

**THE EXPORT ADMINISTRATION ACT:
THE CASE FOR ITS RENEWAL**

HEARINGS
BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

—————
MAY 23, JUNE 12 AND JULY 11, 2001
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Serial No. 107-27

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Printed for the use of the Committee on International Relations



Available via the World Wide Web: http://www.house.gov/international_relations

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U.S. GOVERNMENT PRINTING OFFICE

72-639PS

WASHINGTON : 2001

For sale by the Superintendent of Documents, U.S. Government Printing Office
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THE EXPORT ADMINISTRATION ACT: THE CASE FOR ITS RENEWAL

WEDNESDAY, MAY 23, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to call, at 10:12 a.m. in Room 2172, Rayburn House Office Building, Hon. Henry J. Hyde (Chairman of the Committee) presiding.

Chairman HYDE. The Committee will come to order. I am very pleased to welcome the newly confirmed Undersecretary of Commerce for Export Administration, Mr. Kenneth I. Juster, in the first in a series of hearings on the Export Administration Act and the nation's export controls system. As many of my colleagues are aware, the Export Administration Act, commonly referred to by its acronym as the "EAA," expired in 1994 and was reauthorized on a stop-gap basis in the 106th Congress by this Committee through August 20, 2001.

It is my understanding that the Commerce Department has in place a series of regulations providing for the control and monitoring of the export of sensitive commodities, including high-performance computers, software, machine tools, and other items. Among the 2,400 items on the so-called "commerce-control list," exports are currently restricted by item, country, and end user.

Today, we will begin to examine this control system and the case for the reauthorization of the EAA. We will ask our distinguished witness today to discuss the plans of the Bush Administration to do its own review of the strength and weaknesses of the current system of controls, which dates from the Cold War period.

Mindful that the Senate might soon consider a bill providing a comprehensive rewrite of the EAA, our Committee expects to play a key role in the debate shaping our export control policies. In light of its significance to our economic and national security interests, we will give this legislation all the time and attention it deserves, ensuring that it receives a thorough review and vetting. It is my fondest hope that in doing so, we will spend considerably less than the 3 years the Senate did on its bill.

Maintaining our position in the global economy should, in my view, not come at the expense of shortchanging our obligations to international peace and our respect for human rights—in short, our national security interests. This is a very complex, public-policy area requiring a delicate balance betweenm vetghts

The deliberations on the EAA in the Senate clearly demonstrate that, on the one hand, there is a strong bipartisan support for the reform measure, and on the other hand, there is a committed group of influential Senators who continue to voice their concerns about this measure and its long-range impact on our security.

Sympathetic to many of the issues they are raising, I will want to take a careful look at any EAA reform measure to ensure that it reflects the thinking from all the participants and interest groups involved in shaping our export control policy. First however, we need to step back to examine the origins of the current policy framework.

Under the provisions of the Export Administration Act of 1979, national security export controls sought to prevent exports of dual-use goods, services, and technologies to the Soviet bloc from the United States or its allies in close cooperation through the Coordinating Committee on Multilateral Export Controls, otherwise known as "CoCom."

While this act has been amended and updated in piecemeal fashion over the past 22 years, its provisions have barely kept pace with the dizzying changes in the international landscape. The Soviet Union has disappeared into the ash heap of history, dragging with it all the countries of the Warsaw Pact. Unfortunately, the rationale for a strong and effective multilateral control system disappeared as well.

This system, where the U.S. made frequent use of its veto authority on dual-use goods and services finally dissolved in 1994 and a new, much less stringent multilateral framework, the Wassenaar Arrangement, was created with Russia as a member country. It requires only post export notification of sales of items controlled by its member countries and largely serves as a forum to debate and discuss export trends.

As we join the export control debate, we are reminded that an effective and comprehensive multilateral export system needs to be put back at the center of our policy framework. I look forward to discussing this critical issue and the full range of export control policy concerns with Undersecretary Juster. By all accounts, his distinguished public and private service will help him meet many of the challenges and opportunities posed by his new position. Before turning to our witness, I would ask the Ranking Member, Mr. Lantos, if he cares to deliver an opening statement.

[The attachment to Chairman Hyde's statement follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

I am very pleased to welcome the newly-confirmed Undersecretary of Commerce for Export Administration, Mr. Kenneth I. Juster, before our Committee this morning in the first in a series of hearings on the Export Administration Act and the nation's export control system.

As many of my colleagues are aware, the Export Administration Act, commonly referred to by its acronym as the EAA, expired in 1994 and was reauthorized on a stop-gap basis in the 106th Congress by this Committee through August 20, 2001.

It is my understanding that the Commerce Department has in place a series of regulations providing for the control and monitoring of the export of sensitive commodities, including high performance computers, software, machine tools and other items. Among the 2,400 items on the so-called "Commerce Control List," exports are currently restricted by item, country, and end-user.

Today we will begin to examine this control system and the case for the reauthorization of the EAA. We will ask our distinguished witness today to discuss the plans of the Bush Administration to do its own review of the strengths and weaknesses of the current system of controls which dates from the Cold War period.

Mindful that the Senate might soon consider a bill providing a comprehensive rewrite of the EAA, our Committee expects to play a key role in the debate shaping our export control policies.

In light of its significance to our economic and national security interests, we will give this legislation all the time and attention it deserves ensuring that it receives a thorough review and vetting. It is my fondest hope that in doing so, we will spend considerably less than the three years the Senate did on its bill.

Maintaining our position in the global economy should, in my view, not come at the expense of shortchanging our obligations to international peace and our respect for human rights.

This is a very complex public policy area requiring a delicate balance between competing—and often conflicting—national security and competitiveness issues.

The deliberations on the EAA in the Senate clearly demonstrate that, on the one hand, there is strong bipartisan support for the reform measure and that, on the other hand, there is a committed group of influential Senators who continue to voice their concerns about this measure and its long-range impact on our security.

Sympathetic to many of the issues they are raising, I will want to take a careful look at any EAA reform measure to ensure that it reflects the thinking from all the participants and interest groups involved in shaping our export control policy.

First, however, we need to step back to examine the origins of the current policy framework.

Under the provisions of the Export Administration Act of 1979, national security export controls sought to prevent exports of dual-use goods, services and technologies to the Soviet bloc from the United States or its allies in close cooperation through the Coordinating Committee on Multilateral Export Controls, otherwise known as “CoCom.”

While this act has been amended and updated in piecemeal fashion over the past 22 years, its provisions have barely kept pace with the dizzying changes in the international landscape. The Soviet Union has disappeared into the ash heap of history, dragging with it all the countries of the Warsaw Pact. Unfortunately, the rationale for a strong and effective multilateral control system disappeared as well.

This system where the U.S. made frequent use of its veto authority on dual-use goods and services finally dissolved in 1994 and a new, much less stringent multilateral framework, the Wassenaar Arrangement, was created with Russia as a member country. It requires only post export notification of sales of items controlled by its member countries and largely serves as a forum to debate and discuss export trends.

As we join the export control debate, we are reminded that an effective and comprehensive multilateral export system needs to be put back at the center of our policy framework.

I look forward to discussing this critical issue and the full range of export control policy concerns with Undersecretary Juster. By all accounts, his distinguished public and private service will help him meet many of the challenges and opportunities posed by his new position.

Before turning to our witness, I would ask if the Ranking Member, Mr. Lantos, has an opening statement.

Mr. LANTOS. Thank you very much, Mr. Chairman. Let me first apologize to you and our guest. I was on the Floor welcoming both the President of Taiwan, the democratically elected leader of his nation, and His Holiness, the Dalai Lama, who today is honoring us with his presence.

Mr. Chairman, I am pleased to welcome Undersecretary Juster to his first hearing on the possible reauthorization of the Export Administration Act. This is an extremely important and complex set of issues upon which we could easily spend many months. The details of the specific provisions and directives are complicated enough, but there are also much larger issues that we must address. What are the purposes of U.S. export controls, and how do we measure their success? Should all export controls be derived from multilateral arrangements, thereby risking the race to the

lowest common denominator of export control standards among the many countries that engage in export controls, or should there be some area in which the U.S. ought to be willing to lead with unilateral controls? What is the best administrative structure for an efficient and effective export control system?

I believe that we must be extremely careful in deciding whether or not to alter the current structure of export controls of militarily useful commodities and technologies. Yes, maintaining and enhancing the competitive position of American corporations in an increasingly integrated global economy is very important. Yes, our system of export controls must be able to be updated to be responsive to the global marketplace as well as to the changing nature of the global security threat. But we must be clear, Mr. Chairman.

The national-security interests of the United States in protecting American service men and service women on the battlefield must always take precedence over economic, commercial, and profit considerations. In a future conflict or crisis I do not want to see the wreckage of American barracks, struck by missiles with the components stamped with the inscription, "made in America."

I welcome Secretary Juster to the Committee today, and before we listen to his testimony, let me just indicate a chronological item, Mr. Chairman. As I recall, the Senate dealt with this issue for the past 3 years, and unless my information is inaccurate, the bill the Senate has been working on for a number of years now has not yet come to the Floor of the Senate. When it reaches this body, I think we will have to take reasonable time to explore all of the ramifications.

This is not a piece of legislation to be rushed through the Congress of the United States. There are many ramifications, many implications, and potentially American lives at stake. So I am determined, as I am sure you are, Mr. Chairman, to take all the time necessary to explore all of the ramifications of this important issue, and I thank you for your kindness.

Chairman HYDE. Thank you. Does anyone else have an opening statement?

Mr. MENENDEZ. Yes.

Chairman HYDE. Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman. I want to congratulate you for holding the hearings on this issue relatively early in this Congress. As someone who in the last Congress was the Ranking Democrat on the Subcommittee on International Economic Policy and Trade, I spent a fair amount of time on this issue. I think it is one of the most important undertakings the Committee can pursue in this Congress, and I believe it is high time that we did.

