other side that says, well, maybe we should, there is a market. What are your thoughts on this? And I would like to get the thoughts of the other combat as well.

Ambassador MULL. My thoughts are that we have an obligation when we have a military ally or partner like Japan, for example, to work very closely in making sure that both sides bring the resources and the capabilities that we need to defend each other and to look out for each other's interest. And Japan is actually a very good example, because as you may know, Japan has been very interested in acquiring the F–22, but United States law forbids providing the F–22 to any of our foreign partners. So working within the law, I believe certainly the Pacific Command I know has a very productive dialogue with our Japanese partners in assessing what their defense requirements are if they can't get the F–22, and I think we are able to work within those restrictions well. That doesn't mean key partners do demand some of our most sensitive technology, but we can't provide it to them because of the law or because of our own need to protect ourselves. We certainly work very closely with the militaries in devising alternatives that are within the law.

Mr. SCOTT. I would like to get your response to that, too, it if I have time, but I did want to follow up on the earlier part of my question. Has the administration heard from our key allies or our coalition partners expressing either support for or concern about the U.S. export licensing process?

Ambassador MULL. Congressman, I think the most graphic example would be just a few weeks ago we—perhaps the biggest source of concern out of all of our partners have come from the British in recent years. And in response to that concern, and in recognition of the key role they play as our partner around the world, President Bush signed with then-Prime Minister Blair a new treaty that we hope the Senate will ratify to greatly ease the process of defense cooperation. So we hope that that will work not only as a

good model in providing our British allies of what they need to work with us, but also to reduce the workload on our operation and contribute to our efficiency.

Mr. SCOTT. Briefly, Mr. Chairman, could I get a response from the two of you on the prohibition language on the other nations? Do you agree with that?

Mrs. MCCORMICK. I think, sir, what I guess I would say on that is that there are certain technologies where it is important for the United States to have a technological advantage. And in the case of the particular system that you mentioned, that program really was not designed initially for export at all. But with programs like the Joint Strike Fighter program, I think it is an excellent model, because what we have done is we have taken a very advanced system, basically a fifth-generation aircraft that has a very similar technology. We have brought international partners in at the early stages of that, and they are working closely with us to develop that program.

I think it is incumbent upon us, because we do want to have and work with allies around the world, we are really looking now to think about capabilities and making them basically think about export and the fact that we will share that technology with other countries. And we are trying to do that in the really early stages of our program development.

Mr. SHERMAN. Mr. Manzullo.

Mr. MANZULLO. Back in the early spring of 1993 when I was a freshman, I invited a young man by the name of Chris Padilla, who was in the private sector, to come to my office and to begin the instruction of exactly what dual-use technology is, and that conversation has continued. And my questions have continued. Maybe someday I will get it, Chris.

Mr. PADILLA. I hope my answers are getting better.

Mr. MANZULLO. They are. But we are both getting more gray hair. I like your toys better than mine, and I will be glad to exchange them. But since EAA has expired, my understanding is the International Emergency Economic Powers Act, IEEPA, has been continuing the EAA in force; is that correct?

Mr. PADILLA. Yes, sir, that is correct.

Mr. MANZULLO. Under the EAA as drafted in 1979 and as amended, I understand that 17(c) expressly places previously FAA-certified parts and components under your agency's jurisdiction; is that correct?

Mr. PADILLA. Yes, sir, that is correct.

Mr. MANZULLO. And do you think that the law in any way is unclear?

Mr. PADILLA. No, sir. The President's Executive Order Number 13222, which directs us under IEEPA to continue the EAA in force, says that to the extent permitted by law, the provisions of the EAA shall be carried out under this order so as to continue in full force and effect, and that is what we have tried to do, sir.

Mr. MANZULLO. Obviously these questions are leading to another question. Then why are manufacturers in the congressional district I represent telling me that 17(c) is not being applied?

Mr. PADILLA. Well, as far as I am concerned, this is black-letter law. The provision of the EAA is quite clear, and the provision of

the Executive Order is quite clear. What the EAA says is the part has to be certified by the FAA and be an integral part of civil aircraft. What we are trying to do working with our interagency colleagues is to provide more guidance to exporters and, frankly, to our licensing officers on what that means. What does it mean to be type-certified? What does it mean to be integral to civil aircraft? And most importantly, could we give a list of exactly what kinds of aircraft we mean, Boeing 737 type 200 and so forth?

So from our point of view, there is no question as to the intent of Congress and the intent of the President. I would add though, sir, we have not had, as far as I know, very many commodity jurisdiction cases that have explicitly raised this question, at least not yet.

Mr. MANZULLO. Let me take a look at your toys and my toys. For every 100 applications for a license—I didn't mean to bring it up here, but I am thrilled. I live for objects like this. But for every 100 licenses applied for, how many of those would be represented by items like this that obviously should not be controlled?

Mr. PADILLA. Well, that is a very difficult question to answer. Of the 19,000 or so licenses we do a year, I believe that if the proposal that I was talking about to remove these low-end thermal-imaging cameras were to be implemented, that I think we might take as many as 1,500 licenses a year out of our system right there. If we implement our validated end-user program, trusted customer program, where we remove license requirements for customers who we know we have done intelligence checks, it is the same stuff year after year after year. That could be several hundred more licenses.

So I would hope that we might reverse the trend that we have seen in commerce where the number has been going up about 15 percent a year. But those are probably the best estimates I can give you.

Mr. MANZULLO. Another question is when you have something as simple as this fiber optic cable, which is really a wiring harness, which has many applications, how does something like this end up being on the ITAR list in the first place? Anybody know?

Ambassador MULL. I will be happy to take that question.

Mr. MANZULLO. Okay. You can even answer it if you would like.

Ambassador MULL. I will try to answer it. Of course, the examples that you showed are very, very compelling. And it does suggest that maybe these on the surface appear that these decisions might be made capriciously or without very much thought. But, in fact, the ITAR is very much driven by parts, by things, and so when something goes on the ITAR list, it is because it is useful in a particular part, so that I am not dealing with that particular piece of equipment, but one could imagine a situation where that specific wire fits exactly on an F–14——

Mr. MANZULLO. But do you know what——

Ambassador MULL [continuing]. Which are only used by Iran.

Mr. MANZULLO [continuing]. If you put the longer version on it also, it will still fit with just a little slack.

Ambassador MULL. But if a piece of equipment is designed for an airplane, a fighter plane, that in today's world only Iran is using, we have an obligation according to our interpretation of the law to restrict that.

Mr. MANZULLO. But that is the problem. I mean, this is bread-and-butter stuff. I mean, this is Radio Shack stuff. I mean, this is the stuff that is made in America, and these manufacturers really don't know how to sell this. I can't defend what you just said; I really can't, because this is not controlled at all. This is—take out 1 inch, and it fits. Can you explain that?

Ambassador MULL. But the one that is shorter or longer is designed only for use in sensitive military technology that our enemies could use.

Mr. MANZULLO. No, it is just the length of it. I mean, this is the same thing. You measure it off, and you put it in there. If you want to, you know, you could just snip off an inch here and just move it up. I mean, this is the problem. I mean, this is why there is so much angst. I can't see how you can defend this, Ambassador. For the life of me it is the same thing. What happens if it is on a spool that is 100 feet long; what do you do in that case?

Ambassador MULL. Again, sir, we look at the item. If it is designed specifically for use in sensitive equipment, we believe the law requires us to regulate that.

Mr. MANZULLO. I don't think that is the case at all. I think if it is something, number one, that is not readily available, and that is so sophisticated that if it falls into the hands of the enemy—I mean, the enemy can go out there and buy this and take off 1 inch. So then why should this be regulated?

Ambassador MULL. Well, let's take aircraft, for example.

Mr. MANZULLO. No, no. Answer the question.

Mr. SHERMAN. This will have to be your last question.

Mr. MANZULLO. If the enemy can go out and buy this that is an inch longer than this, and which the enemy can shorten by 1 inch, then why should this be regulated?

Ambassador MULL. Sir, we have the capability of—every civilian aircraft has millions of parts to it, so we have to look at what is designed for a specific aircraft that might be sensitive that might be used by our enemies. And if something is designed for that—can somebody work around and jimmy up something? Yes, they could. But I don't think you are suggesting that we expand our regulation.

Mr. MANZULLO. No, I would suggest that you decrease your regulation. I appreciate your attempt at answering it, but I think that goes to the problem.

Mr. SHERMAN. I will point out that at least we are protecting our customers from buying the F–14 part by mistake and then getting one that is an inch too short and thinking that America doesn't produce good aircraft parts. I hope that our customers around the country are protected from buying a part which fits only in an airplane that they are not operating.

Mr. ROYCE. Will the gentleman yield for a minute?

Mr. SHERMAN. I yield.

Mr. ROYCE. I thank the gentleman for yielding.

I think part of the problem is the focus. Instead of stigmatizing nuclear weapons and wondering about what is happening with the A.Q. Khan network and how we missed that. And how we missed the technology being transferred from Europe which was used to make atom bombs for various countries; so they were in the process

of doing it—Iran is still in the process of doing it with his technology—I just think you have got to balance here, and that is hard for bureaucracies to do. But the focus should be on the nuclear weapons, on things that can really hurt us, and somehow you are going to have to do the calculus internally to do that. That is, I think, your charge, and that should be part of our oversight.

Thank you again, Mr. Chairman.

Mr. SHERMAN. Thank you.

The gentleman from Colorado.

Mr. TANCREDO. Thank you, Mr. Chairman.

Mr. Padilla, it has come to our attention recently that the United Nations Development Program has transferred dual-use technology to North Korea, technology and equipment that they, as I understand, originally applied for permission to obtain—they applied to obtain, and we denied that, which I am so glad to hear. They then obtained it somehow. Nobody is quite sure, as I understand it, exactly how they got it. And it has now been—we recognize that it has been used, it is being used by the North Koreans. It includes very sensitive GPS equipment to very high-end portable spectrometers, and a large quantity of high-specification computer hardware.

What happened? Do we have any idea what happened? And what is—I guess what can we do about the fact that the United Nations is involved with shipping dual-use material to our enemies?

Mr. PADILLA. Well, I will tell you what we know right now, sir, and what we are working to find out and investigating. What we know is that apparently the U.N. Development Program did ship a number of items, as you described, to a project in North Korea. We know that those items were shipped and are not under the control of the UNDP in North Korea. What we do not know with any specificity yet is exactly what the technical specifications of all those items were and whether they would have required a Commerce Department license or not.

Mr. TANCREDO. I thought that they had applied and you turned them down.

Mr. PADILLA. They did apply. There were some applications in I believe it was 1999——

Mr. TANCREDO. That is correct.

Mr. PADILLA [continuing]. For equipment that clearly did need a license and was denied. What we don't know about the most recent shipment, sir, which I understand took place, I believe, within the last year, is whether the technical specifications of that equipment was such that it would have been on the Commerce control list and required a license. What we also don't know is whether the equipment was U.S. origin and therefore subject to our jurisdiction, whether it was bought in the United States and shipped from here, or whether it had U.S. parts and components that would make it subject to our regulations.

We are working closely with the State Department and the U.S. Mission to the United Nations, including Ambassador Khalilzad and Ambassador Wallace, to learn more about the details of these transactions, and then we will take appropriate action. I think it is clear at a minimum, and we have asked to do this, that we talk

with the UNDP and ensure that they understand what our regulations and law require.

Mr. TANCREDO. Yes, I think that is an excellent idea. I think that we should probably expand that to any other department of the United Nations that is actually obtaining this—I mean, it is a strange thing anyway in a way to hear that a part of the United Nation is requesting this kind of equipment and then, of course, finding out that it has fallen into the hands of the North Koreans, and that there were North Koreans that were actually working in the agency itself. And they lied about that in their first response, as I am told, that there were none. Later we found out that that was true. It is quite disconcerting. And I hope it is something that people in the Commerce and State are paying a great deal of attention to. Thank you.

The last question I have deals with I think it was, Ambassador Mull, your comments with regard to a change of focus away from country to consumer of the products because it is no longer the Cold War situation.

Mr. PADILLA. I think that it was me.

Mr. TANCREDO. Mr. Padilla, excuse me—which is certainly understandable and commendable. The question arises, a situation where, for instance, our ally, in this case Great Britain, requests or attempts to purchase something from the United States, and does, in fact, obtain materials that we would agree to provide with a close ally, or to a close ally. And then you recognize that the EU, inside the EU, which now has a ban on all shipments of this kind of material to China, as do we, but you recognize that inside the EU there is now this restlessness about that and the possibility that that would be overturned. And so we then have provided something to an ally who is also part of the EU, which then in turn ends up shipping it to China. I mean, what do we do about that?

Ambassador MULL. Yes, sir. That is a very good question. And, in fact, we are refining, we are developing the answer to it in our current negotiations with the British. We are in the process of coming up with the implementation regulations that would accompany the treaty if the Senate does provide its consent to it. But our thinking is that the best way to do that is to put restrictions on the supplies that we would provide to Great Britain under the terms of the treaty so that it would enjoy the official protection of the British Official Secrets Act and could not be reexported or transferred away from the original user of this service without certainly the permission of the United States. So we will be sure to implement control so that scenario you described, which is a real unfortunate possibility, that that would not happen.

Mr. TANCREDO. Thank you very much. I have no other questions, Mr. Chairman. Thank you.

Mr. SHERMAN. Thank you, Mr. Tancredo.

Mr. Mull, until the F–14 is flown by only one country in the world, that is Iran, do you allow any exports of any part used exclusively in the F–14?

Ambassador MULL. No.

Mr. SHERMAN. We have got these turf battles. Have you gentlemen tried to sit down and just work it out?

Ambassador MULL. Well——

Mr. SHERMAN. You guys could sit down for a couple hours and issue a memorandum of understanding that would identify exactly the answers to all these turf battle questions we keep hearing.

Ambassador MULL. In fact, I think that is an excellent suggestion. And our agencies are in the process of coming up with a better way of doing this.

Mr. SHERMAN. Well, I hope you could get it done in the next week. I don't know why it would take longer, except this is the Federal Government. But there are circumstances where you disagree.

Mrs. McCormick, are you willing to act as referee when they can't reach an agreement?

Mrs. MCCORMICK. Sure. I would be more than glad to perform that role.

Mr. SHERMAN. Okay. Good. Then I know they will report back a week from now that they have reached full agreement on a number of things, and on the rest, you know, give Mull a couple, give Padilla a couple, and you are done with your work.

