THE EXPORT ADMINISTRATION ACT: THE CASE FOR ITS RENEWAL

WEDNESDAY, JULY 11, 2001

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

The Committee met, pursuant to call, at 10:20 a.m. in Room 2172, Rayburn House Office Building, Hon. Henry Hyde [Chairman of the Committee] presiding.

Chairman HYDE. The Committee will come to order. Normally, we do not introduce visiting guests, but we are going to break that rule this morning.

We are very pleased to have with us some distinguished guests from the National Assembly of Armenia. They are in town this week on a Commerce Department Executive Exchange on Export Control and they are here today to observe our legislative process.

I am going to struggle with these names, and I will do the best I can. I would like to recognize the Chairman of the Armenian Foreign Relations Committee, Mr. Hovhannes Hovhannisyan, thank you, sir; the Chairman of the Committee on Defense, the Interior and National Security, Mr. Vahan Hovhannisyan; and the Governor of the Province of Lori, Mr. Henrik Kochinyan; as well as the Deputy Chairman of the Foreign Relations Committee, Mr. Armen Rustamyan.

These parliamentarians are in the process of debating their own bill on dual-use exports and we wish them well in that endeavor.

We are very pleased to welcome our four panels of very distinguished witnesses before our Committee this morning in the third in series of hearings on the Export Administration Act (EAA) and our nation's export control system.

We will ask each of our witnesses to make brief opening remarks on the strengths and weaknesses of our current system and on the need to bring it in line with the challenges facing us in the new century.

Today, we have very able representation from the Departments of State and Defense as well as a private sector panel comprised of two experts who themselves have served for decades administering our export control system in Commerce and Defense.

The goal of our hearing today is to understand how the licensing system works and how it looks from the point of view of our key foreign policy and national security agencies.

We will welcome any comments they might have on the case for the reauthorization of this act, taking into account its importance to our economic well being and national security interests.

As I pointed out in our second hearing last month, protecting these interests should, in my view, not take a back seat to ensuring that our companies remain competitive in the global marketplace.

To be sure, we need to take into account the foreign availability and the mass market availability of key products and technologies under review in the export licensing process, but these considerations should not be the only factors—or necessarily the controlling factors—in licensing exports to all destinations.

Also, if we are going to decontrol an item because of foreign availability, let us ensure that this Administration has sufficient flexibility to set aside this determination when national interests so dictate.

While our colleague, Chris Cox from California readily acknowledged in our June hearing that the U.S. is no longer the sole source of militarily useful technologies, and that we can no longer rely only on unilateral export controls, we need to work with our friends and allies to improve and enhance our existing cooperative control efforts.

I would urge the officials of the Bush Administration to heed Congressman Cox's advice on establishing a coalition of the willing to improve the current deficient multilateral export control arrangements. We cannot abandon or substantially modify our own export control system if the alternatives have been found wanting.

In short, the current multilateral control arrangements have been unable to prevent dangerous technologies from falling into the hands of rogue states and others who would threaten international peace and stability.

We will hear testimony later today to the effect that the new Wassenaar Arrangement, designed in 1994 to replace the Cocom regime directed against the former Soviet Union, has yet to reach a consensus on its goals. Even more disturbing, it lacks meaningful notification procedures where our denial of an export license was apparently undercut when another regime member issued a license for the same transaction.

A fresh approach is needed to change this situation, and I am sure that this Administration will work effectively to address the issue.

In the interim, however, we must be cautious in assuming that any multilateral control system will alone be able to protect our interests better than our current system of national controls and multinational monitoring.

Some would point out that other members of the new arrangement, including our key European and Asian trading competitors, do not share our assessment of the transfer risk to countries such as China, and consequently maintain far less restrictive export controls.

Does this mean that we should be no less active in pursing new or modified multilateral export control efforts to slow the spread of dual-use technologies and goods to key supplier countries with a questionable track record on controlling the spread of weapons of mass destruction?

Or for that matter, should we be any less insistent that this Administration pursue a more rigorous license review process, including effective post-shipment verification procedures, for a market

such as China with a track record in diverting commercial technologies to military purposes?

This morning we are privileged to have a number of experts who have tried to answer these and other difficult questions. I am particularly pleased to welcome Senator Mike Enzi before our Committee this morning. He is a leader on energy and climate change issues, and an acknowledged expert on a wide range of trade issues affecting his home state of Wyoming.

Senator Enzi sits on the Committee on Health and Education, the Committee on Small Business, the Special Committee on Aging, and is the Ranking Member of the Securities and Investment Subcommittee of the Committee on Banking, Housing, and Urban Affairs.

As a former Chairman of the Subcommittee on International Trade and Finance of the Senate Banking Committee, he has led the effort in the Senate to update and reauthorize the Export Administration Act. I look forward to hearing his remarks on that effort and on the status of S. 149, the Export Administration Act of 2001.

I understand that the Senator has a pressing engagement later this morning, and he will not be able to stay with us after he concludes his remarks.

But before turning to Senator Enzi, I would ask if the Ranking Member, Mr. Lantos, has a statement? I am pleased to recognize him.

[The statement of Chairman Hyde follows:]

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

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I understand that the Senator has a pressing engagement later this morning and he will not be able to stay with us after he concludes his remarks.

Before turning to Senator Enzi, I would ask if the Ranking Member, Mr. Lantos, has a statement.

Mr. LANTOS. Thank you very much, Mr. Chairman. I have just a brief one.

I want to join you in welcoming our guests from Armenia. They have a heavy responsibility, and they should feel assured that the Congress is very supportive of their efforts and endeavors.

I also want to join you in extending a warm welcome to our colleague, Senator Mike Enzi, who shares with Boris Yeltsin and me a birth date; not a birth year, but a birth date. So both Boris and I will send you a card at the appropriate moment, which is February the 1st, is it not, Mike?

As our witnesses today understand, Mr. Chairman, the current Export Administration Act will expire on August 20th. With its expiration, the Commerce Department's authority to fully implement U.S. export control laws will be thrown into question.

While there has been some progress in moving forward with Export Administration Act legislation on the Senate side, there is not

a chance, Mr. Chairman, that the House of Representatives will be able to begin its consideration of EAA reauthorization before the August break, let alone have a bill on the President's desk.

For this reason, I have been working with Senator Fred Thompson in crafting legislation to extend statutory authority of the existing Export Administration Act to the end of the 107th Congress, in order to give both our colleagues on the Senate side and all of our colleagues on this side the time necessary to carefully consider Export Administration Act legislation.

Because of the complexity of the issues involved, and recognizing the stark differences between members over the appropriate balance to strike between the needs of U.S. national security and the needs of U.S. companies, this bill will also mandate the creation of a blue ribbon commission to review our dual-use export control structure and policies, and to make recommendations to Congress no later than July 1, 2002.

I plan to introduce this bill, Mr. Chairman, in the House in the next few days, and I expect parallel action in the Senate.

So far, Administration representatives have stuck to their script, that the passage of the Senate bill is the only alternative they are willing to countenance. I think the time has now passed for that to be the only reasonable position.

The August 20 deadline will pass without a new Export Administration Act. I would be interested in hearing from our Administration witnesses which alternative they prefer, extension or expiration.

I welcome all of our witnesses, and I look forward to Senator Enzi's testimony.

Chairman HYDE. Thank, you, Mr. Lantos.

Mr. Gilman has requested the opportunity to make a brief opening statement, and then we will get to you, Senator.

Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman.

I want to commend Chairman Hyde for holding this series of hearings on our U.S. export control policy. It can sometimes be an arcane subject, but it is always an important subject.

We must be vigilant about the export of high technology products and dual-use products—which have both commercial and military applications—that can be put to dangerous uses.

Certain products that can be used, for example, to make fertilizers can also be used as part of a chemical or biological weapons program. Certain imaging equipment can be used in hospitals that can also be used for nuclear weapons programs.

At the same time, we need to put in place a reasonable system of export controls that does not impede the legitimate needs of our commercial sector.

Maintaining a vibrant high technology sector is a national security goal in its own right. At a minimum, the review process should be carried out as expeditiously as possible.

Finally, the highest of priorities should be placed on obtaining an international consensus in favor of a strong export control regime. A strong U.S. export control regime can only do so much if other countries are exporting the same products and services that the United States has forgone.

The international control of the export of nuclear, biological, and chemical weapons technology, and a means to deliver them is essential.

I join in welcoming our distinguished guests from Armenia, and will also welcome the Senator from Wyoming, Senator Enzi, and our newly designated Under Secretary for Arms Control and International Security in the Department of State, John Bolton, and we congratulate him for being here. I guess this is his first hearing after having been sworn in.

Thank you, Mr. Chairman.

Chairman HYDE. Thank you, Mr. Gilman.

Senator Enzi?

STATEMENT OF THE HONORABLE MIKE ENZI, A U.S. SENATOR FROM THE STATE OF WYOMING

Mr. ENZI. Thank you, Mr. Chairman.

Chairman Hyde and Ranking Member Lantos, I thank you for allowing me to testify before the Committee. I do regret that I will have to leave after my testimony to meet some other obligations that we are doing on the Senate side.

Mr. Chairman, I commend you for your commitment in February to focus on the reform of the Export Administration Act during the first four months of your Chairmanship.

I look forward to working with you, Ranking Member Lantos, and the rest of the Committee, to reform and reauthorize the Export Administration Act. Modernization and reauthorization of the EAA are essential to the national security interests of the United States.

I have devoted what I feel like is a good deal of my life to this project at the moment, and I appreciate all the cooperation that I have had, both on the House side and the Senate side.

On the Senate side, Senators Sarbanes and Gramm gave Senator Johnson and I a lot of flexibility to dig into this issue. In typical Washington fashion, there was plenty of paperwork from past efforts to go through.

We did that. We followed the process through. We

had the Department of Commerce, the Department of State, and the Department of Defense representatives sit down and go through the process and the conflicts with us in some detail, and that resulted in the bill that we drafted.

Probably the only reason that the bill is reaching any kind of a position where it can be debated on the Senate side is because of a report that was done on this side. The report that Congressmen Dicks and Cox did had an elevating effect on the Senate side, that gave it enough attention and enough criticality that we were able to address it over there.

Without that report, it would probably have languished in that morass of detail that this bill can be subject to. It is excruciatingly detailed, and it is excruciatingly important. But that does not bring it to a level of interest of the general public.

For 6 years, the Congress had failed to update and reauthorize this important act. Even before last year's passage of the brief extension of EAA of 1979, the Senate Banking Committee had been working tirelessly on an updated EAA.

The Senate Banking Committee began its current effort to update the EAA in January of 1999 in the 106th Congress. The Banking Committee and the Subcommittee on International Trade and Finance held a total of nine hearings on export controls or the underlying legislation.

As we embarked upon our education process in 1999, we began a highly consultative process. This involved virtually everyone who was remotely interested in dual-use export controls, including staff of several of my colleagues, who unfortunately have still voiced concerns about S. 149.

Our attempt has always been to address issues with which there exists reasonable concerns. After numerous hearings, countless meetings, and two staff discussion drafts, the Committee reported a reform bill, S.1712.

Last year, President Bush, in campaign statements, voiced support for bipartisan Senate legislation that reauthorizes the Export Administration Act and allows companies to export products when those products are already readily available in foreign or mass markets.

I would also mention that this came up during the Clinton Administration, and I was very pleased with the cooperation that we had from that Administration and the support that we had.

This year, I, along with Senators Gramm, Sarbanes, Johnson, Hagel, Roberts and Stabenow introduced S. 149, the Export Administration Act of 2001. There are now a total of fifteen sponsors, eight Republicans and seven Democrats.

This legislation was built upon S. 1712, while making several improvements. The Committee overwhelmingly approved S. 149 earlier this year by a vote of nineteen to one, after adopting a number of refinements supported by the Administration.

As you know, the Bush Administration, and more specifically, the President, Secretary Rumsfeld, Secretary Powell, Secretary Evans and Assistant to the President for National Security Affairs, Condoleezza Rice, all strongly support S. 149.

Now I will speak to the issues of the bill. First, I urge my colleagues to go back and read the Export Administration Act of 1979, which is the current law. S. 149 is similar, in many respects, to current law.

Contrary to what some would have you believe, this bill is not a radical approach by any measure. It updates and simplifies certain aspects of the act which are outdated or unnecessary, but keeps the basic structure of the 1979 act.

Some opponents argue that the bill is dramatically new and, therefore, harmful. But if a comparison of the 1979 EAA and S. 149 were made, one would find a striking number of similarities. In addition, one would find several new and more extensive control authorities included in S. 149.

Second, I believe it is important to emphasize what items the EAA deals with. The EAA provides the authority to control items commercially available. These items may have a secondary military application, but they are first and foremost commercial items.

There is a separate export control system administered by the State Department that controls munitions and military items. Be-

cause of the dual application of EAA commercial items, some refer to them as "dual-use" items.

There are reasons why this Administration's national security experts are unified in their support of S. 149. It builds upon the framework of current law, or the 1979 act, while modernizing, simplifying, and streamlining the act and export control processes.

It requires a risk analysis of proposed exports, and emphasizes transparency and accountability to both Congress and the exporter.

S. 149 embraces national security and foreign policy export controls, even going well beyond the 1979 act in several respects.

For example, the bill grants to the President special control authorities for cases involving national security and international terrorism, as well as international commitments made by the United States.

Section 201(c) allows controls to be imposed based on the end use or end user of an item if it could contribute to the proliferation of weapons of mass destruction.

Section 201(d) adds "enhanced controls" which allow the President to impose controls on any item, including those items with incorporated parts, for national security purposes.

These two national security protections are not in current law, and could be used regardless of the foreign availability of mass-market status of the item.

In addition,the bill retains the presidential set-aside authority in the case of foreign availability determination, as well as unlimited set-aside authority for a mass market determination.

The general authorities contained in the bill are entirely consistent with the current law. The bill requires concurrence with the Secretary of Defense for identifying which items are to be included on the control list for national security purposes. This is consistent with current law.

The foreign policy export control authority in title III is exercised by the Secretary of Commerce in consultation with the Secretary of State. This is also identical to current law. In addition, the authority for the issuance of regulations is the same as the EAA of 1979.

The Banking Committee also determined that a flexible, but transparent process was essential to keep the export control system from becoming obsolete the day after it becomes law. A transparent process creates accountability by the decision-makers.

S. 149 allows flexibility for the Administration in the implementation of export controls because technology is changing at a phenomenal rate, business models are very different than even a decade ago, and globalization is breaking down the traditional barriers of trade and investment.

As a result, it is vital that Congress resist the temptation to lock into statute a policy toward a specific country or a specific item. Experience has shown that this is not an advisable course of action in most cases.

Flexibility is needed in light of rapid technological change. To illustrate this point, the Congress placed in Fiscal Year 1998 NDAA provisions relating to high performance computers.

Concerns were genuine about the export of computers to potentially dangerous end users. However, to my knowledge, never be-

fore had the Congress locked into statute a specific parameter of control for an item.

In addition, the Congress initially required a 180-day waiting period before the President could change the MTOPS control threshold. As we all know, this was in the midst of some of the most rapid advancements in computer power, constraining the Administration's ability to keep pace with technological progressions.

In keeping with the need for flexibility, the Banking Committee adopted an amendment offered by Senator Bennett that would repeal the MTOPS requirement. This does not mean that computers would not be controlled. Instead, it means the President can control computer exports in a way that is more effective.