As things stand, the United States may have the leading edge in technology these days, but we are far from basking in the winner's circle when it comes to passing an export control bill that both protects our national security and promotes our economy. I think that those goals are reconcilable in our efforts, and I take a back seat to no one in terms of the interests of the United States in promoting its national security. But I believe, Mr. Chairman, that if we measure technological obsolescence these days in months, we are well past due in the context of this legislation.

And finally, Mr. Chairman, I look at this issue almost as an iceberg, and I think of it in terms of what is at the tip of that iceberg. What is at the tip of the iceberg is that which we uniquely possess as a country that is not available out there in the world. That is what we should clearly control in the national security interests of the United States.

But to suggest that everything that is below the tip of the iceberg that can be found in the world marketplace and not be able to export that abroad not only hampers our economic productivity, but in my mind, does not put that technology, which is American made, out there. To the extent that it is going to be widely available as it is, I would rather have access to technology that was made in the USA than that was made abroad.

So I look forward to the Undersecretary's testimony and then working on this issue, and I ask unanimous consent that my full statement be entered into the record.

Chairman HYDE. Without objection, so ordered. Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman, for holding these hearings on an important area, and I want to associate myself with the prior speakers, including Mr. Lantos's discussion of how important it is to look both multilaterally and unilaterally. This is a balancing of our economic and our national security issues. The importance of national security is obvious with these sensitive exports, but the economic importance is multifaceted.

Not only do we need to be concerned about the balance of payments and jobs, as we are concerned with all of our exports, but it is a national security concern that our high-tech companies remain in the lead in technology, and exports can finance those companies and their research programs.

In contrast, it is adverse to our national security interests to have other countries with lower standards, some of them even hostile to the United States, get an order that could have been filled by the United States, only to see that country develop technology and then perhaps make exports that we would not have even considered.

But this choice is not always a balancing choice of yes or no. If that was the situation, it would be easier. The biggest problem that I have been told about is speed, and even if a no must be issued as often as a yes, this ought to be the fastest agency in the Federal Government. Whether it is financed by user fees or financed by general revenue, there ought to be teams of experts sitting around waiting for the application.

It may be in our national interest to have people that work with Secretary Juster sitting around reading back issues of technical journals, just waiting for the application to come in. There are reasons not to say yes to every application. There are reasons to say yes to every application, but there are no reasons for anything but the fastest possible treatment, and that is not just an economic issue; that is a national security issue. I yield back.

Chairman HYDE. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman. I would like to congratulate the Chairman for including within the State Department authorization bill language an increase in the dollar amounts for transactions that require congressional notification for NATO and

NATO-plus countries. I have introduced a bill, H.R. 1898, the International Commerce Enhancement Act, that goes a bit further in a couple of areas and I will be glad to explain those at the appropriate point.

I also think that we need to go further in some areas. I have introduced H.R. 1553 with Congressman Dreier. This will lift the measure, the current MTOPS standard for millions of theoretical operations per second, the standard by which we judge some computer exports. It has been deemed outdated by the industries that deal with it and also the Bush Administration, and we look forward to moving ahead on these issues. I thank the Chairman for scheduling this hearing.

Chairman HYDE. Thank you. Any further opening statements? Mr. Blumenauer.

Mr. BLUMENAUER. Thank you, Mr. Chairman. I view what you're doing here today as sort of a metaphor for a lot of the challenges we face in the international arena, and I do believe that if we are not careful, we will end up engaged in a self-defeating process. I guess I err on the side of being realistic and being multilateral to deal with trying to accelerate the problem, I think we put an impossible burden many times on a number of our bureaucratic agencies now.

It is not just with the economic impact that we lose potential business, but I really do believe in the long run we are retarding the development of new technology in this country while we are encouraging it in others. And so I am hopeful that we can work cooperatively to be able to look at what is our best interest, even though it may be a little difficult to explain to some of the folks back home. Thank you.

Chairman HYDE. We will now commence the questioning period, and Mr. Lantos, do you want to ask questions?

Mr. LANTOS. No.

Chairman HYDE. I am sorry. We missed your statement. We have nothing to question you about. I thought you would appreciate that.

Mr. SHERMAN. Do you have anything else to add?

Chairman HYDE. Please proceed, Mr. Secretary. Forgive the oversight.

STATEMENT OF THE HONORABLE KENNETH I. JUSTER, UNDERSECRETARY, BUREAU OF EXPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. JUSTER. Thank you very much, Mr. Chairman, Congressman Lantos, and Members of the Committee. I appreciate very much the opportunity to testify about export controls and the proposed Export Administration Act of 2001, which is now pending in the Senate. I would like to summarize my written statement and submit that statement for the record, if that is all right.

Chairman HYDE. Without objection, so ordered.

Mr. JUSTER. Thank you. The Administration believes that an effective export control system is important to our national and economic security. It is critical that we protect this country's national security by ensuring that our sensitive goods and technologies do not fall into the wrong hands. Equally important, as many Mem-

bers have recognized, is an export control system that affords business the opportunity to compete effectively in today's increasingly global marketplace.

The challenge for all of us in government and in the private sector is to have a tough-minded yet common-sense export control system that strikes the proper balance between sharing our technology with friends and protecting against the transfer of sensitive technology to potential adversaries.

In my remarks this morning I first will discuss the elements that I believe are necessary for an effective export control system, I then will address the need for a new Export Administration Act. Finally, I will explain why the Administration strongly supports Senate Bill 149, the Export Administration Act of 2001.

As I have noted, an effective export control system is essential for national and economic security. Given my own background, which includes almost 4 years at the U.S. Department of State, I can assure you that I fully appreciate the critical importance of protecting this country's national security.

To do so, an effective system should provide for controls on the exports of goods and technologies that could make a significant contribution to conventional arms or weapons of mass destruction. An effective system also should provide for the control of goods and technologies to further foreign-policy objectives, such as the promotion of human rights. In addition, an effective system must provide adequate and timely opportunity for those agencies with national security and foreign-policy expertise to review and comment upon proposed exports of controlled items.

As many of you have mentioned, export controls are most effective when they are implemented in concert with the controls of other supplier nations. One of my own priorities on behalf of the Administration will be to work closely with our allies and regime partners in further developing multilateral cooperation and strengthening the contribution of our multilateral regimes to our overall nonproliferation goals.

Another important element of an effective system is vigorous enforcement. There must be sufficient authority to conduct a wide range of enforcement activities, and penalties must be set at a level sufficiently high to appropriately punish violators and deter would-be violators.

Finally, the cooperation of exporters is also essential. It is incumbent upon government to create a system that is rational and transparent so that exporters can comply with it. The system should not adversely affect U.S. companies from competing equally with their foreign competitors unless there is an overriding national security or foreign-policy interest at stake.

Having outlined what I view to be the essential elements of an effective export control system, let me briefly explain why we need a new Export Administration Act. We need a new act because the existing law, as the Chairman mentioned, is significantly out of date. It was enacted in 1979. It is a Cold War statute that simply does not reflect current economic and political realities.

The basic national security control authority of this law is predicated on the existence of a multilateral regime known as CoCom

that ended 7 years ago. In addition, the level of penalties in the 1979 act has been substantially eroded over time by inflation.

If we do not pass a new Export Administration Act, it is possible, as the Chairman mentioned, that the 1979 act will expire in August of this year without being renewed. Under those circumstances, we would operate our export control system, as we have intermittently over the past several years, under the International Emergency Economic Powers Act. Operating under this authority raises an increasing number of legal and political complications.

Moreover, operating under emergency authority, in my view, sends the wrong message at home and abroad about our commitment to export controls. It is hard to persuade other countries about the importance of establishing a sound and workable export control system if we are unable to do so ourselves.

Enactment of a new Export Administration Act that reflects current global realities is, therefore, in my view, imperative. As you know, the Administration carefully reviewed the bill being considered in the Senate. As a result of its review, the Administration proposed a number of changes to the bill which the secretaries of state, defense, and commerce, as well as the national security adviser, agreed would strengthen the President's national security and foreign-policy authorities to control dual-use exports in a balanced manner.

The Administration's proposed changes were incorporated into Senate Bill 149. As a result, the Administration strongly supports the legislation now pending in the Senate. Recently, in a speech, the President reiterated the Administration's strong support for S. 149, and he added, and I quote, "It is time to pass it in the House so I can sign it into law."

The Administration believes that S. 149 provides appropriate authorities to address two major interests: one, the protection of U.S. national security and foreign-policy interests; and two, the promotion of U.S. trade and industry. Contrary to the impression that some may have, it is important, in my view, to note that S. 149 gives the President broad authority to protect national security.

S. 149 authorizes national security controls for three distinct purposes: first, to restrict the export of items that would contribute to the military potential of countries to the detriment of the United States and its allies; second, to stem the proliferation of weapons of mass destruction; and third, to deter terrorists.

In addition, Senate Bill 149 provides for the first time, in explicit statutory provisions, several additional, important authorities. One such authority is known as "catch-all controls." Catch-all controls ensure that items otherwise uncontrolled are not exported to users involved in weapons-of-mass-destruction programs.

Another important authority is known as "enhanced controls." Enhanced controls allow the President to exempt, for reasons of national security, items from what are known as the foreign availability, mass market, and parts and components provisions of the bill. Thus, the most sensitive items will not be subject to those provisions that would otherwise limit controls.

A third authority that appears for the first time in statute allows the President to continue indefinitely controls on the export of

items found to be readily available from foreign sources if the United States has committed to control such items through one of the four multilateral, export control regimes. This provision, therefore, ensures that the most sensitive items, namely, those that are controlled by agreement with our allies in a multilateral forum, will remain controlled regardless of whether they might be available overseas.

The bill has other significant provisions that focus on national security. For example, the bill allows the President to continue indefinitely, for reasons of national security or due to adherence to multilateral regimes, controls on the export of items notwithstanding their mass-market status.

The bill also retains the definition of the term "export" that encompasses what is known as "deemed exports," thereby authorizing the continuation of existing controls on transfers of know-how and technology to foreign nationals residing in the United States.