Mr. PADILLA. Mr. Chairman, I would say specifically with regard to the issue that is most often contentious between us, and that is commodity jurisdiction, does the product that Mr. Manzullo was holding up belong under Commerce's control or State's control? I think we have made some improvements recently, for example, by having more regular meetings between Commerce and State officials——

Mr. SHERMAN. There shouldn't be a single product where industry doesn't know who has control, except in circumstances where the product was invented in the last few weeks or months. These folks all can list the products. And you do have a circumstance now where the decision is being made. It is just being made by the exporter and not by the government, which is not the way we want to have these decisions made. So you can say, oh, we are making progress; oh, we will get together. These are the kinds of disputes which in the private sector two subsidiaries of the same parent corporation would work out in a week. Why can't you come back to us when we come back for the August recess and say for every single commodity identified as one where there is some question as to jurisdiction, you have come up with the answer?

Mr. PADILLA. What I would just suggest, Mr. Chairman, is the way that we work our licensing system I actually think provides a good model for what you are talking about. We have licenses for example 20,000 a year in Commerce. We refer them out to all of these agencies. Sometimes Defense disagrees, and they don't think we should approve it, and we have a dispute.

What we have, however, in the licensing process is a very clear dispute resolution system with time lines, so by a certain number of days, if Defense hasn't gotten their views in, it is deemed approved. If there is a dispute, it goes to an interagency committee that I chair. We have a certain number of days to make a decision. It works pretty well.

Mr. SHERMAN. Then how come there is certain items where you have had disputes for years?

Mr. PADILLA. Because we don't have a similar for commodities.

Mr. SHERMAN. Then why don't you get one? Mrs. McCormick is great. She will just decide these things very quickly for you, and we will solve the problem. Again, in private fields you wouldn't have two subsidiaries of the same parent corporation running these disputes.

For each of the two operating agencies, Mr. Mull and Mr. Padilla, how many applications do you have that are more than 120 days old where you haven't said yes or no yet?

Ambassador MULL. Right now?

Mr. SHERMAN. Yes. Give me your best guess.

Ambassador MULL. It is 567 that have not been resolved that are beyond 60 days.

Mr. SHERMAN. 567. Mr. Padilla, how many do you have that are old and cold?

Mr. PADILLA. I could probably count them on the fingers of two hands.

Mr. SHERMAN. Without taking off your shoes.

Mr. PADILLA. Yes, sir.

We have an Executive Order that we operate under the Commerce licensing system that requires and actually puts an outside deadline of 90 days. And as you can see, our average is about 30 days. So to have something 120 days, the only case I could think of would be one that was pending in very senior interagency levels, and perhaps to a terrorist country or something like that.

Mr. SHERMAN. Why does your average licensing officer only complete 408 applications a year, which sounds like a lot, when the State Department is able to do three times as many per licensing officer?

Mr. PADILLA. Well, we have fewer license applications. But we have the—I believe the appropriate number of staff. If you think about 408 applications, that is more than 1 a day.

Mr. SHERMAN. So your argument is you are not overstaffed, he is understaffed.

Mr. PADILLA. I don't think the Commerce Department is overstaffed. I think we are adequately staffed. And I think if you asked our customers who are exporters of dual-use goods, they would generally say that the Commerce system works well.

Mr. SHERMAN. Well, just between you and me, he is not listening, do you think the State Department can process 1,700 applications per licensing officer and do it well?

Mr. PADILLA. I think it is a lot, sir. I don't think—in my personal opinion, I don't think the State Department has sufficient resources to do the job.

Mr. SHERMAN. I recognize the gentleman from Oregon.

Mr. WU. Thank you very much, Mr. Chairman.

Is it the Department of Commerce which regulates computer exports?

Mr. PADILLA. Yes, sir, by and large.

Mr. WU. By and large, okay.

This is years ago, but I remember a controversy about which computers are exportable, which computers are nonexportable, and which fall sort of in the gray zone of, shall we say, requires a little time to consider. Where are we currently in setting those lines for delineation in terms of computation speed?

Mr. PADILLA. The current computational speed limit is 0.75 weighted teraflops. And I hope you don't ask me to explain what a weighted teraflop is, sir. What I can tell you is that basically that is the multilateral control level for most countries. It is a little bit lower for terrorist-supporting countries. But what we generally issue licenses for in computers now are essentially supercomputers, like IBM, Blue Gene, supercomputer mainframe equipment. And we do a handful of those a year. It is certainly not laptops or desktops or things that you could buy on line.

Mr. WU. Is there a different way—just think with me for moment. Is there a different way of regulating computer exports other than regulating teraflops?

Mr. PADILLA. Well, for many years there was a different control metric called MTOPS (Millions of Theoretical Operations per Second). Some people may remember it. And every other year or so, the administration would have to raise that level because of Moore's Law and the technology moving so quickly.

Mr. WU. Let me reguide you, because what I am trying to at least try to explore with you is whether there is an approach to this which is other than computational speed or crunch power; whether there is a way of delineating architecture, hardware, software architecture that we want where we can do a work-around on this raw speed.

Mr. PADILLA. Right. Well, I think we certainly are open to working with industry. We know the types of machines that we are concerned about, and we know why. We have come up with this weighted teraflop measure, which is relatively new, because we think it is a better way that won't require us to change those computational speed limits every other year. If the industry has suggestions that have to do with architecture or even with end users, I think my colleagues and I would be certainly open to them.

Mr. WU. I haven't heard that suggestion from industry. And when I have discussed this with some other folks, there have been some specific problems raised. Since you are the regulator, if you will, I wanted to probe this with you about whether you have considered ways of regulating these exports that is, shall we say, a little bit more intellectually elegant than measuring computer speed.

And I will give you two concerns about this. One is the administrative burden, if you will. And you have tried to work around that with the weighted teraflop rather than the prior approach. But a more interesting question to me is well, gee, you know, if the limit is today .75 weighted teraflops, shoot, 10 years ago the limit might have been .10 weighted teraflops. And as an intellectual matter, if a computer that could do .50 weighted teraflops was dangerous 5 years ago, what makes it safe today? It is a reasonable inquiry.

I know commercial demands change. I am just saying that there are some problems with measuring these things, measuring using the metric that you all have been using. The inquiry is, is there a consensually different paradigm?

Mr. PADILLA. I think we are open to consider different paradigms. We recently published a notice in the *Federal Register* calling for input from industry or academia or others on a comprehensive review of the Commerce control list. The way the Teraflop measure was developed with extensive input from industry and

computer experts to try to take architecture into account, I think, sir, that we are very open to considering the more elegant types of intellectual approaches. We have not yet found one that we think is better than weighted teraflops. And I think that the weighted Teraflop has succeeded in sharpening the focus of the control pretty well. We are no longer running into the problem of the laptop that you can buy at Radio Shack bumping up against the control limit.

Mr. WU. Thank you very much.

Mr. PADILLA. Thank you, sir.

Mr. SHERMAN. Mr. Mull, it has been suggested by Mr. Manzullo that you send this subcommittee a report, status report, every month on your backlog, and I think that would be a good idea. What do you think?

Ambassador MULL. Well, I am not really sure in terms of defining how you would define the backlog. We are certainly eager to communicate with you and communicate our process to you.

Mr. SHERMAN. I would say average processing time and number of applications that are more than 120 days old or more than 60 days old.

Ambassador MULL. I will have to check with our legislative affairs, but personally that sounds like a fine idea.

Mr. SHERMAN. Okay. Otherwise I can always call you and ask if they won't let you issue something in writing, and then I can share that with other interested Members of Congress.

I want to thank the first panel and move on to the second panel.

Our first witness is Ms. Barr, Director in the Acquisition and Sourcing Management team of the GAO, now known as the Government Accountability Office. As an old CPA, I liked your old name better. In any case, in this capacity she oversees the review of technology transfers, international management, and defense supplier base in contract management.

Ms. Barr.

STATEMENT OF MS. ANN MARIE CALVARESI BARR, DIRECTOR, ACQUISITION AND SOURCING MANAGEMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. BARR. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, thank you very much for the invitation to discuss the export control system. As you are aware, this system is critical to protecting our national security, foreign policy and economic interests, yet GAO's extensive body of work has shown that export control programs and related processes have for the most part been neglected. This raises serious questions about the government's ability to protect defense-related items while allowing legitimate trade to occur.

GAO has made numerous recommendations on ways to improve both the effectiveness and efficiency of the system, but a lack of action or fixes that were not grounded in an analysis of the problems have left the system even more vulnerable. These deficiencies in part prompt the GAO to add to its 2007 high risk list the effective protection of technologies critical to U.S. interest.

Today I will focus on three key areas: questionable program effectiveness, concerns regarding efficiency, and an overall lack of management due diligence. The first area concerns weaknesses

that relate to the most basic aspects of the export control system. That is jurisdictional control and clarity on the use of licensing exemptions.

Regarding jurisdictional control, State and Commerce continue to debate which Department controls the export of certain sensitive items. For some items, including certain missile-related technologies, both Departments have claimed jurisdiction. For other items, such as night vision technology and explosive detection equipment, Commerce improperly claimed control, making the item subject to less restrictive export control requirements. Unless and until these disputes are resolved, it is ultimately the exporter, not the government, who determines what level of governmental review and control will follow.

A lack of clear guidance on exemption use has further limited the government's ability to ensure that exports comply with laws and regulations. Clear guidance is critical for exporters as they are the ones responsible for ensuring legitimacy of license exempt exports. However, State has provided conflicting information to exporters on exemption use, which has in some cases harmed U.S. interests. For an example, an exporter was incorrectly informed by State that a planned shipment of items to support NATO training exercises was not eligible for an exemption; therefore, the exporter cancelled the shipment, and the training exercises were called off.

These weaknesses also create considerable challenges for other players, namely the enforcement community. Without information as fundamental as what items are controlled and which need a license, enforcement officials are limited in their ability to carry out their respective inspection, investigation and prosecution responsibilities.

The second area concerns inefficiencies in the export licensing process. Clearly reviews of export license applications require careful deliberation; however, licensing decisions should not be delayed due to process inefficiencies, nor should licensing requirements be bartered for efficiency.

While State has initiated various efforts to improve its license application processing times, these initiatives have generally not been successful. In fact, median processing times doubled in 4 years, and as was mentioned in the first panel, State reached an all-time high of over 10,000 open application cases. Quite frankly, this grim trend is not surprising to us. When State announced many of its initiatives in 2000, we cautioned then without an analysis of underlying problems, any initiative that State would develop to achieve efficiencies would at best be a shot in the dark.

Although most Commerce-controlled exports can occur without a license, it is no less important for Commerce to seek efficiencies where needed, yet the overall efficiency of the department's licensing process is unknown, in part due to its limited assessments.

The third and final area concerns a more fundamental issue: State and Commerce's lack of due diligence in assessing the overall effectiveness of their systems. Neither Department has conducted a thorough assessment of their system, yet both argue that no fundamental changes are needed. Making this determination without basis is risky business.

In conclusion, our work has repeatedly demonstrated that the U.S. export control system is in desperate need of repair. Redefined security threats, changing allied relationships and increasing globalization, coupled with the numerous weaknesses we have identified, demand that the U.S. Government step back, assess and rethink the current system's ability to protect multiple U.S. interests.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions that you or other subcommittee members may have.

Mr. SHERMAN. Thank you.

[The prepared statement of Ms. Barr follows:]

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Testimony
Before the Subcommittee on Terrorism, Nonproliferation, and Trade, Committee on Foreign Affairs, House of Representatives

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EXPORT CONTROLS

Vulnerabilities and Inefficiencies Undermine System's Ability to Protect U.S. Interests

Statement of Ann Calvaresi-Barr, Director
Acquisition and Sourcing Management

GAO-07-1135T

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Highlights

Highlights of GAO-07-1137T, a testimony before the Subcommittee on Terrorism, Nonproliferation, and Trade, Committee on Foreign Affairs, House of Representatives

July 26, 2007

EXPORT CONTROLS

Vulnerabilities and Inefficiencies Undermine System's Ability to Protect U.S. Interests

Why GAO Did This Study

In controlling the transfer of weapons and related technologies overseas, the U.S. government must limit the possibility of sensitive items falling into the wrong hands while allowing legitimate trade to occur. Achieving this balance, however, has become increasingly difficult due to redefined security threats and an increasingly globalized economy. The export control system is a key government program intended to balance U.S. interests. GAO has identified and reported on many weaknesses and challenges in the export control system.

The export control system is a complex system involving multiple departments, laws, and regulations. It is governed primarily by the State Department, which regulates arms exports, and the Commerce Department, which regulates dual-use exports that have both military and civilian applications.

GAO has made a number of recommendations aimed at improving the export control system, but many have yet to be implemented. This statement focuses on three key areas: (1) weaknesses and challenges that have created vulnerabilities in the U.S. export control system, (2) inefficiencies in the export licensing process, and (3) State's and Commerce's lack of assessments on the effectiveness of their controls.

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To view the full product, including the scope and methodology, click on the link above. For more information, contact Ann Calvaresi-Barr at (202) 512-4841 or calvaresibarra@gao.gov

What GAO Found

For over a decade, GAO has documented vulnerabilities in the export control system's ability to protect U.S. security, foreign policy, and economic interests. Two key weaknesses relate to the most basic aspects of the system's effectiveness. First, State and Commerce have yet to clearly determine which department controls the export of certain sensitive items. Unclear jurisdiction lets exporters—not the government—determine which export restrictions apply and the type of government review that will occur. Not only does this create an unlevel playing field among U.S. companies, it also increases the risk that items will fall into the wrong hands. Second, a lack of clarity on exemption use has limited the government's ability to ensure that unlicensed exports comply with export laws and regulations. These weaknesses compound an already challenged enforcement community, which has had difficulty coordinating investigations, balancing multiple priorities, and leveraging finite resources.

State's initiatives to facilitate defense trade by reducing the time it takes to process export license applications have generally not been successful. For example, D-Trade, State's new automated application processing system, has not yet achieved anticipated efficiencies. Overall, processing times have increased—from a median of 13 days in 2002 to 26 days in 2006. Also, at the end of 2006, State's backlog of applications reached its highest level—more than 10,000 open cases. While Commerce's license processing times have been relatively stable, the overall efficiency of its processing is unknown.

Despite the existence of known vulnerabilities, neither department has conducted systematic assessments of its export control system. Federal programs need to reexamine their priorities and approaches and determine what corrective actions may be needed to ensure they are fulfilling their missions in the 21st century. Given their export control responsibilities, State and Commerce should not be excused from this basic management tenet.