As mentioned earlier, S. 149 injects more transparency into the export control process. The Senate Banking Committee believes that when the Congress grants the President or the Administration with such flexible and broad powers, adequate transparency is essential. Therefore, S. 149 sets forth reporting requirements throughout the bill.

The following are a number of the reports intended to increase transparency and accountability. The bill requires the President to report to the Congress any time in which he uses enhanced control authority or set-asides for foreign availability and mass-market determinations.

S. 149 injects transparency into the foreign policy control authorities by requiring the President to consult with and report to the Congress, prior to the imposition of a foreign policy export control

Section 309 requires the President to report to Congress when controlling an item in compliance with U.S. obligations.

Section 310 requires a report to Congress whenever the Secretary of State changes the status of a country, supporting repeated acts of international terrorism, as well as a report to Congress whenever a license is granted to such country.

The bill requires detailed minutes to be taken at all interagency dispute resolution meetings. Because of the multilateral focus of the bill, it requires a report on information to current and any new multilateral export control regimes.

Finally, an annual report is to be sent to the Congress that includes, among many others, a description of changes in the exercise of delegated authority and a description of any procedural changes undertaken.

As mentioned a moment ago, S. 149 emphasizes the need for strengthened multilateral control regimes. Multilateral controls are the most desirable, because they are the most effective.

Section 501 of the bill directs the President to strive toward certain goals to strengthen multilateral export control regimes.

I had the distinct pleasure of serving as co-Chair with Senator Bingamon, Representative Cox and Representative Berman, on the congressionally-mandated Study Group on Enhancing Multilateral Export Controls for U.S. National Security.

The Study Group came to the conclusion that reform of the export control system is vital to U.S. national security objectives. We recommended that the U.S. should seek to improve the Wassenaar

Arrangement, with the long-term goal of merging existing multilateral regimes.

Additionally, the Study Group recommended that the U.S. should reform its export control laws to build confidence and support among allies and friends for improving multilateral export control regimes.

The provisions in S. 149 are consistent with these recommendations and should help to guide the Administration as it seeks to strengthen our multilateral regimes.

Finally, the bill enhances enforcement. It substantially increases criminal and penalties for violators. It adds new resources for enforcement activities, and strengthens post-shipment verifications (PSVs) by targeting resources to exports involving the greatest risk, rather than focusing solely on computers.

Now during this process, I also brought on board on enforcement agent to write in greater security and to cover the aspects of the complexities of doing these post-shipment verifications.

The Banking Committee believes that we should not reward those entities who deny post-shipment verifications. Therefore, S. 149 requires the Secretary to deny license to end users who do not allow post-shipment verification for a controlled item.

When the CSIS publicly released its report on Computer Exports and National Security in a Global Era on June 8, 2001, General and former National Security Advisor, Brent Scowcroft, said that some seemed chained to the same policies that are largely not useful, and that there is a natural bureaucratic tendency to cling to the current rules.

As the Committee works on a reauthorization of EAA, I urge the Members of be mindful of General Scowcroft's comments.

In conclusion, I commend this Committee for its engagement on the reauthorization of the Export Administration Act. For too long, the issue has been politicized and demagoged.

Instead of covering the warts of the current outdated system with layers of lipstick and mascara, the Congress must pass S. 149 this year to help renew America's leadership in the multilateral control of dual-use export controls.

I would like to respond to Ranking Member Lantos' comment. If given the choice of extension over expiration, I would recommend expiration.

The President contemporarily put into place protections under the International Economic Power Act (IEPA). I believe that would give us all adequate time to complete our work before the end of the year.

This issue has been studied by numerous commissions in other reports that have all concluded the EAA must be reauthorized. A Blue Ribbon commission would most likely have the same result, and only delay protection our national security.

Thank you for the opportunity to testify before this distinguished Committee. I appreciate your commitment to expeditiously move EAA legislation forward, and I look forward to working with you.

[The statement of Senator Enzi follows:]

PREPARED STATEMENT OF THE HONORABLE MIKE ENZI, A U.S. SENATOR FROM THE STATE OF WYOMING

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I. S. 149, THE EXPORT ADMINISTRATION ACT—HISTORY AND PROCESS

For six years the Congress had failed to update and reauthorize this important Act. Instead, our export control laws had been implemented by Executive Orders under the authority of the International Emergency Economic Powers Act (IEEPA). IEEPA was not intended to allow the President to maintain export controls indefinitely without congressional authorization. Therefore, last fall the House and Senate passed legislation that briefly extended the Export Administration Act of 1979 through August of this year. That action provides the 107th Congress with time to enact comprehensive export control legislation before court challenges to the IEEPA controls can again threaten the entire dual-use export control system.

Even before last year's passage of the brief extension of the EAA of 1979, the Senate Banking Committee had been working tirelessly on an updated EAA. I would like to provide you with some background so you can have some appreciation for the process we have gone through in the Senate.

The Senate Banking Committee began its current effort to update the EAA in January of 1999 in the 106th Congress. The Banking Committee and the Subcommittee on International Trade and Finance held a total of nine hearings on export controls or the underlying legislation.

As we embarked upon our education process in 1999, we began a highly consultative process. This involved virtually everyone who was remotely interested in dual-use export controls, including staff of several of my colleagues who, unfortunately, have still voiced concerns about S. 149. Our attempt has always been to address issues with which there exist reasonable concerns. After numerous hearings, countless meetings and two staff discussion drafts, the Committee reported a reform bill, S. 1712. Last year, President Bush, in campaign statements, voiced support for "bipartisan Senate legislation that reauthorizes the Export Administration Act (EAA) and allows companies to export products when those products are already readily available in foreign or mass markets."

This year, I, along with Senators Gramm, Sarbanes, Johnson, Hagel, Roberts and Stabenow introduced S. 149, the Export Administration Act of 2001. There is now a total of 15 sponsors—8 Republicans and 7 Democrats.

This legislation built upon S. 1712, while making several improvements. I will speak more to specifics of the bill later. The Committee overwhelmingly approved S. 149 earlier this year by a vote of 19 to 1 after adopting a number of refinements supported by the Administration. As you know, the Bush Administration, and more specifically the President, Secretary Rumsfeld, Secretary Powell, Secretary Evans and Assistant to the President for National Security Affairs, Condoleezza Rice, all strongly support S. 149.

II. S. 149, THE EXPORT ADMINISTRATION ACT OF 2001—NATIONAL SECURITY AND FOREIGN POLICY FOR THE 21ST CENTURY

Now, I will speak to the issues of the bill. First, I urge my colleagues to go back and read the Export Administration Act of 1979, which is current law. S. 149 is similar in many respects to current law. Contrary to what some would have you believe, this bill is not a radical approach by any measure. It updates and simplifies certain aspects of the Act which are outdated or unnecessary, but keeps the basic structure of the 1979 Act. Some opponents argue that the bill is dramatically new, and therefore destructive to the current process. But if a comparison of the 1979 EAA and S. 149 were made, one would find a striking number of similarities. In addition, one would find several new and more extensive control authorities included in S. 149.

Second, I believe it is important to emphasize what items the EAA deals with. The EAA provides the authority to control items commercially available. These items may have a secondary military application, but they are first and foremost commercial items. There is a separate export control system administered by the

State Department that controls munitions and military items. Because of the dual application of EAA commercial items, some refer to these as "dual-use" items.

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S. 149 embraces National Security and Foreign Policy export controls, even going well beyond the 1979 Act in several respects. For example, the bill grants to the President special control authorities for cases involving national security and international terrorism, as well as international commitments made by the United States. Section 201(c) allows controls to be imposed based on the end-use or end-user of an item if it could contribute to the proliferation of weapons of mass destruction. Section 201(d) adds "enhanced controls' which allow the President to impose controls on any item, including those items with incorporated parts, for national security purposes. These two national security protections are not in current law and could be used regardless of the foreign availability or mass-market status of the item. In addition, the bill retains the presidential set-aside authority in the case of a foreign availability determination (Section 212), as well as unlimited set-aside authority for a mass market determination (Section 213).

The general authorities contained in the bill are entirely consistent with current law. The bill requires concurrence with the Secretary of Defense for identifying which items are to be included on the control list for national security purposes. This is consistent with current law. The foreign policy export control authority in Title III is exercised by the Secretary of Commerce in consultation with the Secretary of State. This is also identical to current law. In addition, the authority for the issuance of regulations is the same as the EAA of 1979.

The Banking Committee also determined that a flexible, but transparent process was essential to keep the export control system from becoming obsolete the day after it becomes law. A transparent process creates accountability by the decision-makers. S. 149 allows flexibility for the Administration in the implementation of export controls because technology is changing at a phenomenal rate, business models are very different than even a decade ago, and globalization is breaking down some of the traditional barriers to trade and investment.

As a result, it is vital that Congress resist the temptation to lock into statute a policy toward a specific country or a specific item. Experience has shown that this is not an advisable course of action in most cases. Flexibility is needed in light of rapid technological change. To illustrate this point, the Congress placed in the Fiscal Year 1998 NDAA provisions relating to high performance computers. Concerns were genuine about the export of computers to potentially dangerous end-users. However, to my knowledge, never before had the Congress locked into statute a specific parameter of control for an item. In addition, the Congress initially required a 180-day waiting period before the President could change the MTOPS control threshold. As we all know, this was in the midst of some of the most rapid advancements in computing power, constraining the Administration's ability to keep pace with technological progressions. In keeping with need for flexibility, the Banking Committee adopted an amendment offered by Senator Bennett that would repeal the MTOPS requirement. This does not mean that computers would not be controlled. Instead, it means that the President may control computer exports in a way that is more effective.

As mentioned earlier, S. 149 injects more transparency into the export control process. The Senate Banking Committee believes that when the Congress grants the President or the Administration with such flexible and broad powers, adequate transparency is essential. Therefore, S. 149 sets forth reporting requirements throughout the bill.

The following are a number of the reports intended to increase transparency and accountability. The bill requires the President to report to the Congress any time in which he uses Section 201(d) enhanced controls and Section 212 or Section 213 set-asides for foreign availability and mass-market determinations. The foreign policy control authorities granted in Title III impose transparency requirements on the President, including consultation with and reporting to the Congress prior to imposition of a foreign policy export control. Section 309 requires the President to report to the Congress when controlling an item in compliance with U.S. obligations. Section 310 requires a report to the Congress whenever the Secretary of State changes the status of a country supporting repeated acts of international terrorism, as well as a report to Congress whenever a license is to be granted to such country. Section 402(c) requires detailed minutes to be taken of all interagency dispute resolution meetings. Because of the multilateral focus of the bill, Section 501(f) requires a re-

port on information relating to current and any new multilateral export control regimes. Finally, Section 701 mandates an annual report be sent to the Congress that includes, among many others, the following elements: 1) a description of changes in the exercise of delegated authority; 2) changes to the country tiering or Control List status; and 3) a description of any procedural changes undertaken.

As mentioned a moment ago, S. 149 emphasizes the need for strengthened multilateral export control regimes. Multilateral controls are the most desirable because they are the most effective. Section 501 of the bill sets forth desirable traits in a multilateral export control regime. It sets these goals for the President in order to strengthen existing regimes or, if possible or necessary, create a new regime. I had the distinct pleasure of serving as co-chair with Senator Bingaman, Rep. Cox and Rep. Berman on the Congressionally-mandated Study Group on Enhancing Multilateral Export Controls for U.S. National Security. The Study Group came to the conclusion that reform of the export control system is vital to U.S. national security objectives. We recommended that the U.S. should seek to improve the Wassenaar Arrangement, with the long-term goal of merging existing multilateral regimes. Additionally, the Study Group recommended that the U.S. should reform its export control laws to build confidence and support among allies and friends for improving multilateral export control regimes. The provisions in S. 149 are consistent with these recommendations and should help to guide the Administration as it seeks to strengthen our multilateral regimes.

Finally, the bill greatly enhances enforcement. It substantially increases criminal and civil penalties for violators. It adds new resources for enforcement activities, including an additional $4.5 million for end-use checks. It strengthens post-shipment verifications (PSVs) by targeting resources to exports involving the greatest risk, rather than focusing solely on computers. The Banking Committee believes that we should not reward those entities who deny post-shipment verifications. Therefore, Section 506(g) requires the Secretary to deny license to end-users who do not allow post-shipment verification for a controlled item.

III. CONCLUSION

When the CSIS publicly released its report on "Computer Exports and National Security in a Global Era" on June 8, 2001, General and former National Security Advisor Brent Scowcroft said that some 'seem chained to the same policies that are largely" not useful, and that there is a "natural bureaucratic tendency to cling to the current rules." As the Committee works on its reauthorization of the EAA, I urge the Members to be mindful of General Scowcroft's comments.

In conclusion, I commend this Committee for its engagement on the reauthorization of the Export Administration Act. For too long the issue has been politicized and demagoged. Instead of covering the warts of the current outdated system with layers of lipstick and mascara, the Congress must pass S. 149 this year to help renew America's leadership in the multilateral control of dual-use export controls.

Thank you for the opportunity to testify before this distinguished Committee. I appreciate your commitment to expeditiously moving EAA legislation forward. I look forward to working with you.

In response to a question from Representative Tom Lantos about further extending the 1979 export act and the appointment of a commission to study the matter, Enzi said if given the choice of extension or expiration, "I would recommend expiration."

"The President can temporarily put in place protections under the International Economic Emergency Power Act. I believe that would give us all adequate time to complete our work before the end of the year. This issue has been studied by numerous commissions and the reports have concluded the EAA must be reauthorized. A Blue Ribbon commission would most likely have the same result and only delay protecting our national security," Enzi said.

Chairman HYDE. Thank you very much, Senator. We understand that you have to leave and you are going to miss our probing, penetrating questions. But if we need more information, we will get in touch with you.

Mr. ENZI. I will certainly be available for that.

Chairman HYDE. Thank you, Senator.

Mr. ENZI. Thank you.

Chairman HYDE. Our next witness is an old friend, Mr. John R. Bolton, the Under Secretary for Arms Control and International

Security within the Department of State. He has been a witness on numerous occasions before this Committee, and needs little in the way of an introduction to many of my colleagues who have come to rely on his advise and counsel on numerous security, peacekeeping, and arms control issues.

Mr. Bolton began his distinguished career as an attorney, before entering public service as the Assistant Secretary for International Organization Affairs with the State Department, the Assistant Attorney General for the Justice Department, and General Council for the U.S. Agency for International Development.

Before assuming his present position, Mr. Bolton was the Senior Vice President of the American Enterprise Institute, a non-profit public policy center dedicated to strengthening the foundations of freedom through research, education, and open debate.

We are honored to have you appear before the Committee today, Mr. Bolton, and invite you to proceed with a five minute summary, if possible, of your statement. The full text will, of course, be made a part of the permanent record.

STATEMENT OF THE HONORABLE JOHN R. BOLTON, UNDER SECRETARY FOR ARMS CONTROL AND INTERNATIONAL SECURITY, U.S. DEPARTMENT OF STATE

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

It is always a pleasure to be here, and I am glad to be back in this new capacity, and glad to testify on your consideration of the reauthorization of the Export Administration Act.

I do have a prepared statement, which I would welcome being put in the record. Let me try and summarize it very quickly, and then respond to any questions that you may have.

Over the past decade, our dual-use export control system has been governed by a patchwork of temporary legislative extensions of the 1979 EAA and Executive Orders issued under emergency authorities.

This situation has hindered our ability to maintain an effective dual-use export control system in the face of rapid technological advances, new emerging threats, and increasing industrial globalization. We welcome the commitment you have expressed to take up this important issue and give it the attention it deserves.