And the bill enhances the statutory role of the Defense Department and other relevant departments in the export control process in several important ways. First, the bill requires that the secretary of commerce refer all license applications to the secretaries of defense and state and to other agencies as the secretary of commerce deems appropriate for their review and recommendation. Second, the bill authorizes each of these reviewing departments to escalate a proposed license decision to the secretarial and presidential levels. Third, the bill requires the Commerce Department to notify the Defense Department of all commodity-classification requests.

S. 149 also provides authority necessary to further significant foreign-policy interests. In this regard, the bill authorizes controls to promote international peace, stability, and respect for fundamental human rights. In addition, the bill provides for strict controls on exports that could assist terrorist countries.

In terms of enforcement, which is also, in my view, a critical component of any export control system, S. 149 significantly raises the penalties for export control violations and contains other important provisions that enhance the U.S. Government's ability to enforce the law effectively. For example, penalties on corporations are raised to \$5 million per violation or to 10 times the value of the export, whichever is greater. This represents a substantial increase over the current level of penalties. Criminal penalties on individuals also are raised, from \$250,000 to \$1 million, and civil penalties increase under the bill from \$10,000 to \$500,000. In addition, the bill authorizes the Commerce Department to conduct undercover operations and to station attaches abroad to ensure that U.S. items are not diverted.

The bill also contains many important features for exporters. For example, the bill authorizes exporters to formally seek government review of items subject to control. It does this by creating the foreign-availability and mass-market provisions. Under the foreign-availability provision, an exporter can request that the U.S. Government determine if a product is readily available to foreign countries from foreign sources. Under the mass-market provision, an exporter can request that the U.S. Government determine if a prod-

uct is widely available and, therefore, cannot effectively be controlled for export.

If a product is found to be readily available to foreign countries from sources outside the United States, or if the product is found to be widely available in the United States—and there is a rigorous test that must be applied in reaching these determinations—the government would remove controls on the product, unless doing so would be inconsistent with our international commitments, such as our commitments to multilateral export control regimes, or would threaten our national security. So we want to avoid what was termed “a race to the bottom,” and we do not automatically export items if they pass these tests.

It is worth noting, as I just said, that the applicability of the mass-market and foreign-availability provisions is limited when national security concerns are raised. The President can exempt any item from these provisions by exercising his authority to invoke enhanced controls. In addition, the President can set aside, for reasons of national security, any mass-market or foreign-availability determination.

Another important feature of the bill, that was alluded to earlier, is the time-limit provision for government decisions. The bill requires decisions on license applications within 39 days of submission unless the application requires higher-level review. Historically, only about 5 percent of license applications require such review.

In conclusion, we believe that Senate Bill 149 provides the framework necessary for an effective export control system. It provides broad control authority and appropriate enforcement authority in order to protect our national security. It also provides transparency, predictability, and time limits for the benefit of our exporters.

Passage of the Export Administration Act of 2001 is a vital step in the Administration’s effort to meet the new challenges that today’s global environment presents for our U.S. national security and economic health, and it is an important component of our overall concerns with nonproliferation.

In particular, this legislation will help strengthen the Commerce Department’s Administration of National-Security and Nonproliferation Controls. My goal is to ensure that the United States has an effective and efficient export control system, and I look forward very much to working with this Committee on that important task. Thank you.

[The prepared statement of Mr. Juster follows:]

PREPARED STATEMENT OF THE HONORABLE KENNETH I. JUSTER, UNDERSECRETARY,
BUREAU OF EXPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Chairman Hyde, Congressman Lantos, and Members of the Committee:

Thank you for the opportunity to testify about export controls and the proposed Export Administration Act of 2001, now pending in the Senate.

The Administration believes that an effective export control system is important to our national and economic security. It is critical that we protect this country’s national security by ensuring that our sensitive goods and technologies do not fall into the wrong hands. Equally important is an export control system that affords business the opportunity to compete effectively in today’s increasingly competitive global marketplace. It is essential to the health of our nation’s industrial and technological base that U.S. companies be able to export their goods, services, and tech-

nology without being hindered by arbitrary and unnecessary regulation. The challenge for all of us—in government and in the private sector—is to have a tough-minded, yet common-sense export control regime that strikes the proper balance between sharing our technology with friends and protecting against the transfer of sensitive technology to potential adversaries.

In my remarks today, I first will discuss the elements necessary for an effective export control system. I then will address the need for a new Export Administration Act. Finally, I will explain why the Administration strongly supports S. 149—the Export Administration Act of 2001.

I. Elements of an Effective Export Control System

An effective export control system is essential for national and economic security. We must ensure that our adversaries, or potential adversaries, do not obtain goods or technologies that could be used for weapons that might ultimately be directed against us. Given my own background, which includes almost four years at the U.S. Department of State, I can assure you that I fully appreciate the critical importance of protecting this country's national security.

At the same time, we also must ensure that U.S. exporters are not arbitrarily excluded from foreign markets. The ability of many U.S. exporters to produce state-of-the-art goods and technologies for our national security is in part dependent on the revenue stream they can generate from export sales. Indeed, America's economic well-being increasingly depends on exports.

To protect national security, an effective system should provide for controls on the export of goods and technologies that could make a significant contribution to conventional arms or weapons of mass destruction. An effective system also should provide for the control of goods and technologies to further foreign policy objectives, such as the promotion of human rights. In addition, an effective system must provide adequate opportunity for those agencies with national security and foreign policy expertise to review and comment upon proposed exports of controlled items.

Export controls are most effective, of course, when they are implemented in concert with the controls of other supplier nations. To this end, the majority of the items subject to export controls in the United States are controlled by most of the other supplier nations through the four multilateral export control regimes—the Wassenaar Arrangement (which relates to arms and dual-use items useful for conventional arms purposes); the Nuclear Suppliers Group; the Missile Technology Control Regime; and the Australia Group (which relates to items useful for chemical and biological weapons). These four regimes form the multilateral basis for export controls, and they are an important element for effective nonproliferation. One of my priorities on behalf of the Administration will be to work closely with our allies and regime partners in further developing multilateral cooperation and strengthening the contribution of these regimes to our nonproliferation goals.

Another element of an effective system is vigorous enforcement. There must be sufficient authority to conduct a wide range of enforcement activities, and penalties should be set at a level high enough to appropriately punish violators and deter would-be violators.

Control authority and vigorous enforcement alone, however, are not sufficient for an effective system. The cooperation of exporters also is essential. It is incumbent upon the government to create a system that is rational and transparent, so that exporters can comply with it. The system should not adversely affect U.S. companies from competing equally with their foreign competitors, unless there is an overriding national security or foreign policy interest at stake. The system also should be predictable, so that exporters can safely plan their business activities.

Having outlined what I believe to be the essential elements of an effective export control system, let me now explain why we need a new Export Administration Act.

II. The Need for a New Export Administration Act

We need a new Export Administration Act because the existing law—the Export Administration Act of 1979—is significantly out of date. It is a Cold War statute that simply does not reflect current economic and political realities. The basic national security control authority of this law is predicated on the existence of a multilateral regime—the Coordinating Committee on Multilateral Export Controls (CoCom)—that ended seven years ago. In addition, the level of the penalties in the 1979 Act has been substantially eroded by inflation. Ideally, we rely on the deterrent effect of stiff penalties for export control violations. But under the 1979 Act, this deterrent effect has largely eroded, because the low level of penalties could be viewed merely as a cost of doing business.

If we do not pass a new Export Administration Act, it is possible that the 1979 Act will expire in August of this year without being renewed. Under those cir-

cumstances, we would operate our export control system under the International Emergency Economic Powers Act. Operating under this emergency authority raises an increasing number of legal and political complications. Moreover, operating under emergency authority sends the wrong message—at home and abroad—about our commitment to export controls. It is hard to persuade other countries about the importance of establishing a sound and workable export control system if we are unable to do that ourselves.

III. Export Administration Act of 2001 (S. 149)

Enactment of a new Export Administration Act that reflects current global realities is thus imperative. Operating under either the 1979 Act or the authority of the International Emergency Economic Powers Act is simply not appropriate. As you know, the Administration carefully reviewed S. 149. As a result of its review, the Administration proposed a number of changes to the bill, which the Secretaries of State, Defense, and Commerce, and the National Security Advisor agreed would strengthen the President's national security and foreign policy authorities to control dual-use exports in a balanced manner. The Administration's proposed changes were incorporated into S. 149 and, as a result, the Administration strongly supports the legislation now pending in the Senate. Recently, in a speech to the Electronics Industries Alliance, the President reiterated his Administration's "strong support" for S. 149. He added that "[i]t's time to pass it [in] the House, so I can sign it into law."

A. Export Control Authorities

The Administration believes S. 149 provides appropriate authorities to address two major interests—the protection of U.S. national security and foreign policy interests, and the promotion of U.S. trade and industry. The bill eliminates the Cold War structure of the existing law and provides greater opportunities for exporters to seek revision of ineffective controls.

Contrary to the impression that some may have, it is important to note that S. 149 gives the President broad authority to protect national security. For example, S. 149 authorizes national security controls for three distinct purposes:

- First, to restrict the export of items that would contribute to the military potential of countries to the detriment of the United States and its allies;
- Second, to stem the proliferation of weapons of mass destruction; and
- Third, to deter terrorist acts.

In addition, S. 149 provides, for the first time in explicit statutory provisions, several additional important authorities. One such authority is known as "catch-all controls." Catch-all controls ensure that items otherwise uncontrolled are not exported to weapons of mass destruction programs.

Another such authority is known as "enhanced controls." Enhanced controls allow the President to exempt, for reasons of national security, items from the foreign availability, mass market, and parts and components provisions of the bill. Thus, the most sensitive items will not be subject to those provisions that would otherwise limit controls.