Ultimately, GAO's work demonstrates both the ineffectiveness and inefficiency of the export control system—a key concern that compelled GAO to designate the effective protection of technologies critical to U.S. national security interests as a new high risk area. In its 21st century challenges report, GAO has identified the need for basic reexamination of programs established decades ago. Given the importance of the system in protecting U.S. national security, foreign policy, and economic interests, it is necessary to assess and rethink what type of system is needed to best protect these interests in a changing environment.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss the U.S. export control system, a key component of the U.S. government's efforts to protect critical technologies while allowing legitimate defense trade. As you know, the U.S. government controls the transfer of weapons and related technologies to other countries and foreign companies. In doing so, the government must consider U.S. national security, foreign policy, and economic interests and strike a balance among these interests. Achieving such a balance, however, has become increasingly difficult due to a redefinition of security threats after the September 2001 terrorist attacks and an increasingly globalized and high-tech economy. This changing environment raises concerns about the ability of government programs, which were established decades ago, to protect critical technologies. These concerns, along with a body of GAO work on weaknesses in the export control system and related federal programs, prompted GAO early this year to designate the effective protection of technologies critical to U.S. national security interests as a high-risk area warranting strategic examination.[1]

Within the safety net of government programs to protect critical, defense-related technologies, the export control system is particularly complex as it involves multiple agencies, laws, and regulations. This system is governed primarily by the Departments of State and Commerce. State is responsible for regulating arms exports[2] while Commerce is responsible for regulating exports of dual-use items, which have both military and civilian applications. Exports subject to State's regulations generally require a license, unless an exemption applies. Many Commerce-controlled items do not require a license for export to most destinations. Both departments, however, are responsible for limiting the possibility of exported items falling into the wrong hands while allowing legitimate trade to occur.

We have made a number of recommendations to address the weaknesses and challenges we have identified in the U.S. export control system, but many have yet to be implemented. My statement today focuses on three key areas: (1) weaknesses and challenges that have created vulnerabilities in the U.S. export control system, (2) inefficiencies in the export licensing

[1]GAO, *High-Risk Series: An Update*, GAO-07-310 (Washington, D.C.: January 2007).

[2]"Arms" refers to defense articles and services as specified in 22 U.S.C. §2778.

process, and (3) State's and Commerce's lack of assessments on the effectiveness of their controls. In addition, the appendix contains summaries of our export control-related reports issued from fiscal year 2000 to date, along with information on the status of the implementation of our recommendations by the various departments involved in the system. A list of related products that we have issued since the mid-1990s is also included.

My statement is based on GAO's extensive body of work on the export control system, including information from our on-going review of the arms export control system. We conducted our work in accordance with generally accepted government auditing standards.

Summary

For over a decade, we have reported on weaknesses and challenges that have created vulnerabilities in the U.S. export control system. Two key weaknesses relate to the most basic aspects of the system. First, State and Commerce have yet to clearly determine which department controls the export of certain sensitive items. Jurisdictional disputes are often rooted in the departments' differing interpretations of regulations and inadequate coordination. Second, a lack of clarity on exemption use has limited the government's ability to ensure that unlicensed exports comply with export laws and regulations. These weaknesses compound an already challenged enforcement community, which has difficulty in coordinating investigations, balancing multiple priorities, and leveraging finite resources.

To help facilitate defense trade, State has sought to reduce the amount of time it takes to process export license applications. However, streamlining initiatives have generally not been successful and processing times have increased in recent years—from a median of 13 days in 2002 to 26 days in 2006. Also, at the end of 2006, State's backlog of applications reached its highest level of more than 10,000 open cases. While Commerce's license application processing times have been relatively stable, the overall efficiency of Commerce's process is unknown, in part due to its limited assessments. Commerce's assessments are limited to only the first steps in its application review process and not the review process as a whole.

State and Commerce can provide little assurance about the overall effectiveness of their respective export control systems. In managing their systems, neither department has conducted systematic assessments that would provide a basis for determining what corrective actions may be needed to ensure they are fulfilling their missions. Without such

assessments, the departments are ill-equipped to adapt to the changing demands of the 21st century.

Background

The U.S. export control system for defense-related items involves multiple federal agencies and is divided between two regulatory bodies—one for arms and another for dual-use items, which have both military and commercial applications (see table 1).

Table 1: Roles and Responsibilities in the Arms and Dual-Use Export Control Systems

Principal regulatory body	Mission	Statutory authority	Implementing regulations
State Department's Directorate of Defense Trade Controls	Regulates export of arms by giving primacy to national security and foreign policy concerns	Arms Export Control Act[a]	International Traffic in Arms Regulations
Commerce Department's Bureau of Industry and Security	Regulates export of dual-use items by weighing economic, national security, and foreign policy interests	Export Administration Act of 1979[b]	Export Administration Regulations
Other federal agencies			
Department of Defense	Provides input on which items should be controlled by either State or Commerce and conducts technical and national security reviews of export license applications submitted by exporters to either State or Commerce		
Department of Homeland Security	Enforces arms and dual-use export control laws and regulations through border inspections and investigations[c]		
Department of Justice	Investigates any criminal violations in certain counterintelligence areas, including potential export control violations, and prosecutes suspected violators of arms and dual-use export control laws[c]		

Source: GAO analysis of cited laws and regulations.

[a]22 U.S.C. §2751 et. seq.

[b]50 U.S.C. App. §2401 et. seq. Authority granted by the Act lapsed on August 20, 2001. However, Executive Order 13222, Continuation of Export Control Regulations, issued August 2001, continues the export controls established under the Act and the implementing Export Administration Regulations. Executive Order 13222 requires an annual extension and was recently renewed by Presidential Notice on August 3, 2006.

[c]Homeland Security, Justice, and Commerce investigate potential dual-use export control violations. Homeland Security and Justice investigate potential arms export control violations.

Implementing regulations for both State and Commerce contain lists that identify which items each department controls and establish requirements for exporting those items. Exporters are responsible for determining which department controls the items they are seeking to export and what the requirements for export are. The two departments' controls differ in several key areas. In most cases, Commerce's controls over dual-use items are less restrictive than State's controls over arms and provide less up-front government visibility into what is being exported. For example,

many items controlled by Commerce do not require licenses for export to most destinations, while State-controlled items generally require licenses to most destinations. Also, Commerce-controlled items may be exported to China while arms exports to China are generally prohibited.

In carrying out their respective export control functions, Commerce and State have different levels of workload and personnel (see table 2).

Table 2: Case Workload and Staffing for the Dual-Use and Arms Export Control Systems for Fiscal Year 2006

	Number of cases closed[a]	Number of positions filled[b]
Commerce Department's Bureau of Industry and Security	23,673	351
State Department's Directorate of Defense Trade Controls	65,274	64

Source: GAO analysis of Commerce and State budget documents and State licensing data (data).

[a]For Commerce, cases include both export license applications and commodity classification requests. For State, cases include applications for permanent exports, temporary exports and imports, agreements, license amendments, and jurisdiction determinations.

[b]Commerce's positions include licensing officers, enforcement agents, analysts, and other staff. State's positions include licensing officers, compliance officials, and other staff. Numbers provided do not include contractors or staff on loan from other organizations.

Jurisdiction Disputes, Lack of Clarity on Exemption Use, and Enforcement Challenges Have Weakened the Export Control System

Our reports have clearly documented weaknesses and challenges in the export control system that point to vulnerabilities in the system and its ability to protect U.S. security, foreign policy, and economic interests. Two key weaknesses relate to the most basic aspects of the export control system: (1) whether items are controlled by State or Commerce and (2) whether items should be subject to government review prior to export.

Because State and Commerce have different restrictions on the items they control, determining which exported items are controlled by State and which are controlled by Commerce is fundamental to the U.S. export control system's effectiveness. However, as we have previously reported, State and Commerce have disagreed on which department controls certain items. In some cases, both departments have claimed jurisdiction over the same items, such as certain missile-related technologies. In another case, for example, Commerce improperly determined that explosive detection devices were subject to Commerce's less restrictive export control requirements when they were, in fact, State-controlled. Such jurisdictional disagreements and problems are often rooted in the departments' differing

interpretations of the regulations and minimal or ineffective coordination between the departments. Until these disagreements and problems are resolved, however, exporters—not the government—determine which restrictions apply and the type of governmental review that will occur. Not only does this create an unlevel playing field and competitive disadvantage—because some companies will have access to markets that others will not, depending on which system they use—but it also increases the risk that critical items will be exported without the appropriate review and resulting protections. Despite these risks, no one has held the departments accountable for making clear and transparent decisions about export control jurisdiction.

Even when jurisdiction is clearly established, limitations exist in the government's ability to ensure that exports exempt from licensing requirements comply with laws and regulations. While State generally requires a license for exports, some exports are exempt from licensing, such as certain arms exports to Canada. In such cases, it becomes the exporter's responsibility—not the government's—to ensure the legitimacy of the export. Therefore, exporters need sufficient guidance to minimize the possibility of incorrect interpretations of the regulations and improper use of an exemption to export an item. At times, State has provided conflicting information to exporters on the proper use of the Canadian exemption, which has resulted in some exporters using the exemption while others applied for licenses to export the same item.

Together, these weaknesses create considerable challenges for enforcement agencies in carrying out their respective inspection, investigation, and prosecution responsibilities. For example, obtaining timely and complete information to confirm whether items are controlled and need a license is a challenge. In one case, investigative agents executed search warrants based on Commerce's license determination that missile technology-related equipment was controlled. Subsequently, Commerce determined that no license was required for this equipment, and the case was closed. The use of license exemptions has also raised serious concerns for enforcement officials. Homeland Security officials explained that they generally oppose licensing exemptions because items can be more easily diverted without detection, which complicates potential investigations. Justice officials similarly noted that prosecuting export violations under an exemption is difficult because of the challenges in acquiring evidence of criminal intent, given the limited "paper trail" generated under an exemption. Other enforcement challenges include difficulty in coordinating investigations among several departments, balancing multiple priorities, and leveraging finite resources.

Export Control System is Further Hindered by Licensing Inefficiencies

While exporters and foreign governments have complained about processing times, reviews of arms export license applications require time to deliberate and ensure that license decisions are appropriate. However, such reviews should not be unnecessarily delayed due to inefficiencies nor should they be eliminated for efficiency's sake—both of which could have unintended consequences for U.S. security, foreign policy, and economic interests. Over the last several years, State has initiated various efforts to reduce license application processing times. Yet, these initiatives have generally not been successful:

- The establishment in 2004 of D-Trade, a new automated system for processing licensing applications, has been cited as State's most significant effort to improve efficiency. However, the anticipated efficiencies have not been realized. Our current analysis of processing times for permanent export licenses does not show a significant difference between D-Trade and paper processing for fiscal years 2004 through 2006.
- State also implemented initiatives to expedite applications in support of on-going military operations. In 2005, however, we reported that only 19 percent of the applications submitted under the initiatives for Operations Enduring Freedom and Iraqi Freedom were processed within the time frames set by State. Our current work shows that even fewer cases are being processed within the department's current 2-day goal for applications in support of these operations.
- Other initiatives have not been widely used by exporters. For example, we reported that between 2000 and 2005, State had only received three applications for comprehensive export authorizations for a range of exports associated with multinational defense efforts, such as the Joint Strike Fighter.

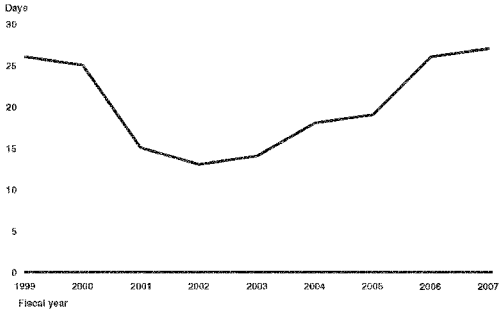
The initiatives' lack of success is not surprising. When many of these initiatives were announced in 2000, we determined that there was no analysis of the problems that the initiatives were intended to remedy or demonstration of how they would achieve identified goals. As a result, there was little assurance that the initiatives would result in improvements to the arms export control system. State also has not implemented procedures to expedite license applications for exports to Australia or the United Kingdom, as required by a 2004 law.[5] Our current work shows that processing times for Australia and the United Kingdom do not significantly

[5]Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 §1225(b) (2004).

differ from other major trading partners, taking a median of 21 days to process in fiscal year 2006.

Despite efforts to improve efficiency, State's median processing times of license applications for arms exports have been increasing since 2003, reversing a downward trend since 1999 (see fig. 1). Furthermore, State has not kept pace with a growing number of applications, which has increased almost 23 percent over the last 3 years. At the end of fiscal year 2006, the backlog reached its highest level of over 10,000 cases.

Figure 1: Median Processing Times for Arms Export Cases, Fiscal Year 1999 through April 2007 (in days)



Source: GAO analysis of State data.

Concerns about licensing efficiency have largely focused on State, in part, because most Commerce-controlled exports can occur without a license. In 2005, for example, only 1.5 percent of dual-use exports, by dollar value, were licensed.[4] However, the overall efficiency of Commerce's licensing process is unknown. For example, in assessing its license processing

[4]This amount reflects only the export of items specifically identified on Commerce's control list. If an item is not listed on the control list but is subject to Commerce's regulations, it falls into the category known as EAR99. In 2005, 99.98 percent of EAR99 items were exported without licenses. Amounts do not include data for exports to Canada.

times, which have remained relatively stable, Commerce only measures the first steps of its application review process—how long it takes to review an application internally and refer it to another agency for review. Commerce does not have efficiency-related measures for other steps in the license application review process, such as how quickly a license should be issued once other agencies provide their input, or for the review process as a whole.

Lack of Systematic Assessments Invites Risk

To be able to adapt to 21st century challenges, federal programs need to systematically reassess priorities and approaches and determine what corrective actions may be needed to fulfill their missions.[5] Given their export control responsibilities, State and Commerce should not be exceptions to this basic management tenet. However, neither department has conducted such assessments to determine overall effectiveness, despite the existence of known vulnerabilities.

While GAO has made numerous recommendations to improve the effectiveness and efficiency of the arms export control system, State has not made significant changes to its system. State does not know how well it is fulfilling its mission and what additional corrective actions may be needed since it has not systematically assessed its controls, even in light of the September 2001 terror attacks.

Commerce officials acknowledged that they had not comprehensively assessed the effectiveness of dual-use export controls in protecting U.S. national security and economic interests. Instead, they stated they conducted an ad hoc review of the dual-use system after the events of September 2001 and determined that no fundamental changes were needed. We were unable to assess the sufficiency of this review because Commerce did not document how it conducted the review or reached its conclusions.

Conclusions

At a time of evolving threats, changing allied relationships, and increasing globalization, it is appropriate to ask how Congress can be assured that the export control system is achieving its intended purposes—protecting

[5]GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, GAO-05-325SP (Washington, D.C.: February 2005) and *21st Century Challenges: Transforming Government to Meet Current and Emerging Challenges*, GAO-05-830T (Washington, D.C.: July 13, 2005).

national security and promoting foreign policy interests while allowing legitimate trade. To accomplish such purposes, an export control system needs to clearly define what should be controlled and how, so that it is understandable by exporters and enforceable by the government. The system should also be efficient and well managed. Our work in this area demonstrates both the ineffectiveness and inefficiency of the system—a key concern that compelled GAO to designate the effective protection of technologies critical to U.S. national security interests as a new high risk area. It is, therefore, time to step back, assess, and rethink what type of system is needed to best protect U.S. national security, foreign policy, and economic interests in a changing environment.