Export controls are first and foremost a national security and foreign policy tool. Dual-use items have legitimate commercial purposes, that are crucial to the establishment and maintenance of weapons of mass destruction, missile, and advanced conventional weapons programs.

Our primary goal is to prevent the proliferation of sensitive technology and capabilities that could threaten the United States and our allies, now and in the future.

At the same time, we must be mindful of the burden that export controls place on U.S. industry, and focus on those items and end users that present a substantial risk.

We basically have four objectives: One of the major State Department responsibilities is to ensure that the United States is able to fulfil the important political commitments we undertake in the multilateral export control regimes.

The shared objective of those regimes is the same as ours in the EAA, protect national security and international stability, while permitting legitimate international commerce.

The President must have flexibility to negotiate multilateral export control regimes that promote American interests. The existing regimes are a product of U.S. leadership over the years and if a new EAA prevented the United States from adhering strictly to these multilateral regimes, our leadership would be severely eroded.

S. 149 gives the President authority to continue controls on any item that is on a multilateral regime list, notwithstanding any other provision of the bill. This key provision ensures full U.S. satisfaction of regime commitments and continuing U.S. leadership within the regimes.

The President must also have flexibility to impose unilateral controls when necessary to achieve critical U.S. national security and foreign policy goals. Effective multilateral controls are preferable, but unilateral controls are sometimes necessary and must be available. We must be able to control dangerous technologies that have not yet been added to the control lists of the multilateral regimes. Similarly, we must be able to control exports to end users and countries that have been designated as state sponsors of terrorism, even if other countries are unwilling to undertake similar restrictions. S. 149 specifically exempts control on state sponsors of terrorism from all other provisions of the bill.

Similarly, for items controlled on national security grounds, although the bill provides for decontrol, based on foreign availability or "mass market status," it also provides for a Presidential set-aside based on national security, which would allow for continuation of the controls. Furthermore, the President can prevent an item from being subject to the foreign availability and mass market provisions by determining the export of the item constitutes a significant threat to national security under the enhanced controls provision of the bill.

There are a number of other aspects in the legislation that I will not go into in detail here that we think protect the President's flexibility and give him authority, especially in dealing with other members of international regimes.

But in sum, we think it is essential that the President have the ability to make any decision on export controls that he feels in the national interest.

S. 149 gives the President authority to maintain controls on items listed by the multilateral export control regimes; control items to countries designated as state sponsors of terrorism; implement catch-all controls against entities and activities of proliferation concern; maintain unilateral national security controls on an item despite foreign availability or mass market status; impose and maintain unilateral foreign policy controls when necessary to achieve U.S. interests, including deferral of procedural requirements prior to imposition; and impose enhanced controls on items he determines to be particularly sensitive, notwithstanding other restrictions on national security controls.

We appreciate the efforts of this Committee to undertake a thorough review of this extremely complex subject, and produce a new Export Administration Act.

Export controls play a critical role in protecting American security, and are a cornerstone of our nonproliferation efforts. How they are implemented is also crucial to the health and competitiveness of American industry. As the lines between military and civilian goods grow increasingly blurred, it is important that our export controls balance the need of American enterprises to compete overseas effectively with the need to protect present and emerging national security interests.

A new EAA must create the architecture to accomplish that goal. The Administration believes S. 149 fully satisfies that requirement, and strongly supports it. I look forward to working with you on this essential task.

Thank you, Mr. Chairman.

[The statement of Mr. Bolton follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN R. BOLTON, UNDER SECRETARY FOR ARMS CONTROL AND INTERNATIONAL SECURITY, U.S. DEPARTMENT OF STATE

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

Thank you for the opportunity to provide the views of the Department of State on the Export Administration Act (EAA).

As you know, since the EAA of 1979 first lapsed, our dual-use export control system has been governed by a patchwork of temporary legislative extensions and executive orders issued under emergency authorities. The lack of a new law has hindered the U.S. Government's ability to meet the challenges of maintaining an effective dual-use export control system in the face of rapid technological advances, new emerging threats, and increasing industrial globalization. The clearest example of this is the inadequate penalties for export control violations from the 1979 law. We welcome the commitment you have expressed to take up this important issue quickly and give it the attention it deserves.

This Administration has worked extensively with the Senate Banking Committee on a new Export Administration Act, and many of our comments have been incorporated into the bill that Committee reported to the Senate. This is a bill that the Administration strongly supports because it appropriately balances our goals of protecting U.S. national security and foreign policy interests while advancing U.S. economic leadership.

Under Secretary of Commerce Juster testified before this committee a few weeks back, and I feel that he provided an excellent overview of what constitutes an effective export control system. My testimony today will cover some of the same issues he raised, focusing on State Department priorities for the EAA and S. 149, the Senate Banking Committee bill.

STATE DEPARTMENT EXPORT CONTROL PRIORITIES

Export controls are first and foremost a national security and foreign policy tool. By the very name we give them, it is clear that dual-use items have both legitimate commercial purposes and at the same time are crucial to the establishment and maintenance of WMD, missile, and advanced conventional weapons programs. In attempting to create a better system, we must remember that our main goal is to prevent the proliferation of sensitive technology and capabilities that could threaten the United States and our allies now and in the future. At the same time, we must be mindful of the burden that such controls place on U.S. industry, and therefore focus our efforts on those items and end-users that present a substantial risk.

Over the last decade, there have been numerous attempts to enact a new EAA. Although there have been many issues of contention in the various bills, the State Department's objectives in enacting a new EAA have consistently focused on four principles:

- Strengthening the multilateral export control regimes;
- Authorizing unilateral U.S. controls when needed;

- Permitting controls based on the end-user and the end-use as well as the item itself; and
- Providing the President with tools and latitude to make critical national security decisions.

MULTILATERAL COMMITMENTS

A major responsibility of the State Department in this process is to ensure that the United States is able to fulfill the important political commitments we undertook as members of four multilateral export control regimes: the Nuclear Suppliers Group; the Missile Technology Control Regime; the Australia Group (for chemical and biological weapons-related items and materials); and the Wassenaar Arrangement (dual-use items useful for military purposes and conventional arms themselves).

Our objective in multilateral regimes is the same as our export control policy as a whole: balance economic considerations with the national security requirement to prevent the proliferation of dangerous militarily useful technologies, particularly those related to weapons of mass destruction, missiles, and advanced conventional weapons. Our partners in these multilateral regimes should, and we believe do, share this objective, even if they do not always agree with us on where the balance is.

Our aim is that American participation in the multilateral regimes should advance our interests. Any legislation on export controls needs to provide this and future Administrations with the flexibility to negotiate multilateral export control regimes that promote U.S. interests. The existing regimes are a product of strong U.S. leadership over many years. If a new EAA prevented the United States from adhering strictly to these multilateral regimes, U.S. leadership would be severely eroded. The regimes would cease to be viable, cutting off our main avenues for achieving effective multilateral controls. Strong multilateral regimes also benefit the U.S. economically, as U.S. exporters are thereby less often subject to the disadvantages of unilateral export controls.

The Senate Banking Committee has included a provision (§ 309) in S. 149 that allows for continued controls on any item that is on a multilateral regime list notwithstanding any other provision of the bill. This key provision would allow the Unites States to maintain regime-based controls even where other provisions of the EAA might call for decontrol, thereby ensuring full U.S. satisfaction of regime commitments and continuing U.S. leadership within the regimes.

UNILATERAL CONTROLS

At the same time, the new EAA must allow us the flexibility to impose unilateral controls when necessary to achieve critical U.S. national security and foreign policy goals. Although we agree that effective multilateral controls are preferable, unilateral controls are sometimes necessary and must be available. For example, the U.S. needs the capability to control dangerous WMD/missile-related technologies that have not yet been added to the control lists of the multilateral regimes. Similarly, it is important that our export control system allow for controls on a range of technologies to end-users in countries that have been designated as state sponsors of terrorism, even if other countries are unwilling to undertake similar restrictions.

Accordingly, the State Department has opposed EAA provisions that would unduly restrict our ability to implement unilateral controls when necessary. The current Banking Committee bill takes this concern into account. It specifically exempts controls on state sponsors of terrorism from all other provisions of the bill. Although the bill imposes additional procedural requirements before a foreign policy control can be created, it also authorizes the President to impose such controls immediately and "defer" compliance with the procedural requirements if the national interest so dictates. Such leeway is critical given that many of these controls are imposed due to situations that demand immediate action.

Similarly, for items controlled on national security grounds, although the bill provides for decontrol based on "foreign availability" or "mass market" status, it also provides for a Presidential set-aside based on national security, which would allow for continuation of the controls. Furthermore, the President can prevent an item from being subject to the foreign availability and mass market provisions by determining that export of the item constitutes a "significant threat" to national security under the enhanced controls provision of the bill (§ 201(d)).

END-USER AND END-USE CONTROLS

The U.S. Government has regulations (the Department of Commerce's Export Administration Regulations, 15 CFR 730–744) to impose controls based on the end-user or the end-use, regardless of whether the item itself is controlled. These "catch-all" controls, which were instituted as part of the Enhanced Proliferation Control Initiative, are extremely important to our effort to hinder WMD and missile programs of concern. They also allow the U.S. to abide by treaty obligations under the NPT, BWC and CWC not to assist anyone, in any way, in proscribed WMD activities. If an exporter knows that an item will be used in such programs or is informed by the government that an export poses an unacceptable risk of use in or diversion to such programs, the exporter is obligated to obtain an export license. The "catch-all" controls allow us to focus even greater scrutiny on the proliferation activities of greatest concern (§ 201(c)).

We have worked closely with our partners in each of the multilateral regimes to encourage them to adopt "catch-all" controls, and the vast majority have done so. In addition, we have also taken initiatives to encourage key non-regime countries to adopt "catch-all" controls. National "catch-all" controls have proven very important in stopping sensitive exports to known proliferation programs. Thus, it is important that the new EAA include specific language authorizing the continued use of such controls. The Senate Banking Committee version has such a provision (§ 201(d)).

PRESIDENTIAL AUTHORITY

Finally, it is essential that the President have the ability to make any decision on export controls that he feels is in the national interest. We believe that the Senate version of the EAA is fully consistent with this important principle. Specifically, the Senate bill gives the President the authority to:

- maintain controls on items listed by the multilateral export control regimes;
- control items to countries designated as state sponsors of terrorism;
- implement catch-all controls against entities and activities of proliferation concern;
- maintain unilateral national security controls on an item despite foreign availability or mass market status;
- impose and maintain unilateral foreign policy controls when necessary to achieve U.S. interests (including deferral of procedural requirements prior to imposition); and
- impose enhanced controls on items he determines to be particularly sensitive notwithstanding other restrictions on national security controls.

One of our main reasons for supporting S. 149 is that it protects the President's prerogative to make these critical decisions.

CONCLUSION

The State Department appreciates the efforts of this Committee to undertake a thorough review of this extremely complex subject and produce a new Export Administration Act. Export controls play a critical role in protecting American security, and are a cornerstone of our nonproliferation efforts. How they are implemented is also crucial to the health and competitiveness of U.S. industry. As the lines between military and civilian goods grow increasingly blurred, it is important that our export controls balance the need of American enterprises to compete overseas effectively with the need to protect present and emerging national security interests. A new Export Administration Act must create the architecture to accomplish that goal. We believe the bill now pending in the Senate fully satisfies that requirement, and we strongly support it.

The Department of State welcomes the opportunity to work with the Committee on this essential task.

Chairman HYDE. Thank you, Mr. Bolton.

Mr. Blumenauer?

Mr. BLUMENAUER. Thank you, Mr. Chairman.

We appreciate your joining us today, Mr. Secretary.

Chairman HYDE. Excuse me, for a second. There is a vote on. I am not going to respond to it. It is approval of the journal. I do

approve of the journal, by the way. But if you want to dash off, go ahead. We are going to proceed. But do come back.

I am sorry, Mr. Blumenauer.

Mr. BLUMENAUER. That is quite all right, Mr. Chairman.

Earlier you heard the discussion about the trade-off between the expiration of the authority, or an extension. I was curious if you felt that there were any major consequences, if the act would, in fact, expire? And what your views are about the trade-off between an extension or just allowing it to expire?

Chairman HYDE. Mr. Bolton, if you would withhold for a moment. I have just been informed there are two votes. There is a vote to adjourn, following the approval of the journal, so I am going to go over and cover that.

Mr. BLUMENAUER. Okay.

Chairman HYDE. Do you wish to continue?

Mr. BLUMENAUER. I would be interested in the answer to that question, and then I shall follow you, Mr. Chairman, if that is all right.

Chairman HYDE. All right, and we will hurry back.

Mr. BOLTON. Okay, well, it is unfortunately a brief answer. The Administration remains hopeful that Congress can act before your August recess, so that the issue would not arise.

But I can assure you, Congressman, I heard what Congressman Lantos said loud and clear, and I will carry that back to my colleagues. But quite candidly, the best I can say, at this point, is that the Administration continues to hope for action on S. 149 in both houses, so that it can reach the President before the recess.

Chairman HYDE. The Committee will stand in recess for 10 minutes to vote.

[Recess.]

Chairman HYDE. Mr. Kerns, do you have any questions?

Mr. KERNS. No, Mr. Chairman.

Chairman HYDE. Thank you.

Well, it looks like we are out of interrogators, so you get to go earlier than you needed to, but thank you very much.

Mr. BOLTON. I would appreciate, Mr. Chairman, if there are any questions that you have for the record or anything else, please feel free to get in touch with us.

Chairman HYDE. I am sure we have and we will. Thank you, John.

Well, I take great pleasure in welcoming to our Committee Mr. David S. Tarbell, the Deputy Under Secretary of Defense, Technology Security Policy and Director of the Defense Technology Security Directorate.

The Directorate is responsible for developing and implementing Department of Defense policies on international transfers of defense-related goods, services, and technologies to ensure such transfers are consistent with American security interests.

This office seeks to preserve critical U.S. military technology advances and to keep American technologies out of hostile hands, and to counter the proliferation of nuclear, biological, and chemical weapons, and their delivery systems.

Mr. Tarbell, please proceed with a five minute summary, if you can, of your statement. Your full statement, of course, will be made part of the record. Thank you.

Mr. Tarbell?

STATEMENT OF DAVID TARBELL, DEPUTY UNDER SECRETARY FOR TECHNOLOGY SECURITY POLICY, U.S. DEPARTMENT OF DEFENSE

Mr. TARBELL. Thank you, Mr. Chairman. I will be brief, if I can be assured of the same treatment as Under Secretary Bolton. [Laughter.]

Chairman HYDE. That is my constant aim.

Mr. TARBELL. Thank you, sir.

Thank you for the opportunity to testify here, Mr. Chairman, on the statutory framework for the Administration and implementation of dual-use export controls.

The Department of Defense believes that proliferation of nuclear, biological, and chemical weapons, their means of delivery, and the acquisition by potential adversaries of capabilities to design, develop, manufacture, and use conventional weapons represents formidable and challenging threats to our national security.

Such proliferation can exacerbate instability in regions of the world where we have major security and economic interests, and can directly threaten U.S. citizens and armed forces around the globe.

The Department of Defense plays an important role in the development of export control policy and its implementation. I manage an organization of about 190 people, who are responsible in DoD for export control policy and implementation. About 40 of those are dedicated to monitoring foreign launches of U.S. satellites.

One responsibility of ours is to bring to bear expertise and analysis to identify, and mitigate national security risks associated with the export of dual-use goods and technologies.