A third authority that appears for the first time in statute allows the President to continue indefinitely controls on the export of items found to be readily available from foreign sources if the United States has committed to control such items through one of the four multilateral export control regimes. This provision ensures that the most sensitive items—those controlled by agreement with our allies in a multilateral forum—will remain controlled.

The bill has other significant provisions that focus on national security. For example, the bill allows the President to continue indefinitely, for reasons of national security or adherence to multilateral regimes, controls on the export of items notwithstanding their mass market status. The bill also defines the term "export" so that it encompasses "deemed exports," thereby authorizing the continuation of existing controls on transfers of technology to foreign nationals in the United States. And the bill enhances the statutory role of the Department of Defense and other relevant departments in the export control process in several ways:

- First, the bill requires the Secretary of Commerce to refer all license applications to the Secretaries of Defense and State, and to other agencies as the Secretary deems appropriate, for their review and recommendations;
- Second, the bill authorizes all reviewing departments to escalate a proposed licensing decision to the President; and
- Third, the bill requires the Department of Commerce to notify the Department of Defense of all commodity classification requests.

S. 149 also provides the authority necessary to further significant foreign policy interests. In this regard, the bill authorizes controls to promote international peace, stability, and respect for fundamental human rights. In addition, the bill provides for strict controls on exports that could assist terrorist countries.

B. Enhanced Enforcement

S. 149 significantly raises the penalties for export control violations and contains other provisions that enhance the U.S. government's ability to enforce the law effectively. Higher penalties and increased enforcement authority will deter those who might otherwise endanger U.S. national security through illicit exports. For example, penalties on corporations are raised to \$5 million per violation, or ten times the value of the export, whichever is greater. This represents a substantial increase over the current level of penalties. Criminal penalties on individuals are raised from \$250,000 to \$1 million, and civil penalties increase under the bill from \$10,000 to \$500,000. In addition, the Commerce Department is authorized to conduct undercover operations and station attachés abroad to ensure that U.S. items are not diverted.

C. Industry

The bill also contains many important features for exporters. First, it provides broad authorization for exporters to formally seek government review of items subject to control. It does this by creating foreign availability and mass market provisions. Under the foreign availability provision, an exporter can request that the U.S. government determine if a product is readily available to foreign countries from foreign sources. Under the mass market provision, an exporter can request that the U.S. government determine if a product is widely available and therefore cannot be effectively controlled for export. If the product is found to be readily available to foreign countries from sources outside the United States or if the product is found to be widely available in the United States, the government must remove controls on the product, unless doing so would be inconsistent with our international commitments, such as our commitments in the multilateral export control regimes, or threaten our national security.

A second important feature of the bill is its treatment of parts and components. The bill limits, with certain exceptions, controls on the export or reexport of dual-use parts and components incorporated into a final product based solely on the nature of the incorporated part or component. These provisions ensure that U.S. exports are not subject to more restrictive treatment than is necessary simply because they contain a controlled part. This also reduces the incentive for foreign producers to design products so as to omit U.S. components.

It is worth noting that the applicability of the mass market, foreign availability, and parts and components provisions is limited when national security concerns are raised. As I stated earlier, the President can exempt any item from these provisions by exercising his authority to invoke "enhanced controls." The President also can set aside for reasons of national security any mass market or foreign availability determination.

A third important feature of the bill is the time limit provision for government decisions. The bill requires decisions on license applications within 39 days of submission unless the application requires higher level review. Historically, only about 5 percent of license applications require such review. The bill also establishes short time limits for the government to respond to formal classification requests and opinions from exporters. Prompt responses are essential for doing business abroad.

IV. Conclusion

In conclusion, we believe that S. 149 provides the authority necessary for an effective export control system. It provides broad control authority and appropriate enforcement authority in order to protect our national security. And it provides transparency, predictability, and time limits for the benefit of our exporters.

Passage of the Export Administration Act of 2001 is a vital step in the Administration's effort to meet the new challenges that today's global environment presents for U.S. national security and economic health. In particular, this legislation will help strengthen the Commerce Department's administration of national security and nonproliferation controls. My goal is to ensure that the United States has an effective and efficient export control system, and I look forward to working with the Committee on this important task.

Chairman HYDE. Thank you, Mr. Secretary, and before we do go into the questions, I owe you a warm introduction, which I deprived you of. So let me welcome Kenneth Juster, *ex post facto*,

who was sworn in May 14th, 2001 as Undersecretary of Commerce for Export Administration.

Before joining the Administration, Mr. Juster was a senior partner at the law firm of Arnold & Porter, where he concentrated on international trade issues and dispute resolution. His previous government service includes service as counselor of the U.S. Department of State from 1992 to '93 and as the senior adviser to Deputy Secretary of State Lawrence Eagleburger from 1989 to 1992, and Mr. Juster is the recipient of the Secretary of State's Distinguished Service Award and Medal, the State Department's highest honor. Undersecretary Juster has published extensively on international economic and legal issues. So I wanted to thank you for your excellent testimony, and now, at long last, we will go to the questions. Mr. Lantos.

Mr. JUSTER. Thank you.

Mr. LANTOS. Thank you very much, Mr. Chairman. And I want to join you in commending Secretary Juster not only for his stellar academic record, but his public service, and particularly his service under our much-admired friend and colleague, Secretary Eagleburger.

It is hard enough, Secretary Juster, for us to follow all of the ins and outs of legislative proceedings on our side of the Hill. It is even more difficult, since we do not have unlimited time, to follow things on the other side. So correct me if my facts are not quite accurate, but I believe they are.

After a protracted period, over 2 years, 2½ years, almost 3 years, my understanding is that an attempt was made to bring the Senate bill to the Floor earlier this month, and four Committee Chairmen, plus a number of other distinguished Senators, have objected to that. As I recall, the Chairman of the Senate Foreign Relations Committee, Senator Helms; the Chairman of the Senate Armed Service Committee, Senator Warner; the Chairman of the Senate Intelligence Committee, Senator Shelby; the Chairman of the Senate Government Operations Committee, Senator Thompson; plus Senator John McCain and Senator Kyl, an old colleague who follows these things closely, all objected. Am I correct in this?

Mr. JUSTER. I share your understanding that the bill was brought to the Senate Floor and then was pulled back. I am not aware of all the inner workings as to why that occurred, but I know that there are several Senators who have voiced some concerns about the legislation.

Mr. LANTOS. Well, my understanding is that these are not just several Senators; these are four respected Chairman of the four key Committees that are relevant to what we are talking about, plus Senator McCain and Senator Kyl, both of whom have considerable credentials. Share with us what your understanding is of their objections.

Mr. JUSTER. I did not mean to suggest that these were not important Senators who Chair important Committees. My understanding is that they have expressed concerns about the national security provisions and safeguards in the legislation. I have been in office for only 1 week, and I have not yet had a chance to meet with them individually but look forward to that opportunity to hear their concerns.

The Administration itself has tried to make sure that the bill does have adequate safeguards for the protection of this country's national security. We believe that we have established in the legislation a framework for doing so, as I mentioned in my testimony. But, again, I do look forward to the opportunity to meet with those Senators and hear their concerns as well.

Mr. LANTOS. Well, Secretary Juster, what does your staff tell you? I am not blaming you for anything. You have been in the job a few days, but this set of events I have just described came to your attention.

Mr. JUSTER. Right.

Mr. LANTOS. And it came to your attention with some commentary from members of your staff. Now, you will get along very well with us if you level with us and if you are candid with us. But if you give evasive answers, we will be less than pleased. So what did you learn from your staff, who have been here more than a week, with respect to the objections?

Mr. JUSTER. Let me characterize the objections in several ways. I think one is a concern as to whether the Defense Department and the State Department have sufficient input on export control decisions. Another objection, as I understand it, is whether the President has too onerous a burden in making a national security determination either to set aside a mass-market or foreign-availability determination under the legislation or to exempt an item from undergoing those determinations in the first place.

Another concern, as I understand it, is whether deemed exports, which, again, are exports of technological know-how to foreign nationals in the United States, are covered by the legislation. As I recall, those were some of the main concerns expressed by these Senators.

Mr. LANTOS. Now, Secretary Juster, in your prepared statement you placed considerable emphasis on the expiration date of this legislation, which as I understand it, is in August.

Mr. JUSTER. That is correct.

Mr. LANTOS. Am I wrong in assuming that this is purely an arbitrary date, and there is nothing that prevents Congress from extending the current act?

Mr. JUSTER. That is the current date that exists in terms of the expiration of the law, but there is obviously nothing that would prevent the Congress from extending the current statute, or if it is not extended, from the Administration operating under the International Emergency Economic Powers Act. That is correct.

Mr. LANTOS. So if, in fact, the Senate has taken some 3 years, and the issue has not yet been brought to the Floor of the Senate, presumably it will not be brought to the Floor during the course of this week, which is the last week before the break, then comes June. We go out for Fourth of July. So we will get this presumably sometime in June or sometime in July.

If the Senate has taken 3 years on this matter, I think it would be inappropriate for the House to feel rushed to judgment on a matter of such great importance. And I would like to ask you, what, in your view, would be the negative consequences of extending the current act for some time?

Mr. JUSTER. Well, as I indicated in my statement, I think there are some important, new authorities that are in the legislation now pending in the Senate. One relates to the enforcement of export controls. Penalties are significantly increased in the legislation, as are our enforcement authorities to undertake undercover operations and to station attaches abroad.

In addition, the bill pending in the Senate contains new authorities for national security purposes. These include what are known as "enhanced controls," that is, the ability of the President simply to exempt a sensitive item from undergoing a foreign-availability analysis. Also, there is the set-aside authority for the President, which allows him to set aside any determination as to whether an item should be decontrolled and to keep the item controlled for national security purposes.

So I do believe that there are some important, new authorities in both the enforcement and the export-licensing area that we would not be with if we continue the current legislation.

Chairman HYDE. The gentleman's time has expired.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. JUSTER. Thank you.

Mr. LANTOS. And I look forward to working with Secretary Juster.