GAO Contacts and Acknowledgments

For questions regarding this testimony, please contact me at (202) 512-4841 or calvaresibarra@gao.gov. Anne-Marie Lasowski and Johana R. Ayers, Assistant Directors; Ian Jefferies, Karen Sloan, and Bradley Terry made key contributions to this statement. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

Appendix: Summary of Prior GAO Reports on the U.S. Export Control System

Over the last several years, GAO has issued numerous reports regarding the export control system. In those reports, we have identified weaknesses primarily in two areas: (1) the U.S. government's controls on exports to ensure that U.S. interests are protected and (2) the mechanisms to ensure that these exports comply with U.S. laws and regulations. We have also identified inefficiencies in the administration and management of the system. To correct these weaknesses and inefficiencies, we have made multiple recommendations. The recommendations have generally focused on clarifying regulations and guidance, improving interagency coordination, and obtaining sufficient information for decision making. As we followed up with the various departments over the last year, we determined that a number of these recommendations have not been implemented. Table 3 summarizes what we found, what we recommended, and what actions, if any, the departments have taken to implement the recommendations.

The State Department regulates overseas arms sales by U.S. companies under the authority of the Arms Export Control Act. State maintains a list of the items subject to its export controls. Prior to exporting State-controlled items to foreign companies and governments, companies generally need to obtain State-issued licenses. The Defense Department assists State by providing input on which items should be State-controlled and by conducting technical and national security reviews of export license applications. State's controls on arms exports are separate from those maintained by the Commerce Department. Commerce regulates the export of dual-use items, which have both military and commercial applications. Under the authority of the Export Administration Act of 1979, Commerce maintains its own list of items subject to its controls. Many items controlled by Commerce do not require licenses for export to most destinations. State and Commerce's controls differ in several key areas. For example, many items controlled by Commerce do not require licenses for export to most destinations, and Commerce-controlled items may be exported to China while arms exports to China are generally prohibited.

Table 3: Summary of 2000-2007 GAO Reports on the U.S. Export Control System

Defense Trade: Analysis of Support for Recent Initiatives (Aug. 31, 2000, GAO/NSIAD-00-191)		
Background: In 1999, Defense compiled a list of 81 defense cooperation initiatives intended to enhance cross-border defense trade and investment. Several initiatives were part of an ongoing effort to reinvent the Foreign Military Sales program, while other initiatives were to help streamline processes and/or change policies considered important for defense cooperation, such as export controls. Building on the 81 initiatives, State and Defense announced 17 measures, collectively known as the Defense Trade Security Initiative (DTSI), to adjust the export control system.	**GAO recommendations**	**Action taken**
	No recommendations	Not applicable
Main issues: Defense developed its initiatives on the basis of incomplete data and inadequate analysis to determine underlying causes for problems it identified. It is unclear whether the department's initiatives will achieve the desired outcomes of improving U.S. and foreign forces' ability to operate together in coalition warfare scenarios, reducing a gap in military capabilities between the United State and its allies, and ensuring that U.S. companies successfully compete in overseas markets. Further, there was no demonstration of how DTSI measures would achieve identified goals and no analysis of existing problems. As a result, there is little assurance that any underlying problems with the U.S. export control system have been sufficiently analyzed to determine whether DTSI will remedy any existing problems.		

Export Controls: System for Controlling Exports of High Performance Computing Is Ineffective (Dec. 18, 2000, GAO-01-10)		
Background: Exports of high performance computers exceeding a defined performance threshold require an export license from Commerce. As technological advances in high performance computing occur, it may become necessary to explore other options to maintain the U.S. lead in defense-related technology. As a step in this direction, the National Defense Authorization Act for Fiscal Year 1998 required the Secretary of Defense to assess the cumulative effect of U.S.-granted licenses for exports of computing technologies to countries and entities of concern. It also required information on measures that may be necessary to counter the use of such technologies by entities of concern. **Main issues:** The current system for controlling exports of high performance computers is ineffective because it focuses on the performance level of individual computers and does not address the linking or "clustering" of many lower performance computers that can collectively perform at higher levels than current export controls allow. However, the act does not require an assessment of the cumulative effect of exports of unlicensed computers, such as those that can be clustered. The current control system is also ineffective because it uses millions of theoretical operations per second as the measure to classify and control high performance computers meant for export. This measure is not a valid means for controlling computing capabilities.	**GAO recommendations** *Commerce* • in consultation with other relevant agencies, convene a panel of experts to comprehensively assess and report to Congress on ways of addressing the shortcomings of computer export controls *Defense* • determine what countermeasures are necessary, if any, to respond to enhancements of the military or proliferation capabilities of countries of concern derived from both licensed and unlicensed high performance computing	**Action taken** Commerce has implemented our recommendation. Defense has not implemented our recommendation.

Export Controls: Regulatory Change Needed to Comply with Missile Technology Licensing Requirements (May 31, 2001, GAO-01-530)		
Background: Concerned about missile proliferation, the United States and several major trading partners in 1987 created an international voluntary agreement, the Missile Technology Control Regime (MTCR), to control the spread of missiles and their related technologies. Congress passed the National Defense Authorization Act for Fiscal Year 1991 to fulfill the U.S. government's MTCR commitments. This act amended the Export Administration Act of 1979, which regulates the export of dual-use items, by requiring a license for all exports of controlled dual-use missile technologies to all countries. The National Defense Authorization Act also amended the Arms Export Control Act, which regulates the export of military items, by providing the State Department the discretion to require licenses or provide licensing exemptions for missile technology exports. **Main issues:** State's regulations require licenses for the exports of missile technology items to all countries—including Canada, which is consistent with the National Defense Authorization Act. However, Commerce's export regulations are not consistent with the act as they do not require licenses for the export of controlled missile equipment and technology to Canada.	**GAO recommendations** *Commerce* • revise the Export Administration Regulations to comply with the MTCR export licensing requirements contained in the National Defense Authorization Act for Fiscal Year 1991, or • seek a statutory change from Congress to specifically permit MTCR items to be exempted from licensing requirements • if Commerce seeks a statutory change, revise the Export Administration Regulations to comply with the current statute until such time as a statutory change occurs	**Action taken** Our recommendations have not been implemented. However, Commerce has a regulatory change pending that, once implemented, will require licenses for the export of dual-use missile technologies to Canada.

Export Controls: State and Commerce Department License Review Times Are Similar (June 1, 2001, GAO-01-528)		
Background: The U.S. defense industry and some U.S. and allied government officials have expressed concerns about the amount of time required to process export license applications. **Main issues:** In fiscal year 2000, State's average review time for license applications was 46 days while Commerce's average was 50 days. Variables identified as affecting application processing times include the commodity to be exported and the extent of interagency coordination. Both departments approved more than 80 percent of license applications during fiscal year 2000.	**GAO recommendations** No recommendations	**Action taken** Not applicable
Export Controls: Clarification of Jurisdiction for Missile Technology Items Needed (Oct. 9, 2001, GAO-02-120)		
Background: The United States has committed to work with other countries through the Missile Technology Control Regime (MTCR) to control the export of missile-related items. The regime is a voluntary agreement among member countries to limit missile proliferation and consists of common export policy guidelines and a list of items to be controlled. In 1990, Congress amended existing export control statutes to strengthen missile-related export controls consistent with U.S. commitments to the regime. Under the amended statutes, Commerce is required to place regime items that are dual-use on its list of controlled items. All other regime items are to appear on State's list of controlled items. **Main issues:** Commerce and State have not clearly determined which department has jurisdiction over almost 25 percent of the items that the U.S. government agreed to control as part of its regime commitments. The lack of clarity as to which department has jurisdiction over some regime items may lead an exporter to seek a Commerce license for a militarily sensitive item controlled by State. Conversely, an exporter could seek a State license for a Commerce-controlled item. Either way, exporters are left to decide which department should review their exports of missile items and, by default, which policy interests are to be considered in the license review process.	**GAO recommendations** *Commerce and State* • jointly review the listing of items included on the MTCR list, determine the appropriate jurisdiction for those items, and revise their respective export control lists to ensure that proposed exports of regime items are subject to the appropriate review process	**Action taken** Commerce and State have not implemented our recommendations despite initially agreeing to do so.

Export Controls: Reengineering Business Processes Can Improve Efficiency of State Department License Reviews (Dec. 31, 2001, GAO-02-203)		
Background: The U.S. defense industry and some foreign government purchasers have expressed concern that the arms export control process is unnecessarily lengthy. While the export licensing process can be lengthy because of foreign policy and national security considerations, other factors may also affect processing times. **Main issues:** State lacks formal guidelines for determining which agencies and offices should review arms export license applications and does not have procedures to monitor the flow of applications through the process. As a result, thousands of applications have been delayed while no substantive review occurred and hundreds more have been lost.	**GAO recommendations** *State* • develop criteria for determining which applications should be referred to which agencies and offices for further review, develop formal guidelines and training for reviewing organizations so they clearly understand their duties • establish timeliness goals for each phase of the licensing process and mechanisms to ensure that applications are not lost or delayed • implement these recommendations before proceeding with a planned upgrade to the department's electronic business processing system	**Action taken** Our recommendations have been implemented. • State's electronic system does not yet accept all types of export applications.

Defense Trade: Lessons to Be Learned from the Country Export Exemption (March 29, 2002, GAO-02-63)		
Background: State's export regulations do not require licenses for the export of many defense items to Canada. In 2000, the U.S. government announced plans to extend similar licensing exemptions for exports to other countries. **Main issues:** Because of unclear guidance, some exporters have implemented the Canadian exemption inconsistently and have misinterpreted requirements to report their export activities to State. State has provided inconsistent answers to exporters and U.S. Customs Service* officials when questions were raised about the exemption's use in specific situations. State encourages exporters to voluntarily disclose violations but relies primarily on U.S. Customs to enforce export control laws and regulations, including use of the Canadian exemption. U.S. Customs' ability to enforce the proper use of exemptions is weakened by a lack of information and resources, difficulties in investigating suspected violations, and competing demands, such as terrorism prevention and drug interdiction.	**GAO recommendations** *State* • review guidance and licensing officer training to improve clarity and ensure consistent application of the exemption and provide the guidance to U.S. Customs to ensure consistent application of the exemption and provide the guidance to U.S. Customs to ensure that consistent information is disseminated to exporters • work with the Justice Department and U.S. Customs to assess lessons learned from the Canadian exemption and ensure the lessons are incorporated in future agreements *U.S. Customs* • assess the threat of illegal defense exports along the Canadian border and evaluate whether reallocation of inspectors or other actions are warranted to better enforce export regulations • update, finalize, and provide guidance on inspection requirements to all inspectors	**Action taken** State has not implemented our recommendations. In its response to our report, State said it would provide training and guidance but did not indicate how it would ensure that the guidance and training are clear and understood by those who need to use them. The department also said it would work with law enforcement agencies to assess lessons learned but did not identify how it would do so. Subsequently, State signed the treaty with the United Kingdom to allow for license-free export before the department conducted a lessons learned assessment. U.S. Customs has implemented our recommendations.

Export Controls: Issues to Consider in Authorizing a New Export Administration Act (Feb. 28, 2002, GAO-02-468T**)**		
Background: The U.S. government's policy regarding exports of sensitive dual-use technologies seeks to balance economic, national security, and foreign policy interests. The Export Administration Act (EAA) of 1979, as amended, has been extended through executive orders and law. Under the act, the President has the authority to control and require licenses for the export of dual-use items, such as nuclear, chemical, biological, missile, or other technologies that may pose a national security or foreign policy concern. In 2002, there were two different bills before the 107th Congress—H.R. 2581 and S. 149—that would enact a new EAA.	**GAO recommendations**	**Action taken**
	No recommendations	Not applicable
Main issues: A new EAA should take into consideration the increased globalization of markets and an increasing number of foreign competitors, rapid advances in technologies and products, a growing dependence by the U.S. military on commercially available dual-use items, and heightened threats from terrorism and the proliferation of weapons of mass destruction.		

Export Controls: Rapid Advances in China's Semiconductor Industry Underscore Need for Fundamental U.S. Policy Review (April 19, 2002, GAO-02-620)		

Background: Semiconductor equipment and materials are critical components in everything from automobiles to weapons systems. The U.S. government controls the export of these dual-use items to sensitive destinations, such as China. Exports of semiconductor equipment and materials require a license from Commerce. Other departments, such as Defense and State, assist Commerce in reviewing license applications. The United States is a member of the multilateral Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.
 	
Main issues: Since 1986, China has narrowed the gap between the U.S. and Chinese semiconductor manufacturing technology from approximately 7 years to 2 years or less. China's success in acquiring manufacturing technology from abroad has improved its semiconductor manufacturing facilities for more capable weapons systems and advanced consumer electronics. The multilateral Wassenaar Arrangement has not affected China's ability to obtain semiconductor manufacturing equipment because the U.S. is the only member of this voluntary arrangement that considers China's acquisition of semiconductor manufacturing equipment a cause for concern. Additionally, U.S. government policies and practices to control the export of semiconductor technology to China are unclear and inconsistent, leading to uncertainty among U.S. industry officials about the rationale for some licensing decisions. Furthermore, U.S. agencies have not done the analyses, such as assessing foreign availability of this technology or the cumulative effects of such exports on U.S. national security interests, necessary to justify U.S. policies and practices.
	GAO recommendations
	
	Commerce
	• in consultation with Defense and State, reassess and document U.S. export policy on semiconductor manufacturing equipment and materials to China:
	  • complete the analyses needed to serve as a sound basis for an updated policy;
	  • develop new export controls, if appropriate, or alternative means for protecting U.S. security interests; and
	  • communicate the results of these efforts to Congress and U.S. industry
		Action taken
		
		Commerce has not implemented our recommendations.

Export Controls: More Thorough Analysis Needed to Justify Changes in High Performance Computer Controls (Aug. 2, 2002, GAO-02-892)		
Background: High performance computers that operate at or above a defined performance threshold, measured in millions of theoretical operations per second, require a Commerce license for export to particular destinations. The President has periodically changed, on the basis of technological advances, the threshold above which licenses are required. The National Defense Authorization Act of 1998 requires that the President report to Congress the justification for changing the control threshold. The report must, at a minimum, (1) address the extent to which high performance computers with capabilities between the established level and the newly proposed level of performance are available from foreign countries, (2) address all potential uses of military significance to which high performance computers between the established level and the newly proposed level could be applied, and (3) assess the impact of such uses on U.S. national security interests.	**GAO recommendations**	**Action taken**
	No recommendations	Not applicable
Main issues: In January 2002, the President announced that the control threshold—above which computers exported to such countries as China, India, and Russia—would increase from 85,000 to 190,000 millions of theoretical operations per second. The report to Congress justifying the changes in control thresholds for high performance computers was issued in December 2001 and focused on the availability of such computers. However, the justification did not fully address the requirements of the National Defense Authorization Act of 1998. The December 2001 report did not address several key issues related to the decision to raise the threshold: (1) the unrestricted export of computers with performance capabilities between the old and new thresholds will allow countries of concern to obtain computers they have had difficulty constructing on their own, (2) the U.S. government is unable to monitor the end uses of many of the computers it exports, and (3) the multilateral process used to make earlier changes in high performance computer thresholds.		