We must be mindful, though, that export controls are but one tool, albeit, an important tool of national security policy, to meet the various threats to our national security. Our overall security approach also includes investing in U.S. military capabilities that make us second to none worldwide, and fostering security relationships with allies and friends as coalition partners.

Export controls complement these other tools by seeking to slow the spread of items and technologies that can threaten U.S. national security, particularly the security of U.S. armed forces and those of our allies and friends.

In structuring a balanced export control policy, we have three basic objectives. First, we seek to prevent the proliferation of nuclear, biological, and chemical weapons, and their means of delivery.

Second, we aim to preserve critical U.S. military, technological advantages. Preserving our military edge involves not only limiting the acquisition of critical technology by potential adversaries, but also involves promoting a vibrant, innovative private sector supporting defense research, development, and production.

In this regard, our approach emphasizes controls that are effective. Ineffective controls only create an illusion of security protec-

tion, where none actually exists, and it wastes scarce government and industry export control resources with no compensating security benefit.

Our final objective is to manage an export control process that supports legitimate defense cooperation with our U.S. allies and friends.

Meeting today's security challenges often requires robust coalitions with allied and friendly armed forces, and promoting appropriate cooperation among our defense industries is one key ingredient for success in that.

We recognize that the U.S. is not the only supplier of many key items and technologies, and that we need the cooperation of these other supplier nations to have effective export controls.

In this regard, DoD works closely on an interagency basis to foster multilateral export control regimes, to increase the effectiveness of other nations' export control systems, and to encourage other countries to adopt policies and practices in consonance with U.S. security interests.

One of the key elements of any effective export control system is a comprehensive export control list. We believe that in order for control lists to be effective, there must be persuasive national security or nonproliferation rationale for all the items on the list.

In that regard, DoD participates actively in the interagency and multilateral processes that define these lists, because the specialized knowledge and expertise required to make the complex judgments regarding the impact of particular high technology items on our national security resides primarily, if not solely with the Department of Defense.

Development and refinement of control lists is an ongoing and continuous process. My organization in DoD coordinates our analysis of lists, drawing on the substantial expertise throughout DoD in the military departments, the Joint Chiefs of Staff, the operational commands, military labs, and DoD intelligence organizations.

While control lists represent the foundation of our U.S. national security export controls, the engine of export controls is the case-by-case export licensing process. It is absolutely essential that the Department of Defense continue to be an equal participant in the licensing process, in order to ensure full consideration of national security interests.

We review over 22,000 licenses per year, of which about 10,000 are dual-use, referred by the Commerce Department. The rest are munitions licenses from State. We support a robust interagency license review process, that considers all interests affected by export license decisions; whether they be national security, foreign policy, nonproliferation, or economic.

As well, all agencies should have an equal opportunity to escalate concerns in a deliberate manner through various levels of decision making that can ultimately lead to the President, if necessary.

I would like to turn briefly to several points about S. 149 that I would like to emphasize for the Committee's consideration. First, we need a strong policy basis in the law that recognizes U.S. national security interests as a major underpinning for U.S. export controls. We believe S. 149 has such language.

Second, in order for controls to be effective in furthering our nation's national security objectives, it is essential that the underlying authority provide substantial flexibility in both establishing and implementing controls.

The national security environment and the advance of technology require an agile system, that can adapt quickly to changing circumstances.

We believe that S. 149 strikes the right balance of providing guidance on implementing controls, while leaving appropriate flexibility for the Executive Branch.

S. 149 provides for DoD concurrence on the establishment of export control lists, whether adding or deleting items.

S. 149's treatment of the export license review system appropriately codifies the principles of transparency, discipline, and opportunities to escalate concerns, while allowing the Executive Branch the flexibility on the details of the system. We believe that every detail of these processes need not be codified in statute.

There are improvements in the interagency process that should be implemented, and the Administration has committed to undertake those improvements. One specific example is that the Administration has agreed to establish an Executive Order, implementing a timely, transparent, and disciplined process for DoD's review of commodity classifications.

Third, the law needs to maintain a sufficiently broad basis for imposing unilateral controls under certain circumstances, while recognizing that controls are generally more effective if they are implemented by other supplier nations.

There are occasional circumstances where the U.S. needs to take a stand on principle in order to lead. Another example of when we might implement a unilateral control is if we invent a new technology, and prior to it being established as a control in a multilateral regime, we want to make sure we get it under control here.

At the same time, we need a strong statutory basis for controls we share with other nations, who are suppliers of comparable items and technologies, both those that are part of formal export control regimes and those that are not. We believe S. 149 gives us the flexibility to address these matters.

Finally, and I would say very importantly, we need a strong basis for enforcement in any new Export Administration Act. I testified on this subject before the Senate Banking Committee a couple of years ago, and emphasized this as one of the key issues that needed to be in an EAA.

I am pleased to report that S. 149 contains appropriate enforcement provisions that meet our objectives in this regard.

Mr. Chairman, the Administration supports S. 149 as reported by the Senate Banking Committee. It includes a number of changes that Secretary Rumsfeld and other members of the President's national security and foreign policy team sought to strengthen the President's national security and foreign policy authorities to control dual-use exports.

With these changes, we believe S. 149 allows the U.S. to successfully meet its national security and foreign policy objectives. Of course, the Administration will continue to work with Congress to

ensure that our national security needs are incorporated into a rational export control system.

This concludes my formal statement. I would happy to answer any questions that you or other Members of the Committee might have.

[The statement of Mr. Tarbell follows:]

PREPARED STATEMENT OF DAVID TARBELL, DEPUTY UNDER SECRETARY FOR TECHNOLOGY SECURITY POLICY, U.S. DEPARTMENT OF DEFENSE

Thank you, Mr. Chairman, for the opportunity to testify on export controls for dual-use goods and technologies and the statutory framework for administration and enforcement of such controls. The Department of Defense believes that the proliferation of nuclear, biological, and chemical weapons, their means of delivery, and advanced and other destabilizing conventional weapons represents a formidable and challenging threat to our national security. Such proliferation can exacerbate instability in regions of the world where we have major security and economic interests and can directly threaten U.S. citizens and armed forces around the globe.

The Department of Defense plays an important role in the development of export control policy and its implementation. Our responsibility is to bring to bear expertise and analysis directed at identifying and mitigating national security risks. We must be mindful, though, that export controls are but one tool—albeit an important tool—of national security policy to meet the various threats to our national security. Our overall security approach includes investing in U.S. military capabilities that make us second to none worldwide and fostering security relationships with potential coalition partners. Export controls complement these other tools by seeking to slow the spread of items and technologies that can threaten U.S. national security—particularly the security of U.S., allied, and friendly armed forces.

In structuring a balanced export control policy, we have three basic objectives:

First, we seek to prevent the proliferation of nuclear, biological, and chemical weapons and their means of delivery. Much of the capability to acquire weapons of mass destruction is inherent in dual-use goods and technologies, and we must be vigilant in maintaining effective controls over such items.

Second, we aim to preserve critical U.S. military technological advantages by controlling and limiting the acquisition of defense-related goods, services and technologies by any country or entity that could be detrimental to U.S. security interests. Preserving our military technological advantage involves not only limiting the acquisition of critical technology by potential adversaries, but also involves promoting a vibrant, innovative private sector supporting defense research, development, and production. Our national security is enhanced by ensuring that U.S. industry can engage in legitimate international trade and investment because the Department of Defense and our principal contractors are increasingly reliant on commercial products, technologies, and processes to improve military capabilities. In this regard, our approach emphasizes controls that can be *effective. Ineffective* export controls only create an illusion of security protection where none exists and wastes scarce government and industry export control resources with no compensating security benefit.

Finally, we work hard to manage an export control process that supports legitimate defense cooperation with U.S. allies and friends. Meeting today's security challenges often requires robust coalitions with allied and friendly armed forces to protect US security interests. Enhancing interoperability with these armed forces and promoting appropriate cooperation among defense industries are key ingredients for success.

We recognize that the U.S. is not the only supplier of many key items and technologies and that we need the cooperation of other supplier nations to have effective export controls that meet our security interests. In this regard, DoD works closely with our interagency export control partners to foster multilateral export control regimes, to increase the effectiveness of other nations' export control systems, and to encourage other countries to adopt policies and practices in consonance with U.S. security interests.

One of the key elements of any effective export control system is a comprehensive export control list. U.S. and multilateral control lists serve as the foundation for all national security and nonproliferation export controls. We believe that in order for control lists to be effective, there must be a persuasive national security or nonproliferation rationale for all items on the list. In that regard, DoD participates actively in the interagency and multilateral processes that define these lists. We have a system in place that has worked quite well. The State Department manages an

interagency process to develop proposals to change control lists in multilateral regimes and DoD is a full participant. If there are disagreements, matters can be escalated. In the development of U.S. controls lists and regulations, Commerce consults with DoD and other agencies before devising regulations that add or delete items. Before any regulations can be finalized, however, they must be approved by a process managed by OMB that provides an open opportunity to resolve all interagency disagreements.

DoD participates in the development of control lists because the specialized knowledge and expertise required to make the often complex judgments regarding the potential impact of particular high technology items on our national security resides primarily, if not solely, with the Department of Defense. My organization, the Technology Security Directorate of the Defense Threat Reduction Agency, coordinates the development of DoD's analysis of these lists. We draw on expertise throughout DoD in the military departments, the Joint Chiefs of Staff, the operational commands, military labs, and DoD intelligence organizations. Development and refinement of control lists is an ongoing and continuing process that recognizes the dynamics of technology development and the diffusion of technology on a global basis and seeks to identify those items and technologies that require control.

While control lists represent the foundation of U.S. national security export controls, the engine of export controls is the case-by-case export licensing process. It is essential that DoD continue to be an equal participant in the licensing process in order to ensure full consideration of the national security interests at stake in export license decisions. We support a robust interagency license review process that considers all interests affected by export license decisions for dual-use items and technologies—whether they be national security, foreign policy, nonproliferation, or economic. We support the principles of transparency and discipline in the dual-use export licensing process. All agencies should have an equal opportunity to bring their interests to bear and to escalate concerns in a deliberate manner through various levels of decision-making that can ultimately lead to the President, if necessary. We strongly believe that every detail of these processes need not be codified in statute. S. 149's treatment of the export license review system appropriately codifies the principles of transparency and discipline while allowing the Executive Branch flexibility on the details of the system to adapt to changing security and technology circumstances.

It is not possible in this statement to discuss all of the provisions of S. 149. However, I wish to emphasize several points that I believe should be kept in mind as the Administration and Congress work on a new Export Administration Act.

First, we need a strong policy basis in the law that recognizes U.S. national security interests as a major underpinning for U.S. export controls. S. 149 has such language.

Second, in order for controls to be effective in furthering our nation's national security objectives, it is essential that the underlying authority provide substantial flexibility in both establishing and implementing controls. The national security environment and the advance of technology require an agile system that can adapt quickly to changing circumstances. The Administration recognizes that export controls on dual-use goods and technologies requires balancing national security, foreign policy, and other interests. As a consequence, there must be a fair and equal role for the various agencies that have responsibilities in these areas. There are improvements in the interagency process that should be implemented and the Administration has committed to undertake those improvements. Specifically, the Administration has agreed to establish an Executive Order implementing a timely, transparent, and disciplined process for Department of Defense review of commodity classifications. S. 149 strikes the right balance of providing guidance on implementing controls, while leaving appropriate flexibility for the Executive Branch.

Third, the law needs to maintain a sufficiently broad basis for imposing unilateral controls under certain circumstances, while recognizing that controls are generally more effective if they are also implemented by other supplier nations. There are occasional circumstances where the U.S. needs to take a stand on principle in order to lead. We agree that the application of unilateral controls should be regularly reviewed, but the ability to apply those controls in particular circumstances is an important mechanism to further our national security objectives.

At the same time, we need a strong statutory basis for controls we share with other nations, who are suppliers of comparable items and technologies, both those that are part of formal export control regimes and those that are not. In this uncertain and fast-moving security and technology environment, we need to have a strong legislative base that supports multilateral efforts, whether they are formal or not. We believe that S. 149 addresses these concerns.

Finally, we need a strong basis for enforcement in any new Export Administration Act. Export controls are a cooperative activity between government and the private sector that generally works quite well. However, we must recognize that there will always be those that are tempted by illicit motives and we need a strong legal basis to deter those temptations and, when necessary, punish those that choose to flout the law. We believe that S. 149 contains appropriate enforcement provisions that meet this objective.

Mr. Chairman, the Administration supports S. 149 as reported by the Senate Banking Committee, which includes a number of changes that the National Security Advisor, and the Secretaries of Defense, State, and Commerce sought to strengthen the President's national security and foreign policy authorities to control dual-use exports. With these changes, we believe that S. 149 will allow the U.S. to successfully meet its national security and foreign policy objectives. The Administration will continue to work with Congress to ensure that our national security needs are incorporated into a rational export control system. This concludes my formal statement, and I would be happy to answer any questions that you or the other Committee members might have.

Chairman HYDE. Thank you very much, Secretary Tarbell.

Mr. Issa?

Mr. ISSA. Thank you, Mr. Chairman.

Secretary, in general, related to what we are talking about here today, but perhaps a little off the direct track, but we do not get you here every day, it seems that we are constantly asked to give the Administration, this one and previous Administrations, the ability to say no.

But in your testimony, you talked about streamlining, and having a cohesive inter-department ability. Just as one example that you are probably aware of, Egypt, as an ally of ours and participant in joint exercises, cannot get 100 of their tanks, the last of 800 or so tanks, released because they cannot get an answer from State.

It seems that one of the things we do not do in oversight that I am concerned about. I would like to hear what, in the new Administration, you believe is going to happen to change that.

Once we have said yes, once we have decided that a technology is or is not available, under the powers that you are asking for here today and many others, is there going to be an improvement in the predictability to our allies, to our neutral trading partners, and even to those who we have poor relationships with, but we do sell to, so that they can look at us as a consistent trading partner?

The reason I ask is simply on behalf of commerce. If you cannot have predictability, then even when you are saying yes periodically, we will not succeed in the international arena in selling our goods, unless we are, both for original purchase and for follow-up purchases and then for repair parts, a predictable source. If you could tell me what steps the Administration is going to take to move toward that end, I would appreciate it.

Mr. TARBELL. Thank you, Congressman. I share completely with you your ideas about ensuring that the business community has predictability in the system.

Sometimes that predictability in individual cases cannot be as open and as transparent as we want it to be, because it involves sensitive security matters and intelligence sources and methods.

But as a general matter, you ought to be able, as a businessman, to sort of have an understanding that if I go market something, that I am going to be able to sell the item. I think that that is an important principle that needs to be in the system.

One of the things that I am sure that this Administration is going to take up is an overall review of the export control system. That will include not only the dual-use system, which is the subject of the Export Administration Act, but also the munitions system at the State Department.

I think that there are some areas, in terms of the administration of that system, and I am not talking necessarily about legislative or statutory issues, but in the administration of that system, that there could be some work done to improve the predictability of it, so that our allies and our friends can have confidence that the U.S. will be a reliable supplier.

As a result then, our defense industry, which we rely on for our own defense, will have the sort of predictability to make the sales that are appropriate and legitimate and meet our security interests, and that help us in our national defense.

So I think all those factors come into play, and I share with you exactly those principles.

Mr. ISSA. I have just one quick follow-up. After you have had an opportunity to do that, since we may not get you back for awhile, I would appreciate it if you could arrange to have in writing, information on steps taken, delivered either to our Chairman or to my office, so that I could be informed on the direction.