Chairman HYDE. Thank you, Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. I want to commend you for holding these hearings on the Export Administration Act. I wanted to welcome and congratulate Mr. Juster. I think he is extremely well-qualified to take on the task before him, which is a difficult one, and I appreciate the fact that he has come to visit with me about his new responsibilities before this hearing.

Thinking back, I have spent more time on this legislative area in my time in Congress than anything else. I recall a conference that went on for over 1 year. Staff members met, were married, and had children during the course of that conference. I remember well then-Congressman Hamilton and I trying to work out differences between then-Congressman Gejdenson and Members of the then-House National Security Committee about a previous attempt to extend and revise the Export Administration Act.

Probably, I have no larger interest in this Congress and what I do here than in exports, but I think the national security consideration always must have a pre-eminent role in our decisions. I have looked at this, as a Member of the International Relations Committee and as a Member of the House Permanent Select Committee on Intelligence, and I think this is a difficult decision and a difficult process that is not going to be well understood by most of our colleagues. It, therefore, places on us a very special responsibility as we prepare to react and reauthorize the Export Administration Act.

My colleagues will know, or should know, that along with the April 2 report of the Senate Committee on Banking, there were additional views filed by Senator Shelby, who is Chairman of the Senate Select Committee on Intelligence. I am not sure that I would agree with all of his concerns, but he has a list of concerns about the Senate bill that I think would be a good place to start in asking

you some questions, Mr. Juster. Congressman Lantos already moved into that area a few minutes ago.

Senator Shelby said that at that time he had been working with Dr. Rice, Vice President Cheney, and Secretary Rumsfeld and that they were in the process of drafting an Executive order that would, among other things, establish an interagency dispute-settlement mechanism. Now, I am not sure if that has happened or not, and I am not certain, of course, whether he would find what they did or what they are proposing to do to be adequate.

But let me mention some of the points of concern. If you could answer briefly, any kind of comment you might like to make, Mr. Juster. I will move from one to the other as long as my time permits.

Senator Shelby is concerned about a broad, national security exemption. He lists that first. He indicates, and I must say, I agree, that the President should have complete, unqualified discretion to override the mass-market, foreign availability, overseas production, or incorporated parts provisions of the bill if he finds that the export of a product would threaten the national security. Do you have any reaction to that most basic concern of Chairman Shelby?

Mr. JUSTER. The bill does provide for what is known as a set-aside by the President if he deems that a mass-market or parts-and-components determination nonetheless runs afoul of national security interests.

Mr. BEREUTER. Would that include foreign availability—

Mr. JUSTER. It does include foreign availability. In that case the set-aside would last for 18 months while the President and the Administration seek to negotiate with a foreign government to stop making the products available. However, it would be an indefinite set-aside if the item is actually listed on a multilateral regime's control list. So, again, there would be a national security override unless it turns out the product is not listed on the multilateral regime control lists, and the product truly cannot be controlled even after an extended negotiation period.

Mr. BEREUTER. Thank you. Would it include overseas production?

Mr. JUSTER. Excuse me?

Mr. BEREUTER. Would it include overseas production? If, in fact, we can demonstrate there is an overseas production of components that are sent abroad, would he still have that discretion?

Mr. JUSTER. The President still has the set-aside authority on parts and components. Exactly.

Mr. BEREUTER. And would you say that it meets his test of having complete, unqualified discretion to the extent that you have not already identified an exception to that matter?

Mr. JUSTER. As I read the proposed legislation, it does provide for the President, if he deems it important to our national security, to be able to make that set-aside in his discretion.

Mr. BEREUTER. Am I out of time?

Chairman HYDE. You are out of time. Do you wish additional time?

Mr. BEREUTER. I will come back at an additional round if you would like to do it that way.

Chairman HYDE. Surely. Very well. Mr. Menendez.

Mr. MENENDEZ. Well, thank you, Mr. Chairman.

Mr. Secretary, let me ask you, with reference to those who criticize the foreign availability and mass-market exemptions approach, they say that expanding those exemptions would, in essence, defeat the whole U.S. controlled regime by decontrolling any item that would meet these criteria and without due regard to its potential to enhance an enemy's military capability. They assert that virtually any product, including dual-use items used for proliferation purposes, would qualify for a mass-market status and, therefore, require the United States to allow the sale of practically anything, even to countries of concern. How would you respond to those concerns?

Mr. JUSTER. As I tried to indicate, there are some competing concerns at stake. On the one hand, in the post-Cold War world, with rapid globalization and expanding technology, items that one day might be sensitive and ought to be controlled may turn out over time to be widely available and uncontrollable, and, indeed, one could walk into a Radio Shack store and purchase such an item. We have seen this phenomenon occur over time with computers.

If the controls stay in place in this country, we are not preventing an importer from obtaining the item; we are really penalizing our exporters. Nevertheless, if U.S. technology is at the cutting edge, as you indicated in your own statement, and an item might be found overseas, or there may be some way of getting hold of it otherwise, first we would have to meet the rigorous test to see if the item is truly mass-market available on a widely distributed basis. But even if it is, the President retains the authority, first, under enhanced controls, to exempt those mass-market and foreign-availability determinations from even being made. In other words, he can say at the outset, this item is sufficiently sensitive so that it is not even going to be subject to a mass-market or foreign-availability determination.

Second, if the item is subject to those determinations and found to be available overseas, the President nonetheless can say, for reasons of national security, that he is going to set aside that determination and protect the item for national security reasons.

So there is a national security safeguard and override, in our view. Yet, at the same time, we want to have the framework in place and the flexibility necessary, so that if technological changes are occurring rapidly, and the global marketplace is changing, we can adapt to those events without unfairly penalizing our exporters in ways that do not enhance our national security.

Mr. MENENDEZ. And, therefore, in your view, the safeguard that lies with the President is also a vehicle in which all of those departments who may have concerns—the Department of Defense, the Department of State—would be able to make their concerns known to the President in terms of having him potentially use that trigger that he might have?

Mr. JUSTER. That is my belief. At the end of the day, you cannot, in my view, write into law every single issue that might occur under an export control system. The world simply changes too quickly. You can have in place a framework for making those decisions. Then you must have officials who properly implement matters under that framework. That is what we believe this bill provides.

Mr. MENENDEZ. Let me ask you a different question. The Cox Commission talked about China's diversion of U.S.-manufactured, high-performance computers for military operations and talked about post-shipment verifications. Do you believe that post-shipment verifications can be effective? Or should the United States approve of technology transfers based on the assumption that a country's military security and intelligence services will have access to it?

Mr. JUSTER. You have to look at these issues on a case-by-case basis. I certainly think there is an important role both for pre-license checks, where one goes to check out an end user to see if, in fact, we believe the end use would be as stated in the license application, and for post-shipment verifications to see if the product is being used as provided for in the license application. At the same time, we need always to be accumulating our intelligence in terms of what is going on overseas and whether diversion is a serious risk, and that should play a role in any license application decision. What is important to note about the legislation pending in the Senate is it expressly provides for a role for the intelligence agencies in the license-application process.

Chairman HYDE. The gentleman's time has expired.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Chairman HYDE. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. The legislation, H.R. 1553—this is on the MTOPS standard—is now part of a Senate bill. Is the Administration supportive of that provision, eliminating the MTOPS standard?

Mr. JUSTER. The Administration did support the provision in S. 149 that eliminates the MTOPS requirement.

Mr. FLAKE. Given the concerns that the Senators noted and given that the Administration has now had time to look at the Senate bill, are you insisting on additional amendments or are you supportive of additional amendments to the Senate bill? Are you still supportive as it stands?

Mr. JUSTER. Currently, we support the bill as it stands. As I indicated earlier in responding to Congressman Lantos, I have not had an opportunity to meet with Senators and others who might have particular concerns about the legislation, and I certainly want to have that opportunity.

Mr. FLAKE. If H.R. 1553, if that provision on the MTOPS standard does go into effect, does that represent total decontrol on computers subject to it. In terms of the congressional role, simply leave it up to the President, using his discretion, to move in if he needs to?

Mr. JUSTER. That would eliminate the statutory requirement for there to be an MTOPS control mechanism on computers, but it would leave the Administration with the discretion to control computers in the way it saw fit. As I am sure you well know, the MTOPS measurements have changed radically over time, and this is exactly the problem we face in trying to codify in statute certain technology metrics for export controls. We believe it is better to have in place a framework that then allows the Administration to adapt to changes that are occurring in the environment.

Mr. FLAKE. Thank you.

Mr. JUSTER. Thank you.

Chairman HYDE. Mr. Blumenauer.

Mr. BLUMENAUER. Thank you, Mr. Chairman. I was curious, Mr. Secretary, the extent to which we have the administrative capacity to actually meet this 39-day-turnaround goal. I have not delved into the details of the budget, but in times past, as you know, we have had little pinch points for times that were not quite this ambitious. Do you have a sense of what our capacity is?

Mr. JUSTER. I clearly want to take a fresh look at the overall licensing process within the department, but my understanding is that the Commerce Department has done rather well in terms of meeting its time commitments. We have 9 days under the legislation to make sure that an export application is in the appropriate form and then refer it to the appropriate agencies, including the State Department and the Defense Department. Then within 30 days they need to get back with a response, or they would otherwise be deemed to consent to the application.

I think the times when items get delayed are when modifications need to be made in the export application, when questions arise, or when particular intelligence may be necessary to gather on the item. But we want to strive very hard to meet those time constraints, and we will be looking closely to see if we need additional resources to do so.

I would note that while the number of license applications has declined over time, the complexity has increased, in large part due to new technologies and, in part, due to the merging in many respects of commercial applications and military applications of particular technologies. So you are correct that it is a complex process, and we really do need to take a fresh look to see if we have all of the resources necessary.

Mr. BLUMENAUER. I appreciate that you have explained that you recently arrived to the position, but this is one that I would appreciate getting a little more elaborate response to in terms of what is going to happen with Commerce and the other related agencies. How do we anticipate that we are going to have the staffing to be able to make this work in a realistic fashion.