Export Controls: Department of Commerce Controls over Transfers of Technology to Foreign Nationals Need Improvement (Sept. 6, 2002, GAO-02-972)		
Background: To work with controlled dual-use technologies in the United States, foreign nationals and the firms that employ them must comply with U.S. export control and visa regulations. U.S. firms may be required to obtain what is known as a deemed export license from Commerce before transferring controlled technologies to foreign nationals in the United States. Commerce issues deemed export licenses after consulting with the Defense, Energy, and State Departments. In addition, foreign nationals who are employed by U.S. firms should have an appropriate visa classification, such as an H-1B specialized employment classification. H-1B visas to foreign nationals residing outside of the United States are issued by State, while the Immigration and Naturalization Service approves requests from foreign nationals in the United States to change their immigration status to H-1B. **Main issues:** In fiscal year 2001, Commerce approved 822 deemed export license applications and rejected 3. Most of the approved deemed export licenses allowed foreign nationals from countries of concern to work with advanced computer, electronic, or telecommunication and information security technologies in the United States. To better direct its efforts to detect possible unlicensed deemed exports, in fiscal year 2001 Commerce screened thousands of applications for H-1B and other types of visas submitted by foreign nationals overseas. From these applications, it developed 160 potential cases for follow-up by enforcement staff in the field. However, Commerce did not screen thousands of H-1B change-of-status applications submitted domestically to the Immigration and Naturalization Service for foreign nationals already in the United States. In addition, Commerce could not readily track the disposition of the 160 cases referred to field offices for follow-up because it lacks a system for doing so. Commerce attaches security conditions to almost all licenses to mitigate the risk of providing foreign nationals with controlled dual-use technologies. However, according to senior Commerce officials, their staff do not regularly visit firms to determine whether these conditions are being implemented because of competing priorities, resource constraints, and inherent difficulties in enforcing several conditions.	**GAO recommendations** *Commerce* • use available Immigration and Naturalization Service data to identify foreign nationals potentially subject to deemed export licensing requirements • establish, with Defense, Energy, and State, a risk-based program to monitor compliance with deemed export license conditions; if the departments conclude that certain security conditions are impractical to enforce, they should jointly develop conditions or alternatives to ensure that deemed exports do not place U.S. national security interests at risk	**Action taken** Our recommendations have been implemented.

Export Controls: Processes for Determining Proper Control of Defense-Related Items Need Improvement (Sept. 20, 2002, GAO-02-996)		
Background: Companies seeking to export defense-related items are responsible for determining whether those items are regulated by Commerce or State and what the applicable export requirements are. If in doubt about whether an item is Commerce- or State-controlled or when requesting a change in jurisdiction, an exporter may request a commodity jurisdiction determination from State. State, which consults with Commerce and Defense, is the only department authorized to change export control jurisdiction. If an exporter knows an item is Commerce-controlled but is uncertain of the export requirements, the exporter can request a commodity classification from Commerce. Commerce may refer classification requests to State and Defense to confirm that an item is Commerce-controlled. **Main issues:** Commerce has improperly classified some State-controlled items as Commerce-controlled because it rarely obtains input from Defense and State before making commodity classification determinations. As a result, the U.S. government faces an increased risk that defense items will be exported without the proper level of government review and control to protect national interests. Also, Commerce has not adhered to regulatory time frames for processing classification requests. In its implementation of the commodity jurisdiction process, State has not adhered to established time frames, which may discourage companies from requesting jurisdiction determinations. State has also been unable to issue determinations for some items because of interagency disputes occurring outside the process.	**GAO recommendations** *Commerce* • promptly review existing guidance and develop criteria with concurrence from State and Defense for referring commodity classification requests to those departments • work with State to develop procedures for referring requests that are returned to companies because the items are controlled by State or because they require a commodity jurisdiction review *Commerce, Defense and State* • revise interagency guidance to incorporate any changes to the referral process and time frames for making decisions • assess the resources needed to make jurisdiction recommendations and determinations within established time frames and reallocate them as appropriate	**Action taken** With a limited exception, our recommendations have not been implemented. In responding to our report, State indicated it partially agreed with our recommendations, while Commerce and Defense agreed to implement our recommendations. Commerce and Defense have added staff to assist with their respective processes. State indicated that it intends to seek additional staff to assist with its processes.

Nonproliferation: Strategy Needed to Strengthen Multilateral Export Control Regimes (Oct. 25, 2002, GAO-03-43)		

Background: Multilateral export control regimes are a key policy instrument in the overall U.S. strategy to combat the proliferation of weapons of mass destruction. They are consensus-based, voluntary arrangements of supplier countries that produce technologies useful in developing weapons of mass destruction or conventional weapons. The regimes aim to restrict trade in these technologies to prevent proliferation. The four principal regimes are the Australia Group, which controls chemical and biological weapons proliferation; the Missile Technology Control Regime (MTCR); the Nuclear Suppliers Group; and the Wassenaar Arrangement, which controls conventional weapons and dual-use items and technologies. All four regimes expect members to report denials of export licenses for controlled dual-use items, which provide members with more complete information for reviewing questionable export license applications. The United States is a member of all four regimes.
 	
Main issues: Weaknesses impede the ability of the multilateral export control regimes to achieve their nonproliferation goals. Regimes often lack even basic information that would allow them to assess whether their actions are having their intended results. The regimes cannot effectively limit or monitor efforts by countries of concern to acquire sensitive technology without more complete and timely reporting of licensing information and without information on when and how members adopt and implement agreed-upon export controls. For example, GAO confirmed that the U.S. government had not reported its denial of 27 export licenses between 1996 and 2002 for items controlled by the Australia Group. Several obstacles limit the options available to the U.S. government in strengthening the effectiveness of multilateral export control regimes. The requirement to achieve consensus in each regime allows even one member to block action in adopting needed reforms. Because the regimes are voluntary in nature, they cannot enforce members' compliance with regime commitments. For example, Russia exported nuclear fuel to India in a clear violation of its commitments under the Nuclear Suppliers Group, threatening the viability of this regime. The regimes have adapted to changing threats in the past. Their continued ability to do so will determine whether they remain viable in curbing proliferation in the future.
	GAO recommendations
	
	State
	• as the U.S. government's representative to the multilateral regimes, establish a strategy to strengthen these regimes. This strategy should include ways for regime members to
	  • improve information-sharing,
	  • implement regime changes to their export controls more consistently, and
	  • identify organizational changes that could help reform regime activities
	• ensure that the United States reports all license application denials to regimes
	• establish criteria to assess the effectiveness of the regimes
		Action taken
		
		State has not implemented our recommendations.

Nonproliferation: Improvements Needed to Better Control Technology Exports for Cruise Missiles and Unmanned Aerial Vehicles (Jan. 23, 2004, GAO-04-175)		
Background: Cruise missiles and unmanned aerial vehicles (UAV) pose a growing threat to U.S. national security interests as accurate, inexpensive delivery systems for conventional, chemical, and biological weapons. Exports of cruise missiles and military UAVs by U.S. companies are licensed by State while government-to-government sales are administered by Defense. Exports of dual-use technologies related to cruise missiles and UAVs are licensed by Commerce. **Main issues:** U.S. export control officials find it increasingly difficult to limit or track dual-use items with cruise missile or UAV-related capabilities that can be exported without a license. A gap in dual-use export control authority enables U.S. companies to export certain dual-use items to recipients that are not associated with missile projects or countries listed in the regulations, even if the exporter knows the items might be used to develop cruise missiles or UAVs. The gap results from current "catch-all" regulations that restrict the sale of unlisted dual-use items to certain national missile proliferation projects or countries of concern, but not to nonstate actors such as certain terrorist organizations or individuals. Catch-all controls authorize the government to require an export license for items that are not on control lists but are known or suspected of being intended for use in a missile or weapons of mass destruction program. Commerce, Defense, and State have seldom used their end use monitoring programs to verify compliance with conditions placed on the use of cruise missile, UAV, or related technology exports. For example, Commerce conducted visits to assess the end use of items for about 1 percent of the 2,490 missile-related licenses issued between fiscal years 1998 and 2002. Thus, the U.S. government cannot be confident that recipients are effectively safeguarding equipment in ways that protect U.S. national security and nonproliferation interests.	**GAO recommendations** *Commerce* • assess and report to the Committee on Government Reform on the adequacy of the Export Administration Regulations' catch-all provision to address missile proliferation by nonstate actors; this assessment should indicate ways the provision should be modified *Commerce, Defense and State* • as a first step, each department complete a comprehensive assessment of cruise missile, UAV, and related dual-use technology transfers to determine whether U.S. exporters and foreign end users are complying with the conditions on the transfers • as part of the assessment, each department conduct additional postshipment verification visits on a sample of cruise missile and UAV licenses	**Action taken** Commerce has addressed our recommendation by revising its licensing requirement for missile technology exports. While Commerce has taken some actions to address our recommendations, the other departments have not done so.

Export Controls: Post-Shipment Verification Provides Limited Assurance that Dual-Use Items Are Being Properly Used (Jan. 12, 2004, GAO-04-357)		
Background: Commerce conducts post-shipment verification (PSV) checks to ensure that dual-use items arrive at their intended destination and are used for the purposes stated in the export license. To conduct PSV checks, Commerce personnel visit foreign companies to verify the use and location of exported items. PSVs serve as one of the primary means of checking whether end users are complying with conditions imposed by the license. Commerce placed conditions on nearly all approved licenses for exports to countries of concern for fiscal years 2000 to 2002. **Main issues**: In fiscal years 2000 to 2002, Commerce approved 7,680 licenses for dual-use exports to countries of concern, such as China, India, and Russia. However, we found that during this time Commerce completed PSV checks on only 428 of the dual-use licenses it approved for countries of concern. We identified three key weaknesses in the PSV process that reduce its effectiveness. First, PSVs do not confirm compliance with license conditions because U.S. officials often lack the technical training needed to assess compliance and end users may not be aware of the license conditions by which they are to abide. Second, some countries of concern, most notably China, limit the U.S. government's access to facilities where dual-use items are shipped, making it difficult to conduct a PSV. Third, PSV results have only a limited impact on future licensing decisions. Companies receiving an unfavorable PSV may receive greater scrutiny in future license applications, but licenses for dual-use exports to these companies can still be approved. In addition, according to Commerce officials, past PSV results play only a minor role in future enforcement actions.	**GAO recommendations** *Commerce* • improve technical training for personnel conducting PSV checks to ensure they are able to verify compliance with license conditions • ensure that personnel conducting PSV checks assess compliance with license conditions • require that the exporter inform the end user in writing of the license conditions	**Action taken** Our recommendations have been implemented.

Defense Trade: Arms Export Control System in the Post-9/11 Environment (Feb. 16, 2005, GAO-05-234)		
Background: Over the years, there have been various efforts to change the arms export control system overseen by State. One effort was the Defense Trade Security Initiative (DTSI) in 2000, which was intended to facilitate defense trade with allies in the post-Cold War environment. Given the September 2001 terror attacks, the U.S. government has had to reevaluate whether existing policies support national security and foreign policy goals. **Main issues:** Since the September 2001 terror attacks, the arms export control system has not undergone fundamental changes because, according to State officials, the system is already protecting U.S. interests. While the system essentially remains unchanged, new trends have emerged in the processing of arms export cases. In particular, median processing times for all arms export cases began increasing in fiscal year 2003. State and Defense have continued to implement DTSI and related initiatives primarily designed to streamline the processing of arms export licenses. According to State officials, they have not evaluated the effects of these initiatives on the export control system or revised the initiatives but maintain that the initiatives remain relevant after September 2001. Yet, applications processed under these initiatives have generally not been processed within the time frames established by State and Defense and exporters have not widely used several initiatives. State has sought limited coordination with the agencies responsible for enforcing U.S. arms export laws—the Departments of Homeland Security and Justice—regarding initiatives designed to streamline arms export licensing. The only exceptions have been regarding proposed export licensing exemptions. Enforcement officials have raised concerns regarding licensing exemptions, including the increased risk of diversion.	**GAO recommendations**	Action taken
	No recommendations	Not applicable

Export Controls: Improvements to Commerce's Dual-Use System Needed to Ensure Protection of U.S. Interests in the Post-9/11 Environment
(June 26, 2006, GAO-06-638)

Background: In regulating dual-use exports, Commerce seeks to allow U.S. companies to compete globally while minimizing the risk of items falling into the wrong hands. In so doing, Commerce faces the challenge of weighing U.S. national security and economic interests, which at times can be divergent or even competing—a challenge heightened by shifts in the security and economic environment. **Main issues:** Commerce has not systematically evaluated whether the dual-use export control system is meeting its stated goal of protecting U.S. national security and economic interests. Specifically, Commerce has not comprehensively analyzed available data to determine what dual-use items have actually been exported. Commerce has also not established performance measures that would provide an objective basis for assessing how well the system is protecting U.S. interests. Instead, Commerce relies on limited measures of efficiency, as well as intelligence reports and meetings with industry to gauge how the system is operating. After conducting an ad hoc review of the system, Commerce officials determined that no fundamental changes were needed after September 2001, but did make some adjustments primarily related to controls on chemical and biological agents. Omissions exist in the watchlist Commerce uses to screen export license applications. This screening is intended to identify ineligible parties or parties warranting more scrutiny. The omissions undermine the list's utility, which increases the risk of dual-use exports falling into the wrong hands. GAO identified 147 parties that had violated U.S. export control requirements, had been determined by Commerce to be suspicious end users, or had been reported by State as committing acts of terror, but these parties were not on the watchlist of approximately 50,000 names. Reasons for the omissions include a lack of specific criteria as to who should be on the watchlist and Commerce's failure to regularly review the list. In addition, a technical limitation in Commerce's computerized screening system results in some parties on license applications not being automatically screened against the watchlist. Commerce has implemented several but not all of GAO's recommendations for ensuring that export controls on sensitive items protect U.S. interests. Among weaknesses identified by GAO is the lack of clarity on whether certain items are under Commerce's control, which increases the risk of defense-related items being improperly exported. Commerce has yet to take corrective action on this matter.	**GAO recommendations** *Commerce* • use available data and develop performance measures in consultation with other agencies to systematically evaluate the effectiveness and efficiency of the dual-use export control system in achieving the goal of protecting U.S. interests • correct omissions in the watchlist and weaknesses in the screening process • report to Congress on the status of GAO recommendations, the reasons why recommendations have not been implemented, and what other actions, if any, are being taken to address the identified weaknesses	**Action taken** While Commerce indicated it has plans to evaluate the effectiveness of the dual-use export control system, it has not implemented them or taken action regarding the report to Congress. Commerce has implemented the recommendations concerning the watchlist.