That is one of the goals that I have in Congress, is to try to offer predictability to the business community, because they do expend a lot of capital, when we tell them to go out and be good traders.

It is very legitimate to say no, when it is a threat to American security; but it is not when it is known that it is not a threat, and you wait and wait and wait, and maybe you get a yes after you shut down a production line. So if you would follow-up on that in writing at your earliest convenience.

Mr. TARBELL. I will carry that back and speak with the regulators on this at the State Department, and make sure that that is done.

Mr. ISSA. Thank you.

Chairman HYDE. Mr. Berman?

Mr. BERMAN. Thank you very much, Mr. Chairman. I am sorry that I missed Mr. Bolton's testimony. I never thought it would be possible that he would done by this time. But I am glad to have the opportunity to hear Secretary Tarbell.

On the issue that Mr. Issa just raised, of course, the Export Administration Act will not deal with the problems of bureaucracy in the State Department munitions list licensing. Is that right?

Mr. TARBELL. That is correct.

Mr. BERMAN. On S. 149, you are saying the Administration supports that bill, as it was reported out of the Banking Committee.

Some in the Senate have argued that the bill does not give the President sufficient authority to override mass market or foreign availability determinations made by the Commerce Department and that the Departments of State and Defense should have a greater role in the export licensing process.

Could you respond to those concerns and explain why you think S. 149 does deal with those issues adequately?

Mr. TARBELL. I would be happy to do that.

On the issue of mass market, there is a provision in the bill that permits the President to set aside that a determination that there is mass market availability, and therefore, there should be decontrol of the item. It permits the President to set that aside completely for national security reasons, and he has complete authority to do that.

Mr. BERMAN. So what is Senator Shelby's concern, then? If he has the total unlimited discretion to set aside a mass market determination, what more could he have?

Mr. TARBELL. I would hesitate to try and put words into Senator Shelby's mouth on this subject. But my understanding is that the concern has to do with the possible standard, and misunderstanding about the standard that the President would have to meet, in order to make that determination; whether it be significant threat or detrimental to security, things of that nature.

Mr. BERMAN. But those are just words.

Mr. TARBELL. In my view, Congressman, those are exactly just words, that the President has the authority to make those sorts of determinations, and that in the past, he has made those sorts of determinations.

Mr. BERMAN. How about on the foreign availability?

Mr. TARBELL. On foreign availability, it is a little bit more complicated, in that if you make a national security finding that a foreign availability determination should be set-aside, there must then be a negotiation process to try and remove that foreign availability.

If that negotiation is not successful after an 18 month period——

Mr. BERMAN. You mean, a negotiation between our representatives and the countries?

Mr. TARBELL. That is, the foreign supplier government that is permitting the exports of these items that are creating this availability that is creating an ineffective control.

Mr. BERMAN. Right.

Mr. TARBELL. As that proceeds then, the negotiation has to be completed within an 18 month period. At the end of that 18 month period, and there is no satisfactory conclusion, then the item is to be decontrolled.

The President then has several options. The President can establish a unilateral control under the foreign policy provisions of the act. The President can decide to put the item under the enhanced controls provision of the act. He can take either of those two acts.

In either circumstance, that allows him to set aside that provision, and set aside an availability determination, and continue to control the item.

So if it is important enough to national security that it ought to continue to be controlled, even if it is a unilateral control, then he has the option and he has the ability to do that.

Mr. BERMAN. Let me ask you one last question because my time is expiring. Let us just assume hypothetically that there was a proposal out there that said with respect to the licensing of commercial satellites, that Commerce would be the principle licensee. Any license application for the export of a commercial satellite for a launch by another country would have to be referred to the State Department and the Defense Department, as well as to all the rel-

evant intelligence agencies, that either one of those departments, within a reasonable period of time, could veto, say no, to that export license.

If they did, it would go right up to the National Security Council and the President for a final determination. Then with respect to any licenses granted to non-NATO or major non-NATO allies, then there would have to be on-site monitoring of the commercial satellite and the launch of that satellite, as well as mandatory licenses for any conversations or discussions with respect to a failed launch.

What is your reaction to that kind of a proposal?

Mr. TARBELL. Congressman, the Defense Department does not have a particular view with regard to where satellites ought to be licensed. Our view is that wherever they are licensed, they ought to be licensed in a manner where we get full review of the licenses, and that the full range of safeguards that we have put into place over the last few years are retained and operate.

I understand that you have a bill that you have put forward, and we are in the process of looking through that, and I think we are going to have some comments on that bill, on the safeguards part of it, not the jurisdictional part of it, that I think will help improve it. I think that we welcome a dialogue with you about that.

Mr. BERMAN. Well, I would be very interested in hearing your comments, if there are reasonable safeguards that somehow are left out of that proposal, I am quite open to making the necessary adjustments in it. I look forward then to your comments. Thank you.

Chairman HYDE. Mr. Flake?

Mr. FLAKE. Most of my question was just answered. But you mentioned the set-aside provisions of mass marketing and of foreign availability determinations. What precedent exists for that kind of action, if you could just expand on that, if you can?

Mr. TARBELL. Congressman, I mean, from a practical standpoint, this has been an issue that has been a little illusory to me.

I have been in my job since August of 1994. There is a provision within the current law for exporters to petition the Government to decontrol items for foreign availability purposes. Since I have been in my job, we have never had such a petition.

Generally, what happens when we review lists and we get concerns from exporters about whether there is foreign availability or there is mass market availability, as in the computer industry, we deal with those issues square up, in terms of the list, and we deal with them as a matter of course in our constant and ongoing and continuous process of updating the lists.

So there is not really a need, and I do not feel like the exporting community has felt the need to invoke these rather draconian procedural processes, in order to get outcomes that ensure that we retain effective controls, and that the controls that are in place are not there just to feel good.

So I think that is the way that we have managed this process, and I think, as a practical matter, a lot of the discussion that we are having on these provisions is really something that they would be used very infrequently, and only in very extraordinary circumstances.

Mr. FLAKE. Thank you, and thank you, Mr. Chairman.

Chairman HYDE. Thank you.

Secretary Tarbell, can the President delegate the authority he has to set aside foreign availability or mass market determinations?

Mr. TARBELL. My understanding of the bill, Congressman, is that he cannot set that aside. That is reserved for the President.

Chairman HYDE. He cannot delegate it?

Mr. TARBELL. He cannot delegate it.

Chairman HYDE. Is that very practical?

Mr. TARBELL. Given, as I said, Congressman, the frequency that this is likely to be undertaken, I think it is practical.

From my standpoint, I think it is appropriate, because what that does is, it preserves full rights for my department, for example, to raise concerns and to make sure that they are dealt with at the very highest levels. So that if we do have a national security concern, then it is dealt with by the person who is ultimately responsible for national security.

Chairman HYDE. The memorandum of understanding between the United States and China regarding the right to perform post-shipment verifications inside this country, is it working effectively?

Mr. TARBELL. I think that that requires a somewhat balanced sort of answer.

Chairman HYDE. It is a more political thought.

Mr. TARBELL. It is a tough one. From a practical standpoint and from a security standpoint, certainly there are improvements in that process and in the post shipment verification process that we would like to see.

The Chinese government has not agreed to do that. So therein lies the problem; that in order to implement this, you need the consent of the other government, just as we would insist on that, as a sovereign nation, if another government wanted to come in here and do this to us.

Therein lies the rub, because the Chinese government has been unwilling to establish a verification regime and an end use monitoring regime, that would get at all of the security interests that we are interested in, to ensure that items that are shipped are not diverted.

Chairman HYDE. So the post-shipment verification regime is a failure?

Mr. TARBELL. I am not sure that I would characterize it as a complete failure, but it is close to it.

Chairman HYDE. It was not a rousing success.

Mr. TARBELL. It is not something that I have a great deal of confidence in.

Chairman HYDE. Do you have enough resources to implement what post-shipments verification you can do?

Mr. TARBELL. This is something that is a responsibility of the Department of Commerce. So I think that I would defer to their judgment on whether they have sufficient resources to do it. But my understanding is that they are thinking about adding some resources to that.

Chairman HYDE. The criticism has been made by many that our export control resources are devoted to licensing relatively benign transactions, diverting resources away from important and dangerous transactions. Is this criticism a fair one?

Mr. TARBELL. Congressman, I think it is really an unfair one. Let me go to some of the comments that I have heard. That is that if we are approving 95 percent of the licenses, then we must be reviewing things that are relatively benign, because we are only denying five percent.

What that ignores is that in two-thirds of those cases we approve, what we are doing is, we are putting significant conditions and safeguards on these transactions. One of the things that we seek to do is to ensure that we are supporting legitimate commerce, but in a manner that protects our security interests.

It is a win/win if you permit the sale to go through, but put a box around it and put safeguards around it, that mitigate the national security risks. That is what we seek to do in most of these transactions.

So it is unfair to say a metric of 95 percent are approved. What you are ignoring is the significant amount of constraints that are put on these exports for security reasons, and the ones that we put conditions on.

Chairman HYDE. Mr. Secretary, we will let you go now, but may we submit to you some additional questions in writing?

Mr. TARBELL. Absolutely, I would be pleased to answer anything additional, and I look forward to working with the Committee in the future.

Chairman HYDE. Thank you, and we similarly look forward to working with you. Thank you.

I would like to extend a warm welcome from the Committee to Dr. Steven Bryen and to Mr. Larry Christensen. Dr. Bryen is a senior Washington consultant specializing in high technology and defense issues. Mr. Christensen is the Vice President of International Trade Content for Vastera, a software development firm.

Dr. Bryen's career includes service as the Deputy Under Secretary of Defense, a staff member for the Senate Foreign Relations Committee, and first Director of the Defense Technology Security Administration.

He currently is a Commissioner on the U.S.-China Security Review Commission, a Managing Director for the firm "Aurora Marketing and Business Development," a member of the Board of Directors of Telos Corporation, a defense and communication services company, and a member of the Advisory Board for the Jewish Institute for National Security Affairs.

Mr. Christensen's career includes service with the Bureau of Export Administration and the Office of the General Counsel in the Department of Commerce. For 11 years, Mr. Christensen was involved in every major regulatory initiative on dual-use exports.

Gentlemen, please proceed with your five minute summary, and we will ensure that your full statements get into the record. We will start with you, Mr. Bryen.

STATEMENT OF STEPHEN BRYEN, MANAGING PARTNER, AURORA MARKETING AND BUSINESS DEVELOPMENT

Mr. BRYEN. Thank you, Mr. Chairman. I would also like to put in the record, if I may, the paper that I did for the Stimson Center and CSIS on the future of strategic export controls. Since the Con-

gress paid for it, I suggest you put it in the record and get some value out of it.

Chairman HYDE. Without objection, it will be placed in the record.

Mr. BRYEN. Mr. Chairman, in consultation with your staff, I said I would be happy to come here today to talk about export control policy. I was not prepared and am not prepared to comment in any detailed way on the renewal of the Export Administration Act or specific provisions.

I would make a general comment. I do not think that we can get along without an Export Administration Act. Relying on emergency authorities is not a way to provide any leadership in this area.

If the United States does not provide leadership in the export control arena, then as far as I am concerned, there is no export control system that will function on a global basis.

The main purpose of export controls is, after all, the protection of American national security and, in the broader sense, global security. If it performs that function effectively, I think that we can say that the tradeoff, in terms of restricting exports, pays off in terms of the benefits to the overall society in retaining and maintaining peace in the world.

Today, I believe there is a policy vacuum on export controls. I do not think we have any real clear idea about how to go about applying export controls, and I do not think we understand, in the ways we should, what the strategic challenges are before us.

During the Cold War period, it was a fairly straightforward process. We had a well recognized adversary, and we had a military competition that was understood, not only by ourselves, but by our allies.

Then the question was, to what degree could the export control system contribute to slowing down the military buildup in the Soviet Union and the Warsaw Pact countries? That was the whole idea.

In the early 1980s, the Central Intelligence Agency came to us, and I was in the Defense Department then. They said, look, the United States has an inferior number of combat systems, compared to what the Soviet Union has, but we have a terrific quality edge. That edge is based very heavily on the use of computers and microelectronics. We see a major deficiency on the Soviet side in this arena.

If we can use export controls to restrict Soviet access to computers and micro-electronics, we think it will have a profound effect on their ability to compete strategically.

And that is exactly what we did. We put in place a strong and vigorous export control system, starting here in the United States, and then extending it to CoCom, which was our Coordinating Committee in Paris in those days with our allies, and ultimately even to third countries that were not members of the CoCom system, but who had common interests with us, including Sweden, Austria, Singapore, and other countries like that.

Through a lot of hard work and jawboning, but also with a very clear, understandable strategic rationale, we were able to persuade our friends and allies to cooperate. The consequence was that the vital technologies to the Soviet Union were not transferred, or were

transferred in such small numbers that it had a very marginal effect.

In the area of semi-conductors, for example, in the early 1980s, the CIA was projecting the difference between the United States and the Soviet Union of only a year or two.

By the end of the 1980s, they were projecting at least a 10 to 15 year gap, so that they saw no chance for the Soviets to catch up in that arena.

The benefit that modern computers and electronics, micro-electronics, communications, brought to our forces is considerable, and was demonstrated absolutely in the Gulf War, when we brought to bear, for the first time, a modern, integrated military force.

Despite the prediction of many experts that we would have many casualties and this would be a difficult conflict, the reality was that we did not. I believe we were successful, largely because of the technology leverage that we had in the situation.

Now that is speaking, of course, about the past. When we speak about the future and the main strategic challenges, I think they fall into two somewhat different areas. One is the problem of the proliferation of weapons of mass destruction, and the delivery systems for those such as rockets and cruise missiles.

That is a much more difficult challenge, because we are not talking so much about a technology edge. We are really talking about the supplier countries. A lot of the supplier countries are not allies or friends of ours.

They are difficult countries, where there is a lot of contentiousness, and where despite many efforts, the truth of the matter is that quite a lot of missile technology and weapons of mass destruction type, biological, chemical, and nuclear capabilities, are being transferred to countries of concern, like Iraq or Iran.

So this is an area that export controls can help, but it is only a very small part of the bigger picture. The bigger picture, I think, is vigorous cooperation and enforcement of whatever we can enforce to prevent smuggling and transfers of these kinds of technologies.

In that respect, Mr. Chairman, I know it is outside of the immediate responsibility of the Subcommittee, but the one place to look is strengthening the intelligence capabilities to detect and follow these kinds of transactions, which I think could stand some strengthening.

Also, I believe we need to help the countries that are on the transit routes, that are in strategic places, cope better, by providing them training, support, equipment, which they badly need.

For example, a year ago in Central Asia, radioactive material from Kazakhstan was being smuggled through, on its way to Iran, I believe. It went through Uzbekistan, and the Uzbeki customs people caught it. We were very lucky that they caught it. But how many shipments got through, and what are the implications of that?

But the type of program that we have now to help these people is a very tiny one. Anything you can do to improve that will be a great contribution to countering proliferation.

In the area of strategic technology, my main concern is China. I believe China presents a formidable future challenge for the

United States. The Chinese military is modernizing. It is certainly not comparable to the U.S. military today.

But in many area, missiles and cruise missiles, for example, I think they present a very profound and growing threat. We do not have the same situation that we have, and I say this in my testimony, in the 1980s; that is to say, where we have one single technology that we can point to and leverage, and make a huge difference.

So we have to think about how to meet the challenge that is emerging; whether we want to consider China a friend or a foe. However we want to look at it, China is an emerging superpower. Her interests and our interests are going to bump up against each other in the Pacific. I think we have to be prepared to deal with that.