I was curious if you have some evidence that suggests that the current regime has been effective in keeping sensitive technology out of the hands of potentially hostile governments. We really, in terms of the presentation, have not gone into how effective this has been. I am wondering if there has been an assessment that you are aware of that would help us understand whether or not this is something that has been particularly worthwhile.

Mr. JUSTER. I do not know if there is an overall assessment that has been done that reaches a final judgment on that issue, but my understanding is that the current regime has been pretty effective. In fact, 95 percent of the applications that come in on export matters are approved by interagency consensus at the working level, and we rarely see any problem with those applications. Occasionally, there is a high-profile case, and that is why it is important that we have enhanced enforcement authorities.

Mr. BLUMENAUER. Let me reframe my question.

Mr. JUSTER. Sure.

Mr. BLUMENAUER. I think that people of good faith have been working as hard as they could to administer this 1979 act. My

question is, do we have some good evidence that the 1979 act, in its application, has been particularly successful in keeping sensitive equipment and software out of the hands of potentially hostile agencies and forces?

Mr. JUSTER. My sense is that it has been generally successful.

Mr. BLUMENAUER. Could you supply us with some information that speaks to the success of this regime?

Mr. JUSTER. I will certainly follow up with that. One of the problems, though, that I want to point out is not just the issue of whether items have been diverted, but the problem that the inter-agency process has not operated as effectively as possible. Applications have run into time delays,——

Mr. BLUMENAUER. Yes, yes, yes.

Mr. JUSTER [continuing]. And people feel that they have——

Mr. BLUMENAUER. Right, right. They have been jacked around, or there have been problems.

Mr. JUSTER. Right.

Mr. BLUMENAUER. I concede that, and I appreciate——

Mr. JUSTER. But on your other point, I will get back to you on that.

Mr. BLUMENAUER. Does it work? Are we doing things that other people cannot really purchase elsewhere, steal elsewhere, or somehow cob together? I think that would be good baseline data.

Mr. JUSTER. Sure.

Mr. BLUMENAUER. My final question is whether or not there is evidence that because of the inflation eroded penalty levels, that American business is, in fact, ignoring the requirements of the act because the penalties are not strong enough.

Mr. JUSTER. In the brief time I have been at the department, I have seen a number of enforcement cases where the penalty levels are rather low. Whether that was a reason why a company did not obey the export control legislation or whether they were simply ignorant of the requirements, I do not know. But certainly, I think the low penalty level overall has created the sense that if a violation occurs, it is not as serious an economic hit to a company as it might otherwise be.

Chairman HYDE. The gentleman's time has expired. The gentleman from Virginia, Mr. Cantor.

Mr. CANTOR. Thank you, Mr. Chairman. I want to thank the Undersecretary for being here. I just want to refer back to your testimony where you say if the product is found to be readily available to foreign countries from sources outside the U.S., or if the product is found to be widely available in the U.S., the government must remove controls on the product unless doing so would be inconsistent with our international commitments, such as commitments in the multilateral export control regimes or those that threaten our national security.

And I ask the question, can you give me a specific example, specifically referring to a constituent company that is in my district that manufactures a fiber, a fiber that is applicable in military use, and I know is one of these that is deemed to be somewhat of a threat to the national security, although they claim there is widespread availability of a similar product internationally. So I am just trying to grapple with the sense of how can something be wide-

ly available in the international market, but yet we deem it threatening to our national security? So we are not going to let our company be in there to compete in the market for this fiber?

Mr. JUSTER. Well, there could be a number of issues. For example, is it truly the same product, or is the U.S. product better in terms of quality? Are the price levels truly the same, or is our price level much lower, thereby potentially making it a much more readily available product? Where is the product being made available? Do we have a way of controlling the availability by negotiations with a foreign government? Is it a country that is a member of a multilateral control regime and, therefore, has agreed to control the product, and is there an enforcement issue that they have to address?

These issues need to be analyzed to determine whether, in fact, this is truly an item that is not controllable because it is available through broad distribution channels at commercially available prices with applications that would be the same as we would have in this country (and, therefore, by denying a license we would not be penalizing the importer but would be penalizing the exporter); or are there circumstances that, while the product might seem to be widely available, it truly is not, or is a slightly different product, and for national security reasons, we think we ought to protect our technology because it does make a difference? And you have to make these determinations on a case-by-case basis.

Mr. CANTOR. Sure. I guess it all is very subjective as far as the Administration is concerned, and obviously the exporter wanting to increase that. Do you see the overall effect of the Senate bill increasing the export of goods from this country?

Mr. JUSTER. Well, I do not think it can be stated in that fashion. The goal is that we might be controlling fewer items but in a tighter way. As the saying goes, having higher walls around fewer items, in order to focus on those items of greatest sensitivity in terms of their ability to affect our national security. We need to make sure that we have in place excellent controls on those items and seek to do so in a multilateral context with significant penalties. As to items that really are not controllable, and for which the technology has long since become widely available, and does not threaten our national security, we need to let those items be sold without diverting our resources in terms of licensing them.

So, on the one hand, the Senate bill might lead to increased exports of certain items; on the other hand, I would hope that we would make an effort to restrict other items that are of greater sensitivity.

Mr. CANTOR. Do you see the bill that you support as making the test, if you will, somewhat more objective rather than subjective?

Mr. JUSTER. There are a number of steps in the bill that one has to go through in terms of undertaking certain analyses, whether it be for the mass-market determination or the foreign availability determination or on foreign-policy controls, which are unilateral controls that on a case-by-case basis may make sense. There is an analysis that one has to go through in terms of what is the objective of the control, how readily achievable is it, and monitoring whether we are, in fact, achieving that goal over time. So I think in that regard, these disciplines provide a level of objectivity to the

licensing process. On the other hand, there are safeguards to ensure that, if release of an item or decontrol would threaten national security, such decontrol should not occur.

Mr. CANTOR. Thank you. Thank you, Mr. Chairman. I yield back.

Chairman HYDE. The gentleman from Florida, Mr. Hastings.

Mr. HASTINGS. Thank you very much, Mr. Chairman. And first, Mr. Chairman, let me thank you for holding this hearing, and, Undersecretary Juster, I thank you for your presentation.

Rather than get into a detailed series of questions, I would like to pick up where Congressman Bereuter left off, not so much with questions, but with a suggestion that he offered. That is that the complexity of the issues that we are dealing with is going to cause a significant number of Members of the House of Representatives not to be in tune with this matter, which leads me, then, to offer a recommendation to you. Obviously a part of your role in trying to see to it that this act is passed is to have a political component to it. The political component generally would follow having good information.

Generally, those of us that call upon the various secretaries' good offices get great responses and come to us and give us appropriate briefings, and we go forward. I suggest that you, because of its complexity, that you may wish to try and learn of those Members that you think are up to speed, and the few that may have interests, and seek them out to offer further briefings and better understandings to them.

I listened to you in response to Congressman Flake's question on used MTOPS and metric, and, I mean, you know, by and large, most people do not know what the hell you're talking about, Congress people and other people. So we have to figure out a way to break this down.

I followed the Cox report. I have had some insight with reference to Mr. Goodling on encryption. Just that subject alone is enough, as it pertains to these things that you have oversight of, to deal with trying to get more knowledge to more people so that there would be better understanding.

Now, my only question would be in response to Congressman Blumenauer, you said that, or seemed to say that, there may be some situations where weak penalties have caused companies—either they did not know what was going on or there was very little in the way of real enforcement.

How, then, can the United States persuade other major exporters to cooperate in controlling exports of dual-use goods and technology that threaten our mutual security, and how can we encourage punitive action against those individuals or groups or countries that violate international norms? I mean, what are we going to do in the multilateral arena? If we are weak already, how are we going to tell somebody else to be strong?

Mr. JUSTER. Thank you very much, Congressman. Let me first say that I fully appreciate your comments about the importance of myself and my bureau being available to Members of Congress and to your staffs to try to explain the complexities of this legislation. I pledge to you that we are available and will make ourselves available to do so.

This is most important. We are public servants. We serve the public, and it is very important that we make every effort to respond in a timely and effective way to any inquiries you have and, in addition, to seek out Members and their staffs to explain the legislation and respond to your questions.

I think you make an excellent point that we have to get our own export system fixed before we can persuasively argue to others that they need to do the same to their export control system. One of the important incentives for companies to put in place effective compliance systems is to have sufficient penalties and enforcement authorities, that they recognize there is a big downside risk if they do not have a compliance system in place.

Part of what my bureau does is try to work with foreign countries, especially some of the new, emerging democracies as well as countries that are important transit points for trade, to help them put in place effective export control systems and to have technical training for companies in the emerging private sectors to develop compliance programs. That is an important function of what we do in conjunction with the State Department, and I think you are 100 percent correct that we have to make sure our own house is in order to be effectively communicating that message.

Mr. HASTINGS. Thank you very much, Mr. Chairman. I yield back the balance of my time.

Mr. JUSTER. Thank you.

Chairman HYDE. Thank you. Mr. Rohrabacher? He did? I am sorry. I have pushed you ahead of Mr. Gilman, which is a cardinal offense.

Mr. ROHRABACHER. I would never want to step in line in front of Mr. Gilman.

Chairman HYDE. Well, I share your sensitivity. Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. I want to welcome Undersecretary Juster, and we welcome you to our hearing. We have had contact in the past,—

Mr. JUSTER. Yes.

Mr. GILMAN [continuing]. And we appreciate all your background. It is suitable certainly and credible for this position that you are now assuming.

I note with a great deal of interest, since we are considering ILSA reenactment, that you wrote some articles about the myth of the IRANGATE and the Libyan sanctions, a national response. I would welcome your thoughts about the importance of ILSA, since I have been one of the sponsors of that measure, along with former Senator D'Amato. We are still very much concerned about Iran's proliferation of weapons of mass destruction and their being classified as a national security threat by our President. I would welcome your thoughts about ILSA reauthorization.