Analysis of Data for Exports Regulated by the Department of Commerce (Nov. 13, 2006, GAO-07-197R)		
Background: GAO previously reported that Commerce has not systematically evaluated the overall effectiveness and efficiency of the dual-use export system. Commerce has not conducted comprehensive analyses of available data about items that have actually been exported from the United States. GAO made several recommendations in that report, including that Commerce should use the available data to evaluate the system's effectiveness.	**GAO recommendations**	**Action taken**
	No recommendations	Not applicable
Main issues: The data we obtained provide an overall picture of the dollar value of commodities subject to Commerce regulations and of the countries receiving these exports. Most items subject to Commerce's regulations do not require government review and approval in the form of a license prior to export. We found that less than 1 percent of exports subject to Commerce regulations were licensed in 2005.[a] The dollar value of unlicensed exports from the United States in 2005 was about $624 billion, while the value of licensed exports was about $1.2 billion.		
The insight we gained from analyzing shipment data further supports the prior recommendation to Commerce that is use available data to evaluate the effectiveness of its export control system. The data could aid in determining the economic impact of current regulations and in evaluating whether exporters are complying with regulations. Commerce officials told us they periodically use portions of the data for enforcement activities but currently do not use the data to evaluate the system's effectiveness.		

Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Companies (Dec. 5, 2006, GAO-07-69)		
Background: The U.S. government controls exports of defense-related goods and services by companies and the export of information associated with their design, production, and use. Globalization and communication technologies facilitate exports of controlled information, which provides benefits to U.S. companies and increases interactions between U.S. and foreign companies—making it challenging to protect such exports. **Main issues:** Commerce and State have less oversight on exports of controlled information than they do on exports of controlled goods. Commerce's and State's export control requirements and processes provide physical checkpoints on the means and methods companies use to export controlled goods to help the agencies ensure such exports are made under their license terms, but the agencies cannot easily apply these same requirements and processes to exports of controlled information. Commerce and State expect individual companies to be responsible for implementing practices to protect export-controlled information. However, one-third of the companies GAO interviewed did not have internal control plans to protect export-controlled information. Commerce and State have not fully assessed the risks of companies using a variety of means to protect export-controlled information. They have not used existing resources, such as license data, to help identify the minimal protections for such exports. As companies use a variety of measures for protecting export-controlled information, increased knowledge of the risks associated with protecting such information could improve agency outreach and training efforts.	**GAO recommendations** *Commerce and State* • strategically assess potential vulnerabilities in the protection of export-controlled information using available resources, such as licensing data, and evaluate company practices for protecting such information • improve interagency coordination in the following areas (1) provide specific guidance, outreach, and training on how to protect export-controlled information and (2) better target compliance activities on company protection of export-controlled information	**Action taken** Commerce and State have not implemented the recommendations, but Commerce indicated it is taking steps to address them.

Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Universities
(Dec. 5, 2006, GAO-07-70)

Background: U.S. export control regulations allow foreign students and researchers without export licenses to partake in fundamental research, defined to mean basic research and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community. U.S. policymakers recognize that foreign students and researchers have made substantial contributions to U.S. research efforts, but the potential transfer of knowledge of controlled defense-related technologies to their home countries could have significant consequences for U.S. national interests. **Main issues:** According to university officials we interviewed, their institutions focus almost exclusively on fundamental research, which is generally not subject to export controls. By conducting fundamental research, universities can openly share and publish their research findings within a broad community that includes international students and scholars. To ensure their research remains in the public domain, most university officials said they extensively screen and review potential contracts and grants for fundamental research to ensure there are no publication or other dissemination restrictions. If export controls apply, university officials stated they sometimes reject the research contract, involve only students and scholars who can conduct the research under license exclusions, or refer such work to associated facilities that can better regulate and control foreign national access to such research. However, the universities we visited indicated that government-provided training and guidance on export regulations is limited in informing their efforts to manage and protect export-controlled information, and it does not clarify when fundamental research exclusions should apply. While State and Commerce officials expressed concerns that universities may not correctly interpret and apply export regulations, they have not conducted an overall assessment of available trend data on technology development research and foreign participation in such research at U.S. universities to identify potential vulnerabilities. Although State and Commerce provide guidance through training seminars, agency Web sites, and telephone help desks to assist exporters in understanding and complying with regulations, officials stated that their focus is on processing export license applications—primarily from industry. Recently, Commerce established an advisory committee composed of industry and university representatives who are expected to discuss issues such as the nature of university research and its relation to export controls.	**GAO recommendations** *Commerce and State* • strategically assess potential vulnerabilities in the conduct and publication of academic research through analyzing available information on technology development and foreign student populations at universities • on the basis of this assessment, coordinate efforts and improve guidance and outreach to ensure that universities understand when to apply export controls	**Action taken** Commerce and State have not yet implemented the recommendations, but Commerce indicated it is taking steps to address them.

Export Controls: Challenges Exist in Enforcement of an Inherently Complex System (Dec. 20, 2006, GAO-07-265)

	GAO recommendations	Action taken
Background: A key function of the U.S. export control system is enforcement, which consists of various activities that aim to prevent or deter the illegal export of controlled defense and dual-use items and can result in apprehending violators and pursuing and imposing appropriate criminal and administrative penalties. Enforcement activities are largely carried out by Commerce, Homeland Security, Justice, and State.	*Commerce, Homeland Security, and Justice*	
	• establish a task force to evaluate options to improve coordination and cooperation among export enforcement investigative agencies	Justice and Homeland Security indicated that they are taking steps to address this recommendation.
	• report the status of task force actions to Congress	
Main issues: The enforcement of export control laws and regulations involves multiple agencies with varying roles, responsibilities, and authorities. The agencies responsible for export control enforcement conduct a variety of activities, including inspecting items to be exported, investigating potential export control violations, and pursuing and imposing appropriate penalties and fines against violators. These agencies' enforcement authorities are granted through a complex set of laws and regulations, which give concurrent jurisdiction to multiple agencies to conduct investigations.	*Commerce and Homeland Security*	
	• establish goals for license determinations	Commerce and State have not yet implemented these recommendations. Homeland Security has implemented the recommendation concerning guidance on license determinations.
	Commerce, Homeland Security, and State	
	• determine what additional training or guidance is needed on license determinations	
Agencies face several challenges in enforcing export control laws and regulations. For example, agencies have had difficulty coordinating investigations and agreeing on how to proceed on cases. Coordination and cooperation often hinge on the relationships individual investigators across agencies have developed. Other challenges include obtaining timely and complete information to determine whether violations have occurred and enforcement actions should be pursued, and the difficulty in balancing multiple priorities and leveraging finite human resources.	*Commerce and Homeland Security*	
	• determine the feasibility of establishing a requirement for Customs and Border Protection to decrement Commerce licenses and an action plan for doing so	Commerce and Homeland Security have not implemented this recommendation.
Each enforcement agency has a database to capture information on its enforcement activities. However, outcomes of criminal cases are not systematically shared with State and Commerce, the principal export control agencies. Without information on the outcomes of criminal cases, export control agencies cannot gain a complete picture of an individual or a company seeking export licenses or discover trends in illegal export activities.	*Justice*	
	• establish formal procedures for conveying criminal export enforcement results to State and Commerce	Justice has implemented this recommendation.

Source: GAO analysis of prior work.

[a]The U.S. Customs Service is now part of the Homeland Security Department's Customs and Border Protection and Immigration and Customs Enforcement.

[b]Amounts do not include data for exports to Canada.

Related GAO Products

Export Controls: Challenges Exist in Enforcement of an Inherently Complex System. GAO-07-265. Washington, D.C.: December 20, 2006.

Analysis of Data for Exports Regulated by the Department of Commerce. GAO-07-197R. Washington, D.C.: November 13, 2006.

Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Universities. GAO-07-70. Washington, D.C.: December 5, 2006.

Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled information at Companies. GAO-07-69. Washington, D.C.: December 5, 2006.

Defense Technologies: DOD's Critical Technologies Lists Rarely Inform Export Control and Other Policy Decisions. GAO-06-793. Washington, D.C.: July 28, 2006.

Export Controls: Improvements to Commerce's Dual-Use System Needed to Ensure Protection of U.S. Interests in the Post-9/11 Environment. GAO-06-638. Washington, D.C.: June 26, 2006.

Defense Trade: Arms Export Control Vulnerabilities and Inefficiencies in the Post-9/11 Environment. GAO-05-468R. Washington, D.C.: April 7, 2005.

Defense Trade: Arms Export Control System in the Post-9/11 Environment. GAO-05-234. Washington, D.C.: February 16, 2005.

Nonproliferation: Further Improvements Needed in U.S. Efforts to Counter Threats from Man-Portable Air Defense Systems. GAO-04-519. Washington, D.C.: May 13, 2004.

Nonproliferation: Improvements Needed to Better Control Technology Exports for Cruise Missiles and Unmanned Aerial Vehicles. GAO-04-175. Washington, D.C.: January 23, 2004.

Export Controls: Post-Shipment Verification Provides Limited Assurance That Dual-Use Items Are Being Properly Used. GAO-04-357. Washington, D.C.: January 12, 2004.

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Export Controls: Issues to Consider in Authorizing a New Export Administration Act. GAO-02-468T. Washington, D.C.: February 28, 2002.

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Export Controls: Clarification of Jurisdiction for Missile Technology Items Needed. GAO-02-120. Washington, D.C.: October 9, 2001.

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Export Controls: System for Controlling Exports of High Performance Computing Is Ineffective. GAO-01-10. Washington, D.C.: December 18, 2000.

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China: Military Imports From the United States and the European Union Since the 1989 Embargoes. GAO/NSIAD-98-176. Washington, D.C.: June 16, 1998.

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Export Controls: Sensitive Machine Tool Exports to China. GAO/NSIAD-97-4. Washington, D.C.: November 19, 1996.

Export Controls: Sale of Telecommunications Equipment to China. GAO/NSIAD-97-5. Washington, D.C.: November 13, 1996.

Export Controls: Concerns over Stealth-Related Exports. GAO/NSIAD-95-140. Washington, D.C.: May 10, 1995.

Export Controls: Some Controls Over Missile-Related Technology Exports To China Are Weak. GAO/NSIAD-95-82. Washington, D.C.: April 17, 1995.

Export Controls: License Screening and Compliance Procedures Need Strengthening. GAO/NSIAD-94-178. Washington, D.C.: June 14, 1994.

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Mr. SHERMAN. I should point out that copies of this wonderful chart prepared by my staff, the testimony of our witnesses. And what I guess I would refer to as a GAO report being issued today are all available at the table on the side.

With that, let's go on to our next witness, Mr. Lowell.

STATEMENT OF MR. WILL LOWELL, MANAGING DIRECTOR, LOWELL DEFENSE TRADE, LLC

Mr. LOWELL. Thank you, Mr. Chairman. I have submitted a prepared statement, so I will just summarize my views.

Mr. SHERMAN. Before I let you proceed, let me indicate that Mr. Lowell is managing director of Lowell Defense Trade, LLC, which advises United States and European firms on export control compliance. He headed the State Department's Office of Defense Trade Control for virtually a decade, from 1994 until 2003. And most impressively of all, he is a former staffer to the Foreign Affairs Committee.

Mr. LOWELL. Thank you, Mr. Chairman. I will just take a few minutes.

The basic system we have for arms export control is sound. That is the statutory system. The problem, in my opinion, lies in three areas, and it has to do with the administration of the licensing system, or in some cases the lack of proper administration.

But there are three things I want to just focus on today briefly. Two of them have already been discussed, and I won't dwell on them. One is the GAO designation of this system as a high-risk area. This is really a flashing red light that needs to be addressed with some sense of urgency in an across-the-board way. This is just the most inopportune time to have all of these vulnerabilities and risks to our system out there in such a documented way. So I applaud your involvement, Mr. Chairman, in making sure that this is given proper attention, and also that of Mr. Lantos' statement that I thought was very encouraging.

The second thing is the impact of the license delays is really taking a toll not just on the economic and commercial interests of the companies and the interests of our allies and their companies and interoperability matters and so forth; it affects compliance with our laws and our regulations in an across-the-board way because of the delays and frustrations and uncertainty. And our system really is the sort of centerpiece of what happens internationally in export controls. The United States' system is the high-water mark. If we expect other countries to cooperate and to strengthen controls where we need them to, to go along with our controls and respect and enforce them, then we need to be able to administer our system efficiently and generate the support for compliance with it.

The third thing relates somewhat to GAO's finding, but is a separate issue. It is important enough that I think it needs to be raised. And that is as alluded to by Ms. Calvaresi Barr, there has been no systematic evaluation in the post-9/11 environment to either the Commerce system or the State Department system. This is probably the only area of U.S. Government national security policy that hasn't been assessed for weaknesses and vulnerabilities. And the agencies have asserted, mostly as an article of faith rather than rigorous assessment, that changes aren't needed. But, in fact, this

is a very dangerous situation the United States is in now. We need to look at these regulations, we need to see if additional authorities are needed, and see if there are particular areas that we need to focus on.

And I think it is important to remember in this respect we are not only talking about weapons going abroad and falling into dangerous hands and then coming back to be used against us. These laws and regulations are also an important means by which we control the transfer of defense articles in the United States to foreign persons and the import, temporary import in particular, of weapon systems from other countries.

So at the current time we have in the regulations a situation where U.S. Government approval is required for the transfer of a commercial communication satellite to a foreign person, but the same regulations don't require a license for the transfer of biological weapons to a foreign person, or harbor entrance detection equipment or other things controlled on the munitions list that we know are of interest to terrorist groups and al Qaeda in particular.

So I would urge, Mr. Chairman, that the subcommittee also put this part of the problem on its agenda. It involves a bigger audience than just State, Commerce and Defense. It involves the law enforcement communities, Justice, FBI, intelligence agencies and so forth, to make sure we have an adequate and effective assessment and solve and address any areas of risk and vulnerability that are related directly to the terrorist threat at this time. And I thank you, sir.

[The prepared statement of Mr. Lowell follows:]

PREPARED STATEMENT OF MR. WILL LOWELL, MANAGING DIRECTOR, LOWELL DEFENSE TRADE, LLC

Thank you, Mr. Chairman. Please permit me to commend you, Ranking Member Royce and other Members of the Sub-Committee for convening this hearing today, which concerns matters of genuine importance and urgency.

I think the questions the Subcommittee is raising are exactly the right ones: Are we doing what needs to be done to ensure our technology does not fall into the wrong hands; and are we taking appropriate steps to facilitate technology sharing where this furthers our interests.