So what I am suggesting, Mr. Chairman, is a three step process for us to get a policy to deal with that kind of challenge. I do not think that we have that in place today. I go into some depth on it in the larger study that I have in my testimony, on the three main points that I think we should take a look at.

The first is that the United States has to carefully identify the major advantages that we possess today, vis-a-vis, China, in our military systems. We have not taken that step. There is no study, and I really want to make this point very strongly, no study, to my knowledge, to my colleagues' knowledge that I have asked the question to. No study like this has been done.

Yet, it seems to me that it is a very important task for us to make that study. In the areas that intuitively come to mind, stealth is an area where we have very important advantages; stealth technology to protect our aircraft, for example.

But are we protecting it correctly; are we looking at the dual-use technologies that can be used to create stealthy systems; do we have control over that; have we done the analysis? I do not think so.

Once we have an idea of what our military advantages are, we need to see which of those advantages are going to play the biggest role in the Pacific area, which is where that challenge with China is likely to be most profound. That is going to narrow the categories quite a bit.

But one of the places that we are going to have to look is our Naval resources, which are stretched pretty thin, as it is, to cover the huge Pacific area in the current circumstances, and their vulnerability.

So, for example, in my testimony, one of the areas that I am concerned about is China's access to wide area ocean surveillance systems.

Congressman Berman was talking about satellites. One type of satellite is a satellite that can view the Pacific area, and report on what it is seeing in real time.

I would think that in any legislation what we call commercial and military today is very blurred, as you well know. We ought to draw some lines and say, certain kinds of satellites are not just not what we have in mind to export.

If you are talking about communications and telephones and things like that, that is one level. If you are talking about eye in

the sky, where you are looking down with infrared sensors, all kinds of visualization systems, that is something that even if it is promoted as a commercial system, it seems to me that we ought to draw the line and say, we are going to be really careful about that kind of technology transfer. So I hope that we can be very precise about these things.

Finally, Mr. Chairman, once we have done that kind of analysis, then I think we can sort out the technologies of the greatest concern to us, and then use our export control system to maintain and manage those technologies.

This is work that is not done, that needs to be done, if we are going to be able to have a properly managed and run export control system that really can serve national security interests.

[The statement of Mr. Bryen follows:]

PREPARED STATEMENT OF STEPHEN BRYEN, MANAGING PARTNER, AURORA MARKETING AND BUSINESS DEVELOPMENT

Since the end of the Cold War the United States has retreated from export controls as an instrument of national security policy. Key institutions such as COCOM were abandoned, and consensus among the allies disintegrated. While the United States maintains a system of export controls on goods, products and technology, application of export controls is inconsistent and, to a degree, incoherent. It looks as if we go through the motions of operating an export control system, but without a clearly defined purpose. It is hard to make the case that export controls now serve national security.

Today there is a policy vacuum on export controls. Can we construct a policy that makes sense in the current global environment? It is important to address the policy issue before we worry too much about the modalities of the export control system. Even if we could invent the perfect export control management system, it would not mean much if there was no guidance on how to use the system to support our national security interests and goals.

During the Cold War we had a fairly clear idea of what our national security objectives were and how export controls could help us. On the one hand, particularly in the 1980's, the Soviet Union was spending a huge share of its GNP on a military buildup. Quantitatively the Warsaw Pact forces opposing NATO were far larger. But qualitatively we enjoyed an important advantage because our technology was superior. There were many areas where we had an important lead, but one area that dominated all the others was in microelectronics and computers. The use of microelectronics was revolutionary in weapons systems. For example, thanks to microelectronics and miniaturization we were able to put lookdown shoot-down radars in our fighter-bombers such as the F–15. With these radars we could find the enemy before the enemy could even see we were there. An early demonstration of how such radars could dramatically change the war fighting picture occurred over the skies of the Bekaa Valley in 1982 when the Israelis, flying mostly American F–15's and F–16's decimated Syria's Soviet-equipped Airforce.

Analysts at the CIA in assessing the Soviet arms buildup saw that we had an opportunity to exploit our advantage. We could, the CIA figured, use the export control system to keep vital microelectronics and computer technology from the Soviet military.

Taking the advice of the CIA, we put in place a comprehensive program that had three critical elements: (1) to organize America's export control system so it worked coherently to block key technology; (2) to work with our allies (leading by example), making use of COCOM; (3) to convince non-COCOM members such as Sweden, Singapore and Austria to cooperate with the embargo.

The program was implemented over an eight-year period and it worked rather well. The CIA in 1981 thought that the Soviet Union was within a few years of achieving the same level as the United States in semiconductor technology and computers. By the late 1980's the CIA saw the gap as much greater, eight to ten years. The Soviet leadership gambled they could gain a decisive advantage in the Cold War period by massive spending on their military, but when they could not obtain technology from the West to bring their quality levels up to be competitive with US and allied weapons, the entire program collapsed. Export controls and export control enforcement played a major role in ending the Soviet threat.

Today the strategic posture of the United States and its allies is very different from what it was during the Cold War and the opportunity to use export controls to support our national security policy is, I think, more limited than in the Cold War era.

For the United States there are two dominant policy issues. The first is how to deal with an emerging superpower that, at least in its military doctrine, aims at driving the U.S. away from dominating the Pacific rimland. In the simplest terms, the U.S. supplies the military balance to China, not by challenging China on land, but by protecting the rimland countries such as Korea, Japan, Taiwan, the Philippines, and Australia.

The other problem the United States faces is the spread of weapons of mass destruction and delivery systems such as ballistic and cruise missiles. While the U.S. has certainly worked hard to try and prevent the spread of WMD-type weapons and delivery systems, unfortunately the trend is very negative. Robert Walpole, NIO for Strategic and Nuclear Programs, National Intelligence Council, told the Congress last year:

The worldwide proliferation of ballistic missiles and weapons of mass destruction continues to evolve. Short- and medium-range missiles, particularly if armed with weapons of mass destruction, already pose a significant threat overseas to U.S. interests, forces, and allies. Moreover, the proliferation of missile technology and components continues, contributing to longer-range systems. Development efforts, in many cases fueled by foreign assistance, have led to new capabilities, as illustrated by Iran's Shahab-3 launches in 1998 and 2000, and North Korea's Taepo Dong-1 space launch attempt in August 1998. Also disturbing, some of the countries that were formerly recipients of technology have now been disseminating that to others.

The Intelligence Community continues to project that during the next 15 years the United States most likely will face ICBM threats from North Korea, probably from Iran—and possibly from Iraq—barring significant changes in their political orientations. These threats are, of course, in addition to long-standing threats from Russia and China.

While export controls can play some role in making it more difficult for countries to make WMD weapons efficient, I do not think that the current export control system will change the negative trend in respect to proliferation.

Today I will focus on the first problem, the absence of a coherent policy for the emerging superpower challenge to U.S. security interests. Policy means "a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions."

As noted earlier, when we dealt with the Soviet Union we were able to put in place a policy based on intelligence assessments that showed an important weakness in the midst of the Soviet military buildup. The weakness could be summarized as lacking the qualitative technological edge, especially in microelectronics and computers.

If we look at China today, I do not think we can point to a similar weakness, because China understands that for it to be competitive it needs to avoid the mistakes made by the Soviet Union. For example, while the Soviet Union was characterized by the absence of a modern civilian economy and a country that was mainly closed to foreigners, China has opted for a model that aims at developing a civilian economy that can raise China's standard of living and improve China's technology infrastructure. While China has not achieved the same level as the West in microelectronics, for example, Western industrial countries, including Taiwan, have transferred quite a lot of semiconductor manufacturing and know-how to China. The technology transferred is modern enough that it can be applied to military systems. Moreover, unlike the Soviet Union which could not openly get help from Western defense companies for military projects, China routinely gets help from the European countries and Israel as well as from Russia. Many of the more difficult challenges in building military systems, as in integrating sensors and computers, has been solved by getting outside help.

Given the amount of outside help and the modernization of China's infrastructure, the challenge is to see if we can construct a credible policy where export controls could potentially help advance our security interests.

The following ideas outline how to go about putting together such a policy.

The United States needs to carefully identify the major advantages we have in our defense systems.

For example, one area where we lead is in stealth technology that gives us an edge against conventional radar detection of our fighter aircraft. Another area where we clearly have a leadership position, and which we demonstrated in the Gulf War, is the ability to use computers and communications to an unprecedented degree to manage war fighting. Sometimes this is called the "Revolution in Military

Affairs." It is a breakthrough in military organization and science, and one that the Chinese have observed and are attempting to emulate.

We need to assess these advantages against the missions we need to perform in maintaining stability in the Pacific.

The U.S. mission in the Pacific has a different emphasis from the Soviet challenge and our NATO responsibilities. For example, the Navy mission in the Pacific plays a very important role in maintaining the balance of power and keeping the sea lines of communication open. China is seeking technologies and capabilities to challenge the U.S. Navy's power protection capabilities that include providing a shield against attacks against Taiwan. One area where China is making a great effort is to acquire the know-how to conduct wide-area ocean surveillance so it can target U.S. forces that are on the move. To do this China is trying to obtain advanced RPV and satellite technology.

Based on the conclusions we reach in focusing on our advantages and their contribution to regional stability, the final step is to identify those civilian and military technologies that are most sensitive. In making this determination, consideration and weight have to be given to identifying the areas where we have the best chance to effectively control technology dissemination.

More is involved in implementing a policy than export controls. Technology is shared through many mechanisms. There are many ways that information about advances in technology can be exchanged, even where highly classified information can be compromised. A vigorous enforcement system based on intelligence is a critical ingredient to implementing an effective policy. It follows that, if we are serious about the challenge, we will need to buttress our intelligence capabilities, bring in more people with Chinese language skills, and better focus our collection efforts based on an analytical model as suggested above.

I do not believe in knee jerk export controls anymore than I believe in policy by the seat of one's pants. We need a rationally based, empirically grounded policy approach to protect our military advantages in the context of our responsibilities in the Pacific.

Chairman HYDE. Thank you very much, Mr. Bryen.

Mr. Christensen?

STATEMENT OF LARRY E. CHRISTENSEN, VICE PRESIDENT, VASTERA, INC.

Mr. CHRISTENSEN. Mr. Chairman, good afternoon, and thanks for the opportunity to talk about export controls with you briefly today.

I am here on behalf of the American Electronics Association, now the AEA, as well as the American Association of Exporters and Importers; in all told, about 4,000 companies.

I have been involved in export controls for 22 years. I am greatly appreciative of the work you are doing in the Committee and the hearing you are holding today. I think we have an important topic.

I see this day to day. At Vastera, we help companies, some 200 blue chip companies, automate export control and import systems to get the documents right, to review the "bad guy" lists and so on. So we see the challenges each day.

I think quite clearly, government and industry both have interests in an effective and a disciplined export control system and that is where the devil is in the detail in getting it right.

I think only truly multilateral controls are effective in denying potential adversaries the wherewithal to proliferate weapons. I want to be as clear as I can, that in those areas, unilateral controls simply do not work.

I would like to make a point, Mr. Chairman, that I think is all too often not made—that is unilateral controls, I believe, are bad for national security.

Above all, I want to underscore the role that you will play in the coming years as the new Chairman of this Committee. I believe

unilateral controls are ineffective controls that hide as regimes. They distract the public. They misled the public.

They draw attention away from the mass media. The average man and woman in the street do not understand that sometimes what we say is a step taken by our Government to deny exports and to improve our national security—really, it is not actually intended to do that.

I think we need more truth in advertising. If a lot of the statements that the Administration puts out over the years about how effective unilateral controls were held up to a Federal Trade Commission truth in advertising test, they would fail.

I think as you develop a bill, I hope you will consider the general points I have made. I have not focused on S. 149, because I believe you have a history as a strong leader in the Congress, and I am sure this Committee will write its own bill, sooner or later.

Here are the things that I think are most important. Effective regimes have to have five elements. Producers have to belong. There has to be a list of common items, targets, license triggers and review standards.

Of the multilateral regimes that the U.S. belongs to today, I think three of them are very strong. The Wassenaar is fairly weak in this regard.

Unilateral controls, on the other hand, are symbolic. I realize that Americans love their symbols. There will be times when Americans will accept the cost in lost exports, lost jobs and lost living standards in order to achieve a symbolic goal.

My greatest concern in that Americans understand when they have got a unilateral control and when they do not, because the costs of unilateral controls are high. The costs include not only lost jobs, but lost respect from foreign suppliers. The experience of the Soviet pipeline case in the early 1980s makes it clear that all industries suffer when there is a unilateral control that is not supported by our allies.

So I would ask you to beware of the Administration. I have written these words myself many times, so I think I know whereof I speak. When you see the words "distancing," you can be assured that it is a code word that the United States has a unilateral policy objective and really does not expect to change the target country's behavior.

When you see the word "leadership" as a rationale, I think that is a good rationale for months, or maybe even a couple of years.

But the oversight responsibility for this Committee, I think, is to make sure that leadership does not continue to be the rationale for unilateral control for years and years and years. You know, when I was in the Army, that was not viewed as leadership. That was viewed as being a pretty stupid lieutenant by getting out too far in front of your men.

I think the diplomats need to have the pressure to improve the negotiations. They need to know that someone is looking at a weak regime that needs to be improved. So these are the roles that I think this Committee can play.

Within the legislation itself, there is consensus that license review deadlines are mandatory. In the 1980s, many, many licenses

took years to get through the system. I am not mistaken. I did not mean to say months. I did not mean to say weeks. It took years.

There is simply no defense for that kind of performance and I think all of us do not want to see the U.S. Administration lapse back into that.

Escalation deadlines, I think, are important. I, personally, am against staff level veto. I am not against staff. That is what I did for many years. My wife was staff up here for 30 years.

But I do not think any Congressman or any Senator would give a member of their staff, let alone every member of their staff, a veto on their particular vote. I do not think Congress should shape provisions in the dispute resolution processes of a bill that would do that.

Foreign availability partitions are important. We need to get at the facts. Americans would be a little disappointed to know how many times export control policy is made without a full understanding of the facts. I think it is important to have that escape valve and to have the opportunity to bring facts to the Government.

You have focused very carefully on this question of who decides the set-aside. I think it is appropriate that it be the President. I realize that Congress and the Executive Branch are loathe to support restrictions on the ability of the President to delegate. But I would agree with Secretary Tarbell, in this case, it is useful.

And there is a precedent, Congressman, for this. In the Reagan Administration, there was one override, shortly after the foreign availability provisions were written in this Committee, substantially with the support of then-Congressmen Bonker, Frenzel and Gibbons.

The penalties in this bill no doubt will be increased. I tell my friends in industry in speeches that one of the few things that the Congress and the Executive Branch were in thorough agreement on in the last Administration was that these penalties will be increased.

But I mention that, Mr. Chairman, because some have described S. 149 as an industry bill—as to say that there are all sorts of goodies in here for industry, and it is a perfect bill for industry.

In a selfish sense, it certainly is not. Senator Gramm started out with a draft sanction for multiple, aggravated violations of the death penalty. Now you might say there has been some progress towards the industry view in bringing back life imprisonment.

But I just say this to underscore, these are tough new penalties in this bill. It is a dramatic change, I think, from the Government's perspective.

I have a couple of words about China. It is all about China. Every tough regulatory export control issue of the day comes back to China.

We have a great debate in this nation. I am not sure how it will come out. I am hopeful, however, that as Congress views this debate, we have to deal with the rough facts of life that no other country views China to be quite the threat the United States does.