Mr. JUSTER. Well, as you have noted, Congressman, I have over the years looked at the subject of sanctions, both on a multilateral and unilateral basis. Let me step back from ILSA and more broadly discuss my philosophy in that regard.

I should note that ILSA is administered by the Department of State, and I know that they are undertaking a review and examination of that legislation. But I think at the outset one would clearly say that having sanctions on a multilateral basis is the

goal, and it is the most effective way to proceed. One first wants to strive, whether it relates to Iran, Libya, or elsewhere, to have multilateral sanctions, and we have done that at times with Libya. After Pan Am 103, we were effective in getting other countries to join us with sanctions.

At the same time, sometimes we need to apply sanctions unilaterally on a case-by-case basis if it makes sense as an overall component of our foreign-policy goals and objectives. And I do not really want to pre-empt at this point the Administration's internal review of the ILSA legislation and the various options available, but I think it is important to note that one should not simply say that unilateral sanctions cannot be effective. You really have to look at it in the context of individual decisions.

One concern at times with ILSA is its effect on other countries and the objections we have received from the Europeans. I think one has to look at those objections in the context of the overall goals of the legislation, and that is what the Administration is doing at this time.

Mr. GILMAN. Mr. Secretary, about a year ago I sat with one of our major exporters of aircraft, and he had a graphic illustration of the amount of bureaucracy that they were confronted with in order to get licensing and how the delays were incorrigible. And we have a chart here indicating what an entrepreneur has to go through to get licensing. What is the average length of time, do you know, that it takes to process export licenses at the present time?

Mr. JUSTER. As I mentioned, I think 90 percent of export license applications are approved by interagency consensus at the working level. Therefore, the time frame, I believe, is very close to the statutory time frame that is in the legislation being proposed in the Senate of approximately 30 to 40 days. However, more complex cases take a longer period of time.

Part of the difficulty in this area is that in a complex case, we want to ensure that the intelligence community has the opportunity to provide its input and that the agencies with national security and foreign-policy concerns, such as the State Department, the Defense Department, and on occasion, the Energy Department, have an opportunity to provide their input, and that disagreements will be raised to a political level. All of this will take some time.

Nonetheless, it is important that we have time limits and that we push that process along. This is one of the goals that I have, and I have spoken informally with my counterparts at the State Department and the Defense Department, to make the interagency process work as effectively as possible in a timely way, as transparently as possible, so that even if a company will be told that the license will be denied, they will not just sit there waiting indefinitely for a decision; they will have an answer and a reason.

Mr. GILMAN. Well, the example they had illustrated to us showed it went on for more than a year, and we would hope that our manufacturers are not going to be confronted with that kind of a bureaucratic delay. If there is a problem, it should be examined but should be examined efficiently and expeditiously.

Mr. JUSTER. I share that concern.

Mr. GILMAN. I appreciate that. Mr. Secretary, do we have a memorandum of understanding or some kind of an agreement in

place with China regarding our right to perform post-shipment verifications inside that country, and are there adequate resources and personnel in place to monitor post-shipment verifications in that country and other key markets?

Mr. JUSTER. Yes. We do have an agreement with the Chinese. It was signed, I believe, in 1998, an end use agreement. I believe we have conducted approximately 150 post-shipment verifications since that time. We have one attache in Beijing, and we have used what are known as "safeguard teams," in which teams have traveled to China on a case-by-case basis to examine different goods.

Right now, under legislation, we are required to do post-shipment verifications on high-performance computers. If the amendment that would take that requirement out of the current legislation were passed, that has either been presented in the House or is in the Senate Bill 149, that would free up some resources to do other types of post-shipment verifications.

Some of the post-shipment verifications we do for high-performance computers relate to U.S. subsidiaries operating in China. These are cases where we usually do not have a security concern but are required by law to do these post-shipment verifications. Without that requirement, we would have the flexibility to do post-shipment verifications in cases that we really thought merited it the most.

Chairman HYDE. The gentleman's—

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. JUSTER. Thank you.

Chairman HYDE. Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Chairman. Mr. Secretary, thank you for being here today. I am sorry. I have another hearing going on at the Committee on Financial Services, so I will be going in and out. I was here when Mr. Flake from Arizona questioned you, and I think he and I are in the same line of thought in that questioning, so I will not belabor that.

But what I would ask is, in the whole debate that we have been having on the issue of MTOP and metric and its outdatedness. Is not it true, if we were to do away with that, that there would still be other controls that would still be in place dealing with the export of computer technology?

Mr. JUSTER. Yes. First, even though there might not be a statutory requirement regarding MTOPS, the Administration would make its own internal review as to what, if any, other types of controls we should put on the sale of high-performance computers. In addition, the framework for export controls itself provides a number of safeguards. Items, whether they be high-performance computers or otherwise, would not be exported to terrorist countries. Other locations, such as China, are on a very restricted list in terms of what they might receive.

We also have, as I mentioned, what is known as "catch-all authorities." If there was a determination that a particular end user would not make proper use of a computer that we regarded as sensitive, we could control the computer export. And the legislation pending in the Senate would provide enhanced controls as well as set-aside authority for the President to say that, for national security reasons, regardless of the fact that we might not have par-

ticular restrictions on high-performance computers, a particular computer should not be sent to a particular importer.

Mr. CROWLEY. Thank you. I yield back the balance.

Chairman HYDE. The gentleman from California, Mr. Rohrabacher. Huntington Beach, to be exact.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. First, good luck, Mr. Undersecretary.

Mr. JUSTER. Thank you.

Mr. ROHRABACHER. You have got a very tough job, and I wish you and your staff and the new Administration success. I hope you can do your job effectively because we have had 8 years of national disgrace concerning the export controls on deadly technologies during the last Administration.

As I noted in the meeting that I had with you in my office, 10 years ago Chinese rockets were relatively ineffective. Mr. Chairman, nine out of ten of their long-range rockets would be launched but would explode, would not be able to reach their target, and were ineffective. For some reason, after a 10-year period, Chinese rockets are now very effective. They carry a much better payload. Their guidance systems are upgraded and are quality guidance systems, and nine out of 10 Chinese rockets now succeed in the mission that they are intended for once launched, and they carry multiple payloads.

Something happened in this last 10 years, and many of us believe what happened was that American industrialists betrayed the national security interests of the United States and provided America's worst potential enemy technology that could be used to kill millions of Americans. That is pretty damn bad, and it is very serious.

Unfortunately, what happened during the last Administration, it seems that when we were trying to do business with friends, there were all kinds of problems and delays and systems created in order to create roadblocks in dealing with friends, but all of the systems that were put in place to try to protect us against deadly weapons technology transfers to potential enemies just collapsed. All of the safeguards just collapsed. Now, is there anything that you can tell me that is going to make me more comfortable with what is going to happen in this Administration as compared to the last one?

Mr. JUSTER. Well, as I mentioned when we met, I myself am fully committed to protecting this nation's national security. My background at the State Department speaks to that concern, and I know that the Administration also shares that concern. I can only pledge to you that we will be trying to implement our own controls in a way that protects national security.

I do note that China is what is known as a "Tier 3 country." It is on the most restrictive list but for those nations that are deemed to be terrorist nations. I cannot speak to individual decisions made previously, but we obviously want to get the full input from the State Department and the Defense Department on these issues and consider each case on the merits in the best way possible.

Mr. ROHRABACHER. I believe in free trade between free people. I think that basically between free countries and democratic countries that we need to tear down the impediments between commerce and contacts between our peoples. Between countries that

are run by dictators, it is essential that we ensure tyrannical regimes, especially tyrannical regimes that are belligerent to our interests and to the United States of America itself, that trade does not in some way bolster their abilities to have leverage on us.

What are we going to do to make sure—let us go to the first part of that—what are we going to do to make sure that with free countries and countries like, let us say, Belgium, as compared to Iran, that people are not going to have to have deals nixed because they have not been approved in the time period necessary?

Mr. JUSTER. You put your finger on an important issue overall. We certainly want to make sure that export-license applications that do not raise issues of national security are dealt with in an expeditious and effective way. As I indicated in my testimony, one of my own priorities is to try to enhance our multilateral controls with our partners and allies in terms of the export of sensitive technology to countries outside the sphere of our friends and allies.

One of the problems that we have to face and we will have to deal with is that a lot of our allies and partners do not look at the world the same way that we do, and that relates to a variety of countries that may be of more concern to us than they sometimes are to our partners. The real issue, now that CoCom no longer exists, and we do not have the same discipline that we had under that system, is how can we enhance our trade with partners and allies and yet still try to keep in place an effective, multilateral system that keeps sensitive items from countries of concern?

Chairman HYDE. The gentleman's time has expired.

Mr. ROHRBACHER. Just one last note, Mr. Chairman, and that is the last Administration failed miserably to protect our national security interests. Big business, for whatever reason, decided that they could betray our national security interests and put us in jeopardy. I wish you success, as I said in my opening statement, and I look forward to working with the Chairman and others on this Committee to work with you to make sure the system works for our country in all of its elements, so thank you.

Mr. JUSTER. Thank you.

Chairman HYDE. The gentleman from New Jersey, Mr. Payne.

Mr. PAYNE. Thank you very much. I am sorry that I also missed your testimony, and I just have a basic question. I hope it is in line what this is all about.

There has been a lot of exploration in Sudan for oil. There has been the building of a massive pipeline. There are continued exploration and drilling and so forth. Are there any indirect ways that the U.S. companies are involved with this business indirectly through multinationals or with direct participation? I know that Sudan is supposed to be on an embargo list, and as you know, it is probably one of the most pariah governments in the world, with the practices that go on there. And I wonder if you could just tell me how we compare with the Sudan?

Mr. JUSTER. As you indicated, Congressman, Sudan is among the countries deemed to be a terrorist country and is on the embargo list. I am not aware of any U.S. participation in oil operations in that country. I will look into that question further and get back to you if I learn anything otherwise. But at this point I do not know any information to the contrary.