Before summarizing where I believe the main problems lie in this area, I think it is important to state what is not a problem. I am referring to the comprehensive framework set forth in the Arms Export Control Act for controlling transfers of armaments and related technology. This statutory framework ensures crucial oversight by Congress and has served our country's security and foreign policy interests well over the years. I think it is no exaggeration to say that, if other governments had similar frameworks in place, we might be dealing with significantly more favorable security situations in various trouble spots around the world. A corollary of this, in my view, is that the United States should be providing leadership in the effort to strengthen international control of armaments—not retreating from leadership through proposals to water down our own system, or undercutting our leadership by administering our system in such a difficult manner as to discourage even our closest allies.

There are three, interrelated problems challenging our arms export control system today. In my view, they all arise with the Executive Branch's administration—or, in part, the lack of proper administration—of various authorities granted by Congress under the Arms Export Control Act.

(1) FAILURE TO ASSESS AND REORIENT CONTROLS AGAINST TERRORIST THREATS

Despite repeated urgings from Congress—and two detailed reports by the Government Accountability Office[1]—there has been no review in the Executive Branch, even at this late date, of whether our export controls should be tightened in some areas (or loopholes closed in others) to deal with the heightened terrorist threat.

There is ample information about this threat, including an important study released by the National Intelligence Council in December 2004, forecasting that terrorists will continue to rely primarily on conventional weapons in the coming years—but will also move up the technology ladder to include advanced explosives, unmanned aerial vehicles and other items of the type controlled on the U.S. Munitions List by State. If we needed a more recent reminder, just last Sunday during his interview on "Meet the Press" Admiral McConnell pointed to concerns about terrorist sleeper cells in the United States and al Qaeda's continued primary interest in explosives that generate mass casualties.

Mr. Chairman, to my knowledge, our export control programs are the only part of our overall national security structure that has not been subjected to a post-9/11 security review. Why the agencies continue to assert—as an article of faith, rather than rigorous assessment—that our programs in this area are sound and immune from exploitation is mystifying and dangerous.

(2) SYSTEMIC VULNERABILITIES AND RISKS TO U.S. TECHNOLOGY

For the first time in history, Executive Branch programs related to export control and protection of critical military technology have been placed in GAO's "high risk" list. This is not just a dubious distinction; it is a flashing red light signaling that many things are wrong—and it comes at an inopportune time.

GAO has spelled out in a series of reports since 9/11 all of the corrective actions needed to resolve problems related to those vulnerabilities. The problems cover the waterfront, from clarifying export license requirements for missile technologies to providing reasonable assurance that anti-tamper systems in U.S. weapons are working as intended when sold to foreign countries.

Given Ms. Calvaresi-Barr's presence at today's hearing, there is no need for me to elaborate on the magnitude of the problems in this area—except to note that the very fact of the high risk designation impeaches any assurance by the Executive Branch that the programs it administers pursuant to the Arms Export Control Act are functioning effectively to safeguard U.S. interests.

(3) DECLINING LEVELS OF SERVICE FOR U.S. INDUSTRY

U.S. industry plays a decisive—perhaps, the decisive—role in safeguarding our military equipment and technology. Executive Branch agencies establish the policies and parameters for exports and other technology transfers to foreign persons through federal regulations and the export license process. But, hundreds of U.S. companies execute those policies on a daily basis through their corporate compliance programs. These companies—particularly small and medium sized defense companies who cannot afford Washington law firms or lobbyists—are currently in very difficult straits due to excessive delays and uncertainty in the export license process. This is not only harmful to U.S. industry; it also takes a toll on our national security interests in multiple ways. For one thing, we will not be very successful in persuading other nations of the need for strict controls over their weapons technology if we cannot administer our own efficiently.

Flat resources at State[2] in the face of an increase in license applications represent only one part of the problem and one that is easily resolved for not a great deal of money. The other, more intractable part is the Department of State's strategy for solving this problem.[3] It is a strategy that appears to imply an air of indifference

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[1] GAO, *Defense Trade: Arms Export Control System in the Post-9/11 Environment*, GAO–05–234 (Washington, D.C.: Feb. 16, 2005); *Defense Trade: Arms Export Control Vulnerabilities and Inefficiencies in the Post-9/11 Security Environment*, GAO–05–468R (Washington, D.C.: Apr. 7, 2005). GAO, *Export Controls: Improvements to Commerce's Dual-Use System Needed to Ensure Protection of U.S. Interests in the Post-9/11 Environment*, GAO–06–638 (Washington, D.C.: June 26, 2006).

[2] The U.S. Government spent $67 million in FY 2005 controlling slightly more than one billion dollars in dual use goods and technology licensed by the Commerce Department. In contrast, only $11 million was spent in the same year controlling $54 billion in defense articles and services licensed by State.

[3] GAO's report (GAO–05–234) *supra* suggests that the Department did not execute a funding authorization to hire additional licensing officers beginning in FY 2003 in order to expedite mu-

Continued

to legitimate concerns of exporters and one that is committed to reducing the backlog of license applications chiefly by redefining the mission to eliminate export license requirements.

There are problems with such a strategy on multiple levels. For one thing, increases in license applications of the magnitude reported by State (i.e., six-to-eight percent per annum) generally correlate to a growing share of the international arms market by U.S. companies. The message we inevitably send to other countries through such a strategy is that the more arms technology our country sells abroad, the less we will control. This does not seem to be a sound basis for managing U.S. security interests internationally. Nor is it one we would welcome if adopted by other governments.

IMPORTANCE OF CONGRESSIONAL OVERSIGHT

Mr. Chairman, the Congress and the American people are entitled to a high degree of confidence that:

(1) Important United States interests related to transfers of military and dual use technology are being safeguarded in the war on terrorism;
(2) This area of national security policy is being thoughtfully and fully integrated into U.S. counterterrorism and nonproliferation policy; and
(3) Legitimate defense trade with our friends and allies is being furthered through timely and efficient adjudication of export license applications submitted by U.S. companies.

Unfortunately, there are serious reasons for concern in all of these matters. The solutions are not expensive and are attainable in the near term. They do not involve any massive re-engineering of the arms export control process at State, which has already become something of a reinvention lab in recent years. But, the solutions do require a commitment by the Department of State to administer the system provided in the Arms Export Control Act responsibly and effectively. They will also require expanded oversight by Congress, at least in the near term to ensure this is done.

That is why I think it would be very helpful for either the Subcommittee or the full Committee as the leadership deems most appropriate to designate several Members who will work intensively with senior management from State on a work plan to:

- Clear away the backlog of license applications at State over the next 120 days through all appropriate means, including through the temporary detail of Department of Defense personnel, the temporary redeployment of State personnel and other extraordinary measures;
- Identify a permanent funding sources (e.g., budgetary or license fees) necessary to prevent a recurrence of any backlog and assure predictable timelines for the U.S. business community in the range of 10 days for most cases (unstaffed) and 30 days for more complex cases (interagency staffed);
- Establish a timetable and reporting channel to Congress for a post-9/11 interagency review (including law enforcement and intelligence agencies) of any gaps to be closed or enhancements needed in U.S. export control regulations and policies; and
- Include in this discussion a plan and timetable for eliminating system vulnerabilities and weaknesses which have triggered GAO's "high risk" designation, and also include GAO representatives in the discussion to ensure the approach is sound.

These are the priorities areas that need to be addressed, Mr. Chairman, in my opinion. In focusing on these urgent matters, I do not mean to imply we should exclude eventual consideration by Congress of well-designed proposals that promote cooperation with allies while preserving credible means for the U.S. Government to safeguard our systems, and deter, detect and prosecute violations when they occur.

But, I am persuaded the primary focus at this juncture should be on getting the arms export control system back on some reasonable footing and dealing effectively with existing security threats and system vulnerabilities. Accomplishing these tasks is well within the grasp of the U.S. Government and should not prove to be vexing or protracted provided there is a good faith effort to do so.

I thank you, Sir.

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nitions export licensing and, instead, planned a reduction in the number of licensing officers over the next two fiscal years.

Mr. SHERMAN. You are one of the few witnesses not to use his entire allocated time. That does not mean Mr. Douglas gets 6 minutes. Let's hear from Mr. Douglas for 5.

And I should point out that Mr. Douglas is here. We welcome him. He is president and CEO of the Aerospace Industries Association. He is a former Assistant Secretary of the Navy for Research Development and Acquisition of defense systems for the United States Navy and the Marine Corps.

Mr. Douglas.

STATEMENT OF MR. JOHN W. DOUGLASS, PRESIDENT AND CEO, AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA

Mr. DOUGLAS. Thank you, Mr. Chairman. And I would also like to join my colleagues and thank you for having this important hearing. This indeed is an area where we need some structural changes in the way our Government operates.

I would add, sir, in addition to being former Assistant Secretary of the Navy, I am also a former general officer in the Air Force, a NATO Commander, a member of the National Security Council staff, and a member of the congressional staff, so I have seen this issue from a lot of different viewpoints.

Mr. SHERMAN. The highest ranking of all being that former congressional staffer.

Mr. DOUGLAS. Yes, sir. The most powerful of all for sure.

I would also ask, sir, with your permission to have my written statement entered into the record.

Mr. SHERMAN. Without objection, all written statements will be made part of the record.

Mr. DOUGLAS. Mr. Lantos' letter of invitation asked me to speak broadly on the impact of U.S. laws, regulations, policies and practice, the impact that these have on the United States industry's ability to sell its products overseas. And I think the place to put this in some perspective, sir, is to sort of describe the span of where all of these laws take place.

On the one end of the spectrum is purely civil equipment, which is generally not reading at all. Then there is dual-use civil equipment. Then there is civil equipment that is modified for military use. Then there is military equipment which is unclassified. And then there is military equipment which is classified by our classification system. And generally speaking, sir, we don't have problems on either end of the spectrum. The industry clearly has no problem in understanding how classified material is dealt with and the products that are manufactured as a result of that system of how we license and export those.

It is in this middle area of dual-use civil equipment, of civil modified equipment. And incidentally, the things that Mr. Manzullo held up were civil items which had been modified. In other words, they just made it an inch longer to go in a military airplane, or I think it is an inch shorter to go in a military airplane. And then there is military unclassified, and there is all kinds of things that are in our military equipment today. And it is really important to note, sir, that that material, the drawings and the specifications for that equipment and so on, since it is not classified, it is not controlled by our military. In other words, you could go on a military

base, and, Mr. Scott, you have military bases in your district, you would find that that is just sitting around a file cabinet, they don't even have to lock it up, it doesn't go in the safe because it is not classified. It is just specifications for screws, bolts, tubes, wires like you just saw today, widely available on the Internet. Although industry is often asked to write specifications for that kind of equipment, it is not classified, it is not controlled.

So you asked me, What is the impact? Well, first of all, there is a huge impact in jobs lost. In my part of the industry that I represent—and I should also add, sir, that I am here today representing the Coalition for Security and Competitiveness, and there are 18 different associations in that coalition. But just in the aerospace and defense area that I am involved in, we can see tens of thousands of jobs that are lost on an annual basis due to the current system. When you expand that to the whole national manufacturing area, many people believe that the number of jobs lost is in the hundreds of thousands versus tens of thousands.

The financial impact is also large. It is at least in the range of billions, not millions, of lost business each year.

Thirdly, as you pointed out, Mr. Chairman, there is a perverse impact of the current system in which we sometimes create industries among our competitors overseas. We have seen this in the space business from time to time where we have put things on the munitions list that are really commercial products, and we create an industry overseas.

What causes these negative effects? Well, first of all, the law itself is a potential cause. As we all know, these laws were all written back in the mid- to late 1970s. I usually have equipment, like Mr. Manzullo pointed out. I could show you a bracket, for example, that is on the munitions list that is also on a John Deere tractor that is exported all over the world.

Regulations, they generally follow the law. Both the Commerce Department and the Department of State generally write regulations that follow the law. So as the law goes, so go the regulations.

When you get to the policies arena, we often see that the policies of administrations from time to time go significantly beyond the law. My colleagues at the table had mentioned the jurisdiction policies as one area where they have gone way beyond the law. Your comments are right on, sir. And clearly the practices of implementing these policies also go far beyond the law.

What can be done? We have made a number of recommendations. They were alluded to by the Ambassador this afternoon.

[The prepared statement of Mr. Douglass follows:]

PREPARED STATEMENT OF MR. JOHN W. DOUGLASS, PRESIDENT AND CEO, AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA

INTRODUCTION

Chairman Sherman, Congressman Royce, and members of the Terrorism, Nonproliferation, and Trade Subcommittee: the Aerospace Industries Association of America (AIA) appreciates the opportunity to provide a statement for the record for today's hearing evaluating how well the U.S. export control system both protects national security and facilitates exports. AIA represents more than 100 regular and 180 associate member companies, and we operate as the largest professional organization in the United States across three lines of business: space systems, national defense, and civil aviation. Representing a total high-technology workforce of 640,000 that manufactures products for customers around the world, we have broad

and deep experience with the U.S. export control system. AIA is also a member of the Coalition for Security and Competitiveness, representing eighteen industry and trade associations committed to working with the Executive Branch and Congress in a cooperative spirit to develop a more modern export control system.

The United States currently faces unprecedented threats to its security both at home and abroad. In confronting these threats, we must be able to exploit the full advantage we derive from our economic strength and technological prowess. To that end, the U.S. export control system must be modernized so that it is better able to respond quickly and effectively to evolving security threats, and promote our nation's continued economic and technological leadership.

THE COALITION FOR SECURITY AND COMPETITIVENESS

The Coalition for Security and Competitiveness advocates the development of a modern export control system that:

- Accurately identifies and safeguards sensitive and militarily critical technologies;
- Enhances U.S. technological leadership and global industrial competitiveness through more responsive and efficient regulatory management;
- Facilitates defense trade and technological exchange with allies and trusted partners;
- Supports a strong U.S. technology industrial base and highly-skilled workforce; and,
- Promotes greater multilateral cooperation with our friends and allies on export controls.

The Coalition believes a modern export control system should be efficient, predictable, and transparent, and an enabling component of America's broader national security strategy.

By efficient, the government must do a better job at making decisions on export authorizations in a timely manner. The goal is a system that can deliver decisions on 95 percent of all license applications in 30 days, not the current 55+ days it often takes.

By predictable, we mean that the license process must be consistent with applicable laws, regulations, and policies and consistent in that comparable export applications under the same conditions receive the same or similar approvals in the same or similar time frames.

Transparent means that the rules governing the license process must be interpreted and used consistently, and that industry and foreign partners have quick, easy access to information on the status of their applications.

The export control system we operate under today lacks these three basic qualities. We can and we must do better because the current system is paradoxically hurting our national security, our economic strength, and our technological competitiveness, and the problems will continue to get worse if we do not take action.

THE NEED FOR EXPORT CONTROL MODERNIZATION

Let me say up front—export controls are necessary. They are critical to our national security. We must keep sensitive items out of the wrong hands. However, equally important to our national security is sharing technology with our friends and trusted partners.