Now that has several implications. I think, above all, I would agree with Dr. Bryen that perhaps we need stronger intelligence

resources brought to bear, not just on license review, but brought to bear to support negotiations with our allies.

Countries act in their own best interests. Until we can convince them that our policy reflects interests that they share, then we are not going to be able to find support for any China policy.

The devil is in the detail, and I would be glad to answer your questions, Mr. Chairman.

[The statement of Mr. Christensen follows:]

PREPARED STATEMENT OF LARRY E. CHRISTENSEN, VICE PRESIDENT, VASTERA, INC.

Good morning Mr. Chairman and members of the Committee, thank you for the opportunity to discuss Export Administration Act (EAA) and the case for its renewal. My name is Larry Christensen, and I am vice president of international trade content for Vastera. I am here today on behalf of AeA (formerly the American Electronics Association), a 3,700-member company organization, and the largest U.S. high-tech trade association representing the U.S. electronics, software and information technology industries. I am also appearing on behalf of the American Association of Exporters and Importers (AAEI), an association of more than 1,000 member firms involved in both exporting and importing.

I have a brief oral statement describing my company and background, and AeA's and AAEI's comments on export control reform. I ask that my written statement be made part of the record.

My company, Vastera, manages global trade for our clients through software, consulting, and managed services. We provide our software and services to over 200 blue chip clients, and we are on the front lines of international trade every day. I am also an adjunct professor at Georgetown University Law Center and co-teach export controls and trade sanctions. Earlier I served the Commerce Department for eleven years where I directed the first complete rewrite of the Export Administration Regulations. In the private sector and in government, I have done export control work for twenty-two years.

Overall, AeA and AAEI support the creation of a new Export Administration Act, as it would provide a certain and stable legal framework for the executive branch to implement export controls. As recent events have shown, absence of an EAA can bring new challenges to the U.S. exporting community. Several times, the EAA of 1979 has expired and the International Emergency Economic Powers Act (IEEPA) was put in place to fill the void. Never intended to be a replacement for the EAA, IEEPA's authority was recently challenged in the United States District Court, M.D. Florida, Tampa Division, in the case of the Times Publishing Company, and Media General Operations, Inc., d/b/a The Tampa Tribune versus the United States Department of Commerce. If the U.S. government had not successfully appealed the original decision, it would have had two potentially catastrophic impacts: 1) it would have undermined the current U.S. export control regime; and 2) it would have enabled competitors, especially foreign ones, to obtain highly confidential marketing and pricing information of U.S. high technology companies.

As a result of this case, last October Congress reinstated through August 20, 2001 the expired EAA of 1979. AeA and AAEI are very appreciative of the initiative taken by the Congress on this issue. However, I believe that this is a short-term fix to a long-term problem. After August 20, 2001, the disciplines of the EAA will no longer be available unless the statute is renewed.

Industry and government both have strong interests in making the export control system as effective as possible. AeA's member companies and AAEI's member companies support effective national security and non-proliferation export controls. The challenge for government is to avoid ineffective controls that not only do not advance important interests of the United States, but also result in lost jobs and lost export opportunities. Exporting is good for the United States. It drives the growth in our economy, provides well-paid jobs for our people, provides an industrial base necessary for our military, and generates the revenues for the research and development necessary to move to the next generation of products, which are also valuable to our military.

In regard to the current EAA legislation (S. 149) which is awaiting a vote in the Senate, the essentials of the dual-use structure carry over from the approach of the 1979 EAA as amended, which were developed at the height of the Cold War. AeA member companies and AAEI member companies now find themselves in a much different environment; the Cold War and the peer-to-peer technological competition between the United States and its major potential adversary of that period are a

thing of the past. Administrative approaches developed in the Cold War environment are no longer effective and, in fact, can be seriously harmful to truly globalized U.S. companies.

In response to this new environment, I would make the following observations and recommendations for the House International Relations Committee as it considers its strategy for export controls. The themes of my remarks are effectiveness and discipline. The challenge for government is to impose disciplines on the system to avoid ineffective controls that do not advance important interests of the United States but impose on our citizens lost jobs and lost export opportunities.

TRULY MULTILATERAL REGIMES ARE EFFECTIVE

Multilateral regime building is by far the most important work by the government in the export control process. It is also the biggest challenge for our State Department diplomats. I cannot emphasize enough the importance of regimes that are effective.

Unilateral export controls do not work. They do not deny a target country access to the controlled item. Unilateral controls are often criticized by U.S. industry because they cause U.S. employees to lose jobs and U.S. firms to lose sales, market share, and revenues for research and development.

Unilateral controls are also bad for the national security of the United States for yet another reason. Unilateral controls give policy makers and the media the false sense of security that we have solved a given national security problem when, in reality, we have not. National security and non-proliferation controls that are unilateral in practice divert necessary oversight attention and diplomats do not spend the time and effort necessary to build an effective multilateral regime to deny the potential enemy access. Such an ineffective regime is a sheep in wolves clothing. It misleads the public and leaves the United States vulnerable.

Just what is an effective export regime? It is a cooperative arrangement among countries that represent all the producers of a controlled item and who have agreed to the following four elements: 1) a common list of items, 2) a common set of target countries or target end-users, 3) a common set of license triggering events, and 4) a common license application review policy. If a regime lacks any one of these elements, it will be ineffective. If a regime has all four elements, it is a means to leverage United States sovereignty and to achieve goals it cannot achieve on its own.

If the regime membership does not include all the countries that produce a given product, then the country that is not a member of the regime will supply the product to target countries; and the regime's objective in denying access to the target country will not be met. This is simply the law of economics. In the terms used in the Export Administration Act of 1979, there is "foreign availability." The regime and the U.S. export rules implementing the regime are ineffective. The days are long gone when the United States had a monopoly over the production of critical dual use products and can therefore deny an enemy products through unilateral action.

If the members of a regime do not agree on all four common elements, then the regime will be ineffective. For example, if the United States denies the export of a semiconductor fab to China and another member of the Wassenaar Arrangement authorizes its manufacturer to fill the same order, then the regime is similarly ineffective. Under the current terminology, we say that the United States denial has been "undercut" by another regime member granting a license for the same transaction.

During the Cold War, COCOM gave each member country a veto or blackball over the exports to the former-U.S.S.R, of high-end items on the COCOM Industrial List. During the 1980s, the United States regularly exercised this veto with no support from any other country. Our allies resented this, and they are now unwilling to agree to such a procedure in the export control regimes of today: the Wassenaar Arrangement (WA), the Missile Technology Control Regime (MTCR), the Nuclear Supplier Group (NSG), and the Australia Group (AG). However, the U.S. government has worked hard to develop so-called "no under cut" arrangements or at least notification procedures under which one country notifies all the other members of the particulars of its denial of a given license application. In this way, other members are informed of the position and will think long and hard before granting a license that under cuts their fellow regime member.

History tells us that as countries gain experience with each other in a given regime, they are likely to agree to more effective procedures. I think that is the experience of the United States in the MTCR, NSG, and AG. The WA has a ways to go. It has a general agreement—albeit unpublished—that the four rogue countries of North Korea, Iran, Iraq, and Libya are targets of the regime. However, the WA does

not yet have agreement on other targets. Keeping in mind that all countries that produce a controlled product should belong to the relevant regime, it is important that Russia has become a member of the WA. China is neither a member nor a target of the WA.

UNILATERAL CONTROLS ARE SYMBOLIC ONLY

All export controls and sanctions come with a cost. There are no cost-free controls. It is on the benefits side that unilateral controls are especially hard to justify. A unilateral control does nothing to deny an enemy or target consignee access to the equipment it needs. That is so almost invariably because there is foreign availability for that equipment from a nation other than the United States.

So what good is a unilateral control imposed by the Executive Branch or the Congress? Usually, a unilateral control achieves nothing in return for heavy costs in lost jobs and lost credibility of U.S. producers. Such controls prompt buyers around the world to view U.S. firms as unreliable suppliers because of the limitations imposed by the U.S. government. These are some of the reasons that unilateral controls are often referred to as "shooting ourselves in the foot." The Russian pipeline control and related cases of the early 1980s best illustrate the costs of a misguided unilateral export control. Virtually all of Europe opposed the U.S. policy to curtail exports to the then Soviet Union for the purpose of building a gas pipeline from Siberia to Europe. This resulted in an emotional clash with our allies, blocking statutes, a permanent loss of jobs and market share in the earth moving equipment business, and the construction of the pipeline as originally planned. In the final analysis, the United States paid a heavy price to achieve nothing.

Unilateral controls are especially likely to generate strong complaints from our allies when foreign firms within their jurisdiction are made subject to U.S. reexport controls or when foreign subsidiaries of U.S. firms are directed to follow U.S. rules. This problem goes at least as far back as the 1960s and is illustrated by the French court decision in Frehauf. The U.S. authorities ordered U.S.-based directors of a U.S.-based firm to order its French subsidiary to refuse to honor a contract to sell trailers to another French firm, which planned to export them from France to China. The French authorities directed that French firms honor the contract; and the French court found French interests prevailed. The U.S. authorities basically stood down.

BEWARE OF THE "DISTANCING" RATIONALE

Proponents of unilateral controls would argue that a unilateral control would achieve a symbolic goal of "distancing" the United States from the abhorrent behavior of the government of another country. When you see the Department of Commerce or the State Department use the term "distancing", you can rest assured that this code word means the U.S. government does not expect the support of allies and does not expect to change the behavior of the target government. In other words, the control is symbolic.

Symbols are important to Americans. Perhaps there are times when the majority of Americans would choose to pay the costs of a unilateral control in return for making a symbolic point. However, my opinion is that the media and the public at large seldom have enough information to judge whether a given unilateral control is worthwhile or even whether it is, in fact, a unilateral control. Unilateral controls are often wrapped in press releases and speeches that mislead the public and give the false impression the control will, in fact, change the behavior of the target government. These policy statements create a false sense of security that something is being done to promote national interests effectively when that is simply not true. In the face of such policy marketing or spinning, it can often take a good deal of political courage to question the control, but these are precisely the circumstances that call for hard analysis of a policy to see just what it achieves and what it does not achieve. In other words, unilateral controls require the highest degree of oversight and statutory discipline to minimize their use and the burdens they impose upon the American people. Unilateral controls should be imposed or continued only after an open, honest policy debate to determine whether the costs of the control are worth the symbolic gesture.

BEWARE OF THE "LEADERSHIP" RATIONALE

Another argument for unilateral controls is leading other nations to follow the policy of the United States. In fairness to the State Department negotiators, the early days of an export control regime may require some level of patience before reaching a consensus on targets countries or end users, license requirements, and license review policy. The AG and the MTCR both began with very little consensus on these

issues and have substantially matured to become more effective. However, the WA is many years old now and does not yet have a consensus on its goals. U.S. diplomats have worked hard to achieve an effective regime under its notification procedures, but indications in the press are that at least one U.S. denial of a license was undercut when another WA member issued a license for the same transaction.

Several U.S. foreign policy controls outside the scope of national security and nonproliferation controls have failed completely to generate support from our allies. Expressions of "leadership" in that context ring hollow. Solid Congressional oversight must cut through such claims and determine whether the symbolism of such a control is worth the costs in lost jobs, lost credibility with allies, and lost vigor in the U.S. economy necessary to support our military.

WHAT ARE THE BURDENS ON BUSINESS UNDER THE CURRENT SYSTEM?

As the Committee develops legislation, it is important to understand the practical burdens on industry. Under the current system, businesses face at least six types of burdens. The newest among these is imposed by the restrictions initiated in the early 1990s prohibiting the end use of all products in connection with proliferation activity. These end-use controls extend to the entire economy and not just items on the Commerce Control List. This is the key element of the Enhanced Proliferation Control Initiative or EPCI initiated in the first Bush Administration.

The U.S. government often takes the position that EPCI represents a trade off. Many items were taken off the Commerce Control List, and in return the U.S. government shifted important judgments to the private sector. Each firm now has the burden of avoiding exports and reexports with knowledge the buyer is going to engage in nuclear, missile, or chemical and biological weapons end uses. This is not easy to do; and the task brings with it considerable expense and effort.

The second burden is the explosion of names blacklisted by the U.S. government. There are more than 3000 names blacklisted by the U.S. government; and it is a per se felony for a U.S. firm to deal with anyone of those blacklisted firms or people anywhere in the world. Most of these names are published by the Office of Foreign Assets Control (OFAC) of the Treasury Department and are fronts for embargoed governments. These are called Specially Designated Nationals. OFAC also publishes two other lists—Specially Designated Drug Traffickers and Specially Designated Terrorists. The State Department publishes debarred and sanctioned parties; and the Commerce Department publishes parties denied export privileges as well as nonproliferation entities of concern. Once again, this burden extends to all products in the U.S. economy and to many transfers abroad. The burdens of export controls are not limited to high tech companies any more. All these blacklists create a burden on industry through the export control system. The requirement to vet all sales through thousands of ever-changing entities, located both in the United States and abroad, creates an enormous potential for liability for all U.S. businesses.

The third burden on industry is the classification burden. This requirement is to determine whether each product is on the Commerce Control List and, if so, what is the proper individual entry on the Commerce Control List. This burden falls on far more firms than those that make products that are actually controlled. In effect, every firm has the practical task of establishing that its products are not on the Commerce Control List. Without classifying a product, a firm often cannot know whether it needs a list-based license. In my judgment, there is very little Congress can do to reduce this burden. It is inherent in the system. However, Congress can see that exporters continue to have a right to a timely response from the Commerce Department when a firm asks how its product must be classified. That is essential in a fair export system.

The fourth burden is the time delay in getting a license. Once a company's products are classified, it can determine whether a list-based license is required or not. If a license is required, then the firm must submit an application and wait for an answer. This can take several months. The time consumed in this process is frustrating to industry because this delay can cause the loss of an order. The time required for the interagency process to pass on a license application is a feature of the export control system that must be disciplined. Congress should review this performance regularly; and the EAA should codify time limits for review and escalation of license applications. Codification of the current Executive Order would be a good feature for a renewed EAA in my judgment. However, many in industry would argue that the Executive Order allows the U.S. government too much time to review an application.

The fifth burden on industry is the uncertainty of jurisdiction among the agencies and complexity driven by the different processes and standards of the different agencies. The U.S. government is the only government in the world I am aware of

that splinters export-licensing jurisdiction so widely. The regulatory definitions and systems are quite different among the agencies (Commerce, State, Treasury, etc.). As between State and Commerce, some uncertainty of jurisdiction remains despite the order of the first President Bush to remove commercial items from the U.S. Munitions List. There are legitimate reasons to treat munitions and dual-use items differently, and I do not see any effort to change this jurisdictional system. However, it is important for the Committee to understand this burden and the distinctions and similarities between the two systems. In my judgment, Congress should not have return civil telecommunications satellite jurisdiction to State against the recommendations of State. With a better understanding of the relationship of the two programs, I think Congress would be willing to return civil satellite jurisdiction to the dual-use system and to control satellites in the way other nations do.

The sixth burden of industry is the challenge of dealing with different countries and procedures in every country of the world. Even a medium sized manufacturing firm in the United States will often have manufacturing or distribution centers in five other countries. Each has different rules and processes. Once again, this underscores the importance of developing truly multilateral controls.