Mr. PAYNE. Thank you. Okay. One last portion to that. We think that countries that are pariah countries, that indirectly have access to capital markets on Wall Street, I feel that we should not take any further, where there should be a way to prevent, for example, the Talisman Oil Company, which is made up of a Canadian company and PetroChina, but they have access to capital markets in the U.S. to build a pipeline and to drill for oil and to move that government along.

Do you have any thoughts about as not directly hardware or computers or, you know, the whole evil empire that my friend from California always talks about, how terrible that last, 8-year Administration? Of course, he never talks about who all of these businessmen were. They are not Democrats. They do not live in my district. But anyway, have you looked at that kind of access to capital markets?

Mr. JUSTER. I personally have not gotten involved in that issue at this time. The financial controls are administered by the Treasury Department's Office of Foreign Asset Controls, and I know that they do try to monitor these issues quite closely. But I would be glad to speak to them and find out more about that issue as well.

Mr. PAYNE. That would be good. Thank you, Mr. Chairman. I yield back.

Chairman HYDE. Thank you. Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. I am going to continue my list of questions based upon Chairman Shelby's dissenting views. But I did want to say something with respect to my service on the Cox Committee. I think your department has a special burden to bear now and work to restore the reputation of the Department of Commerce because it was in periods of time in previous Administrations so politicized. I think you have that burden.

As a Member of the Cox Committee, I do recall very vividly that we felt, by unanimous decision, that one, perhaps two, U.S. companies had conveyed sensitive and classified information to the Chinese and that potentially now makes Chinese missiles more accurate and dependable. As far as I know, there has been no penalty assessed to that firm or those firms.

Going on with the list, Chairman Shelby makes the point that while there is a presumption that our national security concerns throughout should have only equal or lesser weight than commercial concerns, that troubles him; it troubles me. While there is an involvement of the State Department, the Defense Department, at least at that time that he wrote the this letter, their involvement was not required on the appeals board.

Mr. JUSTER. Well, let me describe how the process would work under Senate Bill—

Mr. BEREUTER. If you could do it fairly briefly but completely.

Mr. JUSTER. Yes. There is full involvement by State and Defense, first at the working level in terms of making decisions on the license application. At the next level above the working level—what is called the "operating committee"—State, Defense, Commerce, and at times, Energy, would meet, and the decision would be made at that point by a Commerce Department official, with input from the others, as to whether to grant a license, and if so, whether to have conditions on it or anything else of that nature. That decision,

however, can then be appealed to the political level of the assistant secretary, at which all agencies have an equal voice. Next is the secretary level, and if need be, the presidential level.

And as I indicated as well, the legislation ultimately provides the President with the discretion to set aside any decision for national security reasons or to exempt the export application from this process in the first place for national security reasons. So I think that does tip the balance in favor of national security in terms of the President's discretion. I also believe that the other agencies do have a full say in the process.

Mr. BEREUTER. So how, Mr. Juster, does he reach the conclusion that the State and Defense are not required by the legislation to have a placement on the appeals board?

Mr. JUSTER. I am not 100 percent certain and would want to chat with Senator Shelby about that.

Mr. BEREUTER. Well, I think we would like to know that, too.

Mr. JUSTER. I think he may be referring to the operating-committee level, which is where the Commerce Department makes the decision, and in a sense, that may be viewed as the appeals board from the working level. But there are then levels above that in which State, Defense, and Commerce have an equal vote in the process.

Mr. BEREUTER. He reaches the conclusion that the regulations may be promulgated without the concurrence of the national security agencies, and that is something that would concern me.

Mr. JUSTER. The regulations would have full interagency clearance. We would both draft the regulations with input from the State Department and Defense Department, and then they would go through the OMB clearance process, which would require input from those agencies. If there were any disagreement, that, again, would be raised to the presidential level, if necessary. Obviously, we would like to reach consensus and avoid that from occurring.

Mr. BEREUTER. He makes further comments about problematic, mass-market provisions that I will not go into. But on incorporated parts and components, what he calls "loophole," it says this legislation prohibits export controls on items otherwise controlled if they are incorporated into production which the control component comprises 20 percent or less of the total values or if the controlled item is shipped overseas for final assembly. And he says this kind of exemption is simply counterintuitive.

Mr. JUSTER. My understanding is that this provision is really meant to cover an item such as the Sony Play Station, where you might have a microprocessor incorporated into it, but someone would not be purchasing a Sony Play Station to obtain a microprocessor.

Mr. BEREUTER. That seems to be a rather harmless example, but not all examples are so harmless.

Mr. JUSTER. If, in fact, there were a case where it seemed like someone was purchasing an item solely for the purpose of obtaining the part or component within that item, and it was a part or component that was easily separable from the item and not integrally a part of it, we have the authority under the legislation pending in the Senate both to exempt that item from being available under the enhanced control provision or to set aside a determination that

the item would be available based on the President's decision that national security should preclude us from exporting the item.

Mr. BEREUTER. Mr. Chairman, I have two more points. May I have unanimous consent for two more minutes?

Chairman HYDE. You certainly may. Mr. Cantor has a question as well.

Mr. BEREUTER. All right. Well, I will defer to him.

Chairman HYDE. No. We will do you, and then we will do Mr. Cantor.

Mr. BEREUTER. Two points, and I will hit them both, Mr. Juster, so you can respond.

Mr. JUSTER. Sure.

Mr. BEREUTER. On foreign availability, his argument is that the degree to which an item is available from foreign sources is a factor that should be considered but should not automatically result in elimination of the export control on an item. And the second and final point of his six: Deemed exports are not covered. He says that S. 149 does not cover the transfer of knowledge, information, or know-how of controlled goods or technologies to foreign persons or entities, whether to the United States or abroad. How would you address those two final points?

Mr. JUSTER. Okay. Thank you, Congressman. Let me address the second point first. On deemed exports, the way I read, and, I think, the Administration reads, the definition of an export, it includes the transfer of technology, so that a deemed export, which involves the transfer of technology and know-how to a foreign national in the United States, would be covered by the legislation. That is certainly our reading, and we, therefore, view deemed exports as fully subject to export controls.

Mr. BEREUTER. But it seems to me that technology implies something that is physical, whereas information or know-how is certainly not physical. However, it can be just as damaging.

Mr. JUSTER. I take your point. I can only say that I think both we and the Senate staff, as I have had my conversations with them, regard deemed exports as covered by the legislation. If that is in need of a technical fix, that is certainly something we would look at.

Mr. BEREUTER. I think so. Could you address the other one?

Mr. JUSTER. On foreign availability, as I mentioned, there is a rigorous test and analysis that must be undertaken to determine whether an item is deemed to be foreign available. Then if it is, the item would be decontrolled unless the President steps in and says, for national security reasons, the item should not be, or as I have indicated, before such an analysis even takes place, exempts the item as too sensitive even to undergo a foreign-availability analysis. So the decontrol is not automatic; there are national security safeguards.

Mr. BEREUTER. It is automatic unless he uses the waiver.

Mr. JUSTER. Either the enhanced control to exempt the item at the outset or the set-aside authority at the end of the day.

Mr. BEREUTER. Mr. Cantor, I appreciate your patience. Thank you, Mr. Chairman.

Chairman HYDE. Thank you. Mr. Cantor.

Mr. CANTOR. Thank you, Mr. Chairman. I just want to lastly follow up on the line of questioning about the timeliness of response in licensure approval, and I want to ask your opinions about a GAO inquiry that is about to be released shortly, from what I understand.

I think the results of that inquiry find that it takes longer to get an approval from Commerce than it does from State, on average, from Commerce, 50 days, than it does from the State Department's Office of Defense and Trade Controls. And this is despite the fact that State has less than half the staff and that they are reviewing 46,000 licenses, while Commerce is only reviewing 11,000, and that Commerce has over four times the budget. So do you have any reaction, and what are your thoughts about the GAO inquiry?

Mr. JUSTER. With respect to the GAO report, we have, in fact, received a draft of that and feel that it misunderstands in many respects the licensing process that goes on in the Commerce Department. Some of the comparisons they make between Commerce and the State Department are inaccurate. We have provided them with extensive comments in that regard. Let me just mention a few.

A number of export licenses that the State Department administers under its munitions controls go to NATO countries. Those require very little time and analysis as opposed to exports that might go to non-NATO countries. You really have to separate out the time frames to make a comparison with the Commerce Department. The GAO built into their Commerce Department time frame periods those instances where we have referred a license application to the intelligence community to provide input or have returned the application to the exporter for clarification. So there are a number of time periods incorporated into the GAO's 50-day response figure that should not be in there in terms of the amount of time that the Commerce Department actually reviews the application.

In addition, as I mentioned, we refer all of our applications to State and Defense, and that time frame has also been included in there. We have provided comments in detail to the GAO, and hope they take them into account, regarding a number of the differences that we believe exist in the two licensing processes and a number of inaccuracies that we think occurred in terms of measuring our overall time frame.

Mr. CANTOR. Thank you.

Mr. JUSTER. Sure.

Mr. CANTOR. Thank you, Mr. Chairman.

Chairman HYDE. Thank you. And, Mr. Secretary, we do have some questions that will not be asked at this hearing, but we will submit them to you in writing if we could.

Mr. JUSTER. Thank you. Sure.

Chairman HYDE. And I want to thank you for your testimony today. You have been very patient and very instructive, and we look forward to working with you in the future, and thanks so much.

Mr. JUSTER. Well, thank you very much, Mr. Chairman. This is my first visit to the Committee. I am sure I will have many more, and I greatly look forward to working with you and your colleagues and staff on these and other issues.

Chairman HYDE. You will be most welcome.

Mr. JUSTER. Thank you.

Chairman HYDE. The Committee stands adjourned.

[Whereupon, at 11:54 p.m. the Committee was adjourned.]