Our failure to do so effectively is hurting interoperability, capacity building, and our relationships with allies. The U.S. benefits considerably when the technologies our allies bring to the battlefield are compatible and have capabilities that multiply the effectiveness of our own forces. Licenses facilitating such technology exchange are generally approved. However, delays and inconsistencies associated with the eventual processing of these same licenses bruise these important relationships, and do not send a message of trust and partnership. Such problems in the export control system also hamper the ability of U.S. industry to leverage global innovation to deliver the best equipment to our warfighters at the best value to the U.S. taxpayer. This goes to the heart of what led to the formation of the Coalition—of which AIA is an important member.

How the current export control system operates is also hurting our economic and technological competitiveness. We must recognize the importance of trade and international collaboration for sustaining economic growth, innovation and skilled employment in U.S. industry. Nearly four million workers are employed in U.S. high-tech industries—those affected either directly or indirectly by export controls. And these industries account for about one third of manufactured goods exports or nearly

$350 billion in 2006. The challenges created by the current export control system are particularly harmful to our most dynamic and innovative small businesses, who incur costs of compliance with a byzantine system and risk missing out on business opportunities because they cannot turn around an export license in an overloaded system fast enough.

THE COALITION'S PHASE I PLANS

In the first phase (Phase I) of the Coalition's plans to advocate for a modern export control system, we decided to focus on improvements to the current system that could have an immediate, positive impact on predictability, efficiency, and transparency in license processing. Our criteria for identifying these recommendations were that they had to be measurable, attainable, and meaningful. We also agreed to focus, at least initially, on process improvements that the Administration could implement now under existing statutes. At the same time, mindful of Congressional interest in this issue, we committed to organize briefings with Congressional committees and offices on the importance of this issue and how our proposals can help. Detailed explanations of these defense and dual-use related proposals can be found at the Coalition's website: www.securityandcomeptitiveness.org. The remainder of this statement will focus on the Coalition's defense trade proposals.

PHASE I PROPOSALS FOR DEFENSE EXPORT CONTROLS—INTERAGENCY

There are proposals in our defense trade package that cut across all parts of the federal government. These proposals primarily seek to drive greater interagency dialogue and generate more and clearer political guidance on the risks and rewards of defense trade transactions.

The Coalition has called on the White House to re-state the strategic policy principles that should govern the operation of the U.S. export control system. This statement should highlight the need to capture the full benefits of prudent technology exchange with our friends and allies. We ask for the appointment of a Senior Director at the National Security Council focused on conventional defense and dual-use export controls by separating these issues from the nonproliferation portfolio. The Coalition also calls for the creation of a new Presidential advisory body to establish a dialogue among the executive branch, congress and industry on defense trade and technology cooperation.

At the policy-making level, while the Coalition is not challenging the Administration's national security determinations on transactions, we are asking that those decisions be made consciously, consistently, and clearly. This is especially true for administering the rules governing the Commodity Jurisdiction process, the process for determining whether the State Department or Commerce Department has jurisdiction over an export authorization. We believe a significant number of export licenses that clog up the current system may, in fact, no longer be required if the interagency process that evaluates such transactions all followed the same regulatory interpretation.

In commodity jurisdiction and other policy-related cases where the interagency process must come to a consensus decision, an interagency appeals process for precedent-setting decisions would also be useful to ensure policy and process are consistent, and that policies continue to be relevant as circumstances change. Such quality control, in the form of reviews of licenses that are denied or "returned without action (RWA), would be helpful at the transaction level as well.

PHASE I PROPOSALS FOR DEFENSE EXPORT CONTROLS—STATE DEPARTMENT

There are also defense proposals that will primarily require the leadership of the State Department to implement. The most immediate proposal requiring attention is funding the hiring of additional licensing and agreements officers to handle the 8% a year growth rate in defense license applications and the license backlogs that have ranged between 5,000 and 10,000 licenses in recent years.

Besides advocating the adding of more personnel to handle this challenge, the Coalition asked the Administration to begin to consider, and develop, new approaches to caseload management, particularly the licensing caseload generated by U.S. government programs with our allies and partners. New management approaches are needed to reduce the number of authorizations related to a given program and to facilitate efficient interaction with our program partners. The Coalition's proposal for a new approach to licensing major U.S. government programs involving our allies and partners can be found in Annex 1, and should be considered as a starting point for a more in-depth and timely discussion.

Finally, the Coalition has called for the development of a more robust electronic system for processing licenses that enhances transparency. The system should track

across the entire interagency process automatically not only the current status of license applications but also their transit times and next steps against mandatory timelines. Industry is especially interested in tracking licenses that require congressional notification from when they are first submitted to the government to when they are sent to Congress for review.

PROSPECTS FOR THE COALITION'S PHASE I PLANS

The Coalition is appreciative of the careful consideration and positive remarks given to our objectives and our proposals in numerous discussions with Administration and Congressional leadership. We believe the favorable response reflects the different way industry is trying to approach the issue of export control modernization versus previous campaigns. First, this time we have specific recommendations that are measurable, attainable, and meaningful. Second, we are focused on process improvements that can help all of industry—and the US Government—not just demands for policy changes on specific technologies, countries, or other slices of the broader issue that tend to divide people. Third, we want to work with the Executive Branch and Congress to improve the system. This administration and this Congress have shown their interest and commitment to understanding our concerns and engage us in thoughtful consultations. Lastly, we are working as a coalition, speaking with the voices of the thousands of companies we represent, and the millions of Americans that go to work every day to make this country great . . . and we intend to grow this coalition.

THE COALITION'S PHASE II PLANS

Implementation of any/all of the Coalition's proposals would have an immediate and positive impact on U.S. national security and economic competitiveness. However, the Coalition is mindful that process improvements to the existing system will not make the system fully prepared for the security and economic challenges and opportunities of the 21st century. For this reason, we are in the beginning stages of discussing and identifying within the Coalition the key elements of a "model modern system" to compare with the existing system. This exercise is important to sustain the new, necessary, and ongoing process of review and consideration of this important issue, exemplified by this hearing today. We intend to put forward proposals for a "next generation" system next year for consideration by and discussion with Congress as well as the 2008 Presidential campaigns, and we look forward to working with your Subcommittee on this important initiative.

CONCLUSION

The Coalition for Security and Competitiveness welcomes the support and participation of those who recognize the importance for the United States of having an efficient, predictable, and transparent export control system that supports U.S. national security and competitiveness.

ANNEX 1

PROPOSED FRAMEWORK FOR STREAMLINED LICENSING FOR U.S. GOVERNMENT PROGRAMS

The current interagency review of industry recommendations for export control modernization affords the Administration an opportunity to address a particularly important issue—improving management of licensing that supports the government's own critical programs. The Administration is urged to take action requesting the State and Defense Departments to develop a framework for streamlined licensing of U.S. government programs involving significant international participation in support of national security and foreign policy objectives.

The State Department's export licensing caseload is huge, having risen last year to 70,000 separate transactions, with a backlog of some 10,000 applications last year. A significant portion of this caseload is generated by U.S. government programs that have both important practical and policy mission objectives. These programs can generate hundreds if not thousands of individual licenses to enable hardware, technology and technical data-sharing between the U.S. and its international allies and partners.

This creates a major bottleneck in the ITAR export control process that burdens both U.S. government agencies and industry, and hampers cooperation among allies and partners that is essential to achieving program objectives. Reducing the volume of licensing transactions associated with these programs would alleviate a signifi-

cant administrative burden on government and industry, facilitate important program objectives, and free up resources for other license applications—especially those that do warrant special attention.

As recommended in Coalition Proposal 7, what is needed is a different approach to managing export licensing that significantly—

a. Reduces the regulatory and administrative burden on both the U.S. government and industry by minimizing the number of authorizations required overall for a given program; and
b. Facilitates program management and interaction with allies and partners.

This approach may be implemented, as appropriate, under existing authority (e.g., ITAR 126.14) or pursuant to a new framework for program licensing.

STREAMLINED LICENSING FOR U.S. GOVERNMENT PROGRAMS PROPOSAL

In confronting unprecedented threats to the nation's security both at home and abroad, U.S. technological leadership and ability to make full and speedy use of advanced technologies is of paramount importance. Export licensing is necessary both to protect technology deemed critical to our national security interests, and to enable the technology-sharing needed to implement critical programs and operations involving the U.S. and its allies and partners. It shall be the policy of the United States to achieve these objectives through effective and efficient management of export licensing, consistent with the following principles—

- Support U.S. technological leadership and strengthen U.S. industrial competitiveness in global technology markets.
- Safeguard access to critical technologies.
- Preserve the U.S. industrial base, including a highly skilled U.S. defense workforce.
- Facilitate defense cooperation and interoperability with U.S. allies.

Agency Responsibilities:

1. The State and Defense Departments shall develop a new framework for streamlined program licensing that significantly—
   a. Reduces the regulatory and administrative burden on both the U.S. government and industry, in particular, by minimizing the number of authorizations required overall for a given program; and
   b. Facilitates program management and interaction with allies and partners.
2. The framework shall provide for an authorization that—
   a. Specifies categories of technologies, systems, components, and materials;
   b. Defines and tailors protection requirements to each category; and
   c. Pre-qualifies companies in allied and partner nations for each category to, *inter alia*—
      i. authorize each to handle and share controlled hardware, technology and related technical data with other pre-qualified companies;
      ii. eliminate need for amendments to add pre-qualified subcontractors and teammates;
      iii. establish an appropriate vetting process for dual national personnel of pre-qualified companies.
   d. Establishes shared responsibility for ensuring ITAR compliance, certification, and auditing through periodic U.S. government monitoring of authorized entities, including U.S. and allied and partner companies.
3. The framework may be implemented under new authority or a new approach to existing authority.

Mr. SHERMAN. Mr. Douglas, I am going to have to make your statement part of the record and ask my colleagues to ask one and only one question, and then we are going to have to go to the floor for what I am told is roughly 10 votes. And I will not ask you to stay here, so this hearing will end quickly.

My one question, Mr. Douglas, is if, God forbid, the only way to deal with the State Department backlog was to turn to industry

and ask for them to pay $1 out of every $10,000 for a licensed export, is that a good thing or a bad thing?

Mr. DOUGLAS. In general, sir, we don't like user fees for what we consider to be inherently government functions. On the other hand, if it would solve the problem, we would probably gladly pay it. But we don't have high confidence it would solve the problem. You have seen some evidence of that yourself here today. They tripled the fees, and the length of time went up.

Mr. SHERMAN. Clearly if the fees are then hijacked by State or for other purposes, they wouldn't do any good. There has to be a maintenance of effort.

And with that, I turn it over to Mr. Royce for one question.

Mr. ROYCE. Thank you, Mr. Chairman. I appreciate that. It is good to see Mr. Lowell with us. I want to commend him for his testimony, but also for the service he provided us before on this committee.

Thank you, Mr. Lowell, for being with us. I was going to ask you for your views on the U.S.-U.K. defense trade treaty that has been proposed. Also you discussed the need to bring a sense of urgency to some of the shortcomings that we have been talking about today. I would like you to further explain the need for urgent action and what are the consequences. Mr. Lowell.

Mr. LOWELL. Well, thank you, Mr. Royce, for your kind words. While you were out voting, there is actually just one point I made about the urgency of that, which has to do with the need to look systematically at potential threats that could be exploited from terrorist—terrorist organizations and our current regulations' need for a systematic examination of that.

I also think that the growing backlog creates multiple national security problems in countless ways and unforeseen ways. There are a lot of important things in there that need to be adjudicated, and there are probably some things in there that shouldn't be adjudicated. So while this backlog builds up, it just corrodes compliance throughout the industry. We depend on industry in the private sector to make this all work. The government describes the regulations and the parameters. The industry has got to carry it out. So it is just a recipe for problems if it continues to go on.

With respect to the U.K. treaty, I would be reluctant on something so important to give you sort of a definitive view. I think the fact that it is a treaty is a response in part to one of the concerns that Members of Congress had in the House at least the last time of rounds, and that is a good development, but I think we will have to wait to see the details to see whether this is really another part of a broader strategy to decontrol the arms export control system, or whether it is really a well-designed way to safeguard our interest in a different fashion. So I think we just have to see the details.

Mr. SHERMAN. Thank you, Mr. Lowell. I appreciate that.

Mr. ROYCE. Thank you, Mr. Lowell. I appreciate that.

Mr. SHERMAN. Mr. Scott.

Mr. SCOTT. Thank you.

I would like to just take a look at the comment given the state of the world now with terrorism and some of our problems with Iran. And I asked earlier about who our allies and our partners were for a reason, because I think that there is an enormous loop-

hole in how we deal with other nations with our technical information and aspects of our weaponry, especially, for example, we have alliances with countries that might have alliances and partnerships with countries that we don't have. So it seems to me that there is a loophole here, that there is a problem here, and I am wondering how we address that.

I think that is one of the reasons why we got into the mess in Iraq that we are in, because we weren't sure what information was getting to countries we were dealing with and other countries were dealing with who we found out were dealing with Iraq. We just didn't have any way of knowing what solid intelligence was.

I was wondering, where would we tighten our export controls, and where do you see the loopholes? I notice in your testimony, I think you referred to that, Mr. Lowell, and I think, Ms. Barr, you used the word "neglect." I am wondering if you could respond to that.

Mr. SHERMAN. Quickly address that. We had been told the vote would be at 5:30.

Ms. BARR. I would be happy to respond.

I think part of the issue here is that it is really important for the U.S. export control agencies to be fully aware of what the other countries' export controls policies and procedures are going forward, because clearly then you can find what needs to be controlled and how we have to control it.

If you license things, you have to get a license number with certain conditions and provisos, and have to have access to check and make sure that the export that did eventually go out is being used as intended. I am not confident based on the work that we have done that we have that kind of sophisticated or comprehensive intelligence gathering to know the repercussions of some of what we are sending out.

Mr. SCOTT. Mr. Lowell.

Mr. LOWELL. Mr. Scott, I mentioned a few—with respect to the gaps and weaknesses, I mentioned a few a few moments ago with respect to internally United States transfers to foreign persons where there is no coverage under the Arms Export Control Act. So, we have a control on a commercial COMSAT but not on biological weapons. That seems to be something that should be updated.

Other things might be exemptions we have in the regulations. For example, it is still the case that anybody coming from Canada can temporarily import any munitions item from Canada. We have had problems with Canada, the millennium bomber came from Canada, and so it is not clear that that shouldn't be restricted in some way.

Mr. SHERMAN. Mr. Lowell, I will have to gavel down the hearing. And all of our witnesses do add whatever comments that they have to Mr. Scott's questions or other questions for our record sometime in the next 5 days.

Thank you very much, and the floor calls.

[Whereupon, at 4:11 p.m., the subcommittee was adjourned.]

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