CHINA

China is on everyone's mind both in industry and in government. Some countries view China as the likely largest single market of the world this century. Most of these countries do not consider China an enemy or a direct threat to their national security. We are engaged in a great debate in the United States to determine our policy toward China. I do not know how that debate will end, but I am confident of one important factor that I think should be considered in that debate. Our allies have no interest in making China the target of the Wassenaar Agreement or any other national security export control regime. If the U.S. government were to impose a unilateral tightening of controls on China, I believe there is little or no chance that our allies would follow such a policy.

As for the non-proliferation regimes, China is a member of the Zanger Committee. As a practical matter, the Zanger Committee could not hope to be effective without the support of China. China is also a nuclear weapons state and a party to the Nuclear Non-proliferation Treaty (NNPT). In other words, China has the right to maintain nuclear weapons under a treaty ratified and long supported by the United States. The United States has had its disputes with China over its nuclear trade with other nations. My personal view is that the nations of the Zanger Committee have more leverage over and powers of persuasion with China as a cooperating member of Zanger Committee than would be the case if China were not in the Zanger Committee. The same is true as far as China's obligations under the NNPT.

The topics of espionage and campaign finance have confused and made more difficult a clear discussion of export control policy toward China. This is especially true of missile technology. My view is that the highest objective of the United States is to convince China that it is in China's self-interest to refrain from missile trade and to join the MTCR. Career public servants at the State Department have indicated that they have made progress toward this goal. My concern is their conclusion that if the U.S. government chooses to make China an enemy, then it will be more difficult to bring China into the group of nations committed to stemming the proliferation of missiles. The MTCR can be far more successful with China as a cooperating member. At the end of the day, the United States can and will do that which is in its self-interest. Obviously, the relationship with China is complex. Among those complexities is the self-interest in the United States in seeing that China cooperates with the non-proliferation goals of the MTCR. The same is true of the NSG.

RENEWAL OF THE EAA

The first order of business in renewing the EAA is to do no harm to the export control system. Some have considered a statutory veto in the staff of one department or another. In my judgment, that would be a mistake. It could mean the return to the poor performance of the 1980s when license applications languished for years. That is not a typographical error. Some license applications were neither granted nor denied for years. Many purchase orders were lost simply by reason of the inability of the United States Government to make a decision. U.S. industry and American workers deserve better treatment. They should have a right under the EAA to timely decisions and to a resolution of license applications within the Executive Branch.

A veto by the career staff of any department could result in unending delays. In addition, it is simply inconceivable that superiors might be precluded by statute from reviewing interagency conflicts generated by their subordinates. One of the key

features of the current system that is necessary is the escalation procedure. The President and the Cabinet have not and will not see more than one or two cases over any given two-year period. However, an escalation procedure up through the levels of the Executive Branch (office directors, Assistant Secretary level, cabinet, and the President) is absolutely necessary to discipline the system. A career public servant will not often take positions that his superiors cannot defend in the interagency process. That is as it should be. The potential for a different decision at higher levels in effect disciplines the initial decision. No one would suggest that a Congressman's vote should be subject to a veto by each member of his or her staff. Similarly, officials in the Executive Branch should not be hamstrung by a statute that imposes a type of tyranny of the staff.

The EAA should recognize the differences between multilateral controls and unilateral controls. It should then impose substantial disciplines upon the creation and extension of unilateral controls. Frankly, industry is skeptical that adequate disciplines can be developed. The current system requires that foreign policy controls sunset each year unless renewed by the Executive Branch sending a detailed report to Congress. A unilateral foreign policy control has been removed only once under this provision. That involved certain controls on oil field equipment destined for the former Soviet Union. At an absolute minimum, the Executive Branch should be required to report that a control is unilateral so that its value can be debated. Oversight dedicated to minimizing unilateral control burdens is also important. Disciplines on Congressional imposition of unilateral controls are also necessary, and that is the subject of the debate initiated by Senator Lugar and supported by industry through U.S.A. Engage. From the perspective of industry, unilateral controls present the same problems whether implemented by the Executive Branch or the Congress.

On another matter, it is essential that the renewed EAA provide some method for industry to petition the government to raise facts that justify a measure of relief. The Export Administration Act of 1979 provided for certain relief when the petitioner could establish foreign availability. The U.S. House of Representatives should work long and hard to create disciplines for the use of unilateral controls.

Section 12(c) of the Export Administration Act of 1979 provided for the confidentiality of certain information provided by industry to the Department of Commerce such as license applications, classification requests, and other information necessary for the Executive Branch to do its job. The protection is important for the integrity of the system and to encourage industry to participate fully in the process. This protection must be included in any renewal of the EAA.

In my judgment, it is time for Congress to pass a right to judicial review from final administrative action. No such right now exists. In the 104th Congress, two members of this Committee spent three days in nearly constant negotiations with the Office of the Chief Counsel for Export Administration. The result is language that is the minimum judicial review that should be provided. In my judgment, the Committee should go further and provide for standard judicial review accorded regulatory actions. The many years of promulgation of the Export Administration Regulations under IEEPA tell us that the system works well in the face of judicial review.

In terms of legislative processes, industry is eager to see a working draft. That will likely generate much greater communication with the Committee. The above list of recommendations is by no means comprehensive. The devil is in the detail when it comes to export controls and trade sanctions. A working draft will permit industry to give more specific recommendations, will help forge a consensus, and will provide a uniform structure within which industry can operate when the bill is passed into law.

I realize that the Committee will create its own bill to renew the EAA and will not merely mark-up the Senate Banking Committee bill, S. 149. However, I would like to make the following comments on that bill.

S. 149

AeA and AAEI have recommendations that would enhance the Senate bill and minimize some of the harmful by-products of the current control regime. Our recommendations are focused on two key areas: the controls on transfer of technology and software within U.S. enterprises; and, the open-ended nature of EPCI catch-all controls on decontrolled and uncontrollable products, particularly in light of the order of magnitude increases in civil penalties found in S. 149.

SECTION 2(9)

AeA and AAEI recommend including language in Section 2(9), definition of an export, specifying that the intent of the Committee is that a license exception be created to permit transfers of data, technology or source code within qualifying companies as part of the Administration's commitment to review the deemed export control process. This commitment was reflected in the Senate Banking Committee's Report on S. 149.

U.S. companies must operate in a competitive global environment. Integration of worldwide facilities and efficient use of resources within U.S. companies are critical to the maintenance of leadership within high-technology industries and the economic and employment benefits that leadership provides. These activities are seriously impeded by restrictions that apply to non-US employees in the United States and abroad. Inclusion of the recommended language would build on stringent company controls on proprietary data and be a step forward in minimizing this impediment. The United States can maintain and enhance its national security interest by controlling the transfer at the critical stage abroad, rather than inhibit the sharing of knowledge at a U.S. enterprise.

END-USE AND END-USER CONTROLS (SECTION 201(C))

End-use and end-user controls in Sec. 201(c) should be enhanced with language that would mandate the exclusion of certain items from control that fall below reasonable *low value* standards, thereby eliminating pro-forma Enhanced Proliferation Control Initiative (EPCI) controls from marginal and uncontrollable transactions. Such language would provide a concrete benchmark for the "material contribution" standard already specified in the catch-all proliferation controls in this section.

This language would provide that no controls on end-use or end-user could be imposed on exports or reexports if, for example, the item would qualify for export or reexport to the country of destination under "No License Required", notwithstanding controls on end-use or end-user, and the value of the export is less than $10,000.

This exemption from end-use/end-user controls would not apply if the Secretary of Commerce determined that any item specifically identified and published in the *Federal Register*, if released from control by this provision, would pose a serious risk to the national security. It also would not apply to any export controlled under statutory authority other than the EAA.

This provision could eliminate EPCI end-use/end-user screening from tens of thousands of *low value* export transactions involving decontrolled products, eliminating the need for extensive screening for decontrolled products. In addition, it would create reasonable boundaries for potential imposition of massive civil penalties for *low value* administrative errors of no national security significance. An "escape clause" would be available to specifically list items that are so sensitive that a *low value* shipment criteria would pose serious security risks.

PENALTIES (SECTION 503)

In regard to penalties contained in Sec. 503, asks that the Committee seriously consider development of a tiered system similar to that used by the U.S. Customs Service. Customs' system ranks offenses as *negligence, gross negligence, and fraud,* with a corresponding tiered schedule of penalties.

The potential for imposition of civil penalties for *low value* administrative errors, particularly under EPCI controls, is extremely great, and is exacerbated by the order of magnitude increase in civil penalties included in the draft legislation. Under these conditions, boundaries must be established to protect exporters from arbitrary enforcement involving *low value* administrative errors in an extremely complex regulatory environment. In the absence of such limits, many exporters, particularly small businesses, may forgo the export market.

COUNTRY TIERS (SEC. 203)

AeA members and AAEI members believe that the three-tier system laid out in Sec. 203 is counterproductive and should be eliminated.

A country-tier approach limits the flexible and effective management of controls by imposing artificial groupings and constraints based on country criteria alone. Moreover, the five-tier system articulated in the draft would not lend simplicity to the system, but would complicate it further. Finally, the tier classifications have been proven to acquire a life of their own, becoming 'signals' of potential policy shifts rather than being modes of control as originally intended, thus tying the hands of any Administration wishing to change them.

FOREIGN AVAILABILITY AND MASS MARKET (SEC. 211)

Incorporate into Section 211 language that is forward looking. For instance, Sec. 211(d)(1)(A) currently reads "is available . . .". AeA and AAEI recommend that it read "is or will be available".

Export control legislation needs to encompass language that takes into account present realities as well as future developments. This is particularly important to the high-tech sector where technology is constantly advancing and new products are regularly entering the market place. The requirements for determining foreign availability and mass market status currently established in S. 149 are restrictive. If the Act does not provide for the administration to anticipate probable competitive developments that undermine the effectiveness of controls, U.S. exporters will first have to lose a market and demonstrate that it is lost before relief can be granted. However, once a market is lost, it is often lost forever and the damage to the U.S. industrial base cannot be undone.

OFFICE OF TECHNOLOGY EVALUATION AT THE DEPARTMENT OF COMMERCE (SEC. 214)

Establish criteria such as annual training and internship programs that ensure that the staff of this office is up-to-date in its technical knowledge and information.

The Office of Technology Evaluation will have important responsibilities including, but not limited to, foreign availability and mass market assessments, evaluation of global technological developments, and the monitoring and evaluation of multilateral export control regimes. It is therefore important that the staff's knowledge is current with the present day export environment and technologies. Deficiencies in this area will directly impact the exporting community.

NATIONAL DEFENSE AUTHORIZATION ACT (NDAA)

Repeal the provisions of the NDAA relating to high performance computers (Subtitle B of the NDAA).

These provisions no longer reflect the realities of the marketplace and have become a serious obstacle to U.S. interests. The "MTOPs' restriction on computers which requires the President to control computers based on their performance levels, no longer make sense under current technological trends, much less for future circumstances. The exponential growth of computing power and the availability of clustering and other technological developments have made this metric-based approach obsolete. While the metric fails to serve national security interests, it imposes a serious burden on U.S. economic interests and the Administration, diverting resources to constant adjustment of the MTOPs thresholds to reflect the latest technological trends.

The Committee faces a difficult challenge in drafting a bill to renew the EAA. However, the Committee has a long, distinguished record in the area of export controls; and I am confident that the Committee can meet its goals. It has now been thirteen years since the oversight committees of jurisdiction have substantially amended the EAA in legislation that has passed into law. Rather, export control law has been shaped by amendments to the National Defense Authorization Act and funding bills for foreign aid. The results have been poor. I am encouraged that the House International Relations Committee is asserting its authority, and I applaud the Committee for holding these hearings.

Once again, I thank you Mr. Chairman and Committee members for this opportunity and I am happy to answer any questions you may have.

Chairman HYDE. Thank you very much, Mr. Christensen.

Mr. Flake?

Mr. FLAKE. Mr. Christensen, because I am stupid, I guess, or out in front, you named some particular areas. One that comes to mind for me is the MTOPS standard. I actually co-sponsored a bill to get rid of that. But what specifically are you referring to?

Mr. CHRISTENSEN. Well, I am referring to two very different types of circumstances. One is the legislation locking in the MTOPS. I do not lay all the blame on Congress for that. I think the last Administration was a bit too quick to pull the trigger and move on computer decontrol levels, without support of allies. I think it has generated some backlash.

I am also talking about sanctions. It is easier to criticize unilateral controls in sanctions in the abstract than it is to name them.

But to be very bold about it, and I can do that, as I am not in Government anymore, there is no support in Europe for the Iran sanctions. There is a daily battle in Europe to determine whether you are captured by the U.S. sanctions in your particular subsidiary or not.

Most Americans do not know that the Iran sanctions are completely unilateral. I think that is probably the best example.

Another example I would give would be unilateral aspects of controls. There are five or six major burdens in the export control system. The license burden is only one of them. End use restrictions that the U.S. imposes are unilateral. Yet, I realize they are important to our response to Pakistan and India in the detonation of nuclear weapons and the like.

But these are unilateral aspects of what might be viewed as multilateral controls that add substantially to the U.S. burdens. U.S. companies are willing to bear them. The difficulty is, without effective regimes negotiating the same terms and conditions, if you will, they feel a certain unfairness that their competitors abroad do not have to meet those requirements.

Mr. FLAKE. Thank you.

Chairman HYDE. Mr. Menendez?

Mr. MENENDEZ. Thank you, Mr. Chairman. I regret that conflicting meetings did not allow me to be here at the beginning of the hearing. I would like to take this opportunity to just make some comments on this issue which I have been following for some time, and I appreciate the gentleman's testimony.

I think, Mr. Chairman, the task before us, simply put, is to responsibly legislate export controls. Indeed, I believe the single criteria for this renewal, it seems to me, is whether those export controls that we legislate can actually protect Americans, while providing for global competitiveness.

As a matter of principle, before enacting export restriction legislation, both Congress and the Administration must ensure to the maximum extent possible that the affected exports, in fact, can be effectively restricted.

I doubt anyone, as I think we have heard in some of this testimony, would responsibly suggest that legislating an unworkable control achieves any worthwhile goal and makes any sense at all.

Other important criteria needs to be determined. Would this legislation sensibly update the outdated 1979 law? That is, would it recognize the nations, states, and other global actors' technology and the threats to the United States have changed significantly since the end of the Cold War? Would it enhance America's economic prosperity, without sacrificing America's national security? I have often thought about this as an iceberg, with the tip of the iceberg being that which we seek to control, that which we uniquely possess. But the rest of that iceberg that is found worldwide in the marketplace is to try to control it is a very insignificant venture, and one that harms our economic competitiveness and does nothing for our national security.

Would it provide the Executive Branch with all the legal authority and flexibility it needs to protect the American people? To put

it another way, would it unduly tie the hands of the Administration in a way that would obstruct its duty to provide for the national defense?

I have taken a hard look at S. 149. I believe that it would meet those questions that I have asked. It would satisfactorily address the criteria I have outlined above. It enhances America's economic prosperity without sacrificing America's national security.

In that regard, I think that when we look at it, and I have been following this, as we all have, and I think those of us who have served on the Committee are keenly aware of national security issues and threats that face our great country.

In the last Congress, I was the former Ranking Member on the International Economic Policy and Trade Subcommittee, which no longer exists. But a good part of our time there was focused on the Export Administration Act. I came to appreciate the advent and permanence of rapid technological change and its immediate effects on our national security and economic prosperity.

I think these considerations have persuaded me of the importance of updating the Export Administration Act. I have concluded that passage of S. 149, as was reported by the Senate, is a prudent way to protect our national security and to enhance our economic prosperity.

I am convinced that it is time to move, Mr. Chairman. I want to commend you for holding a series of extensive hearings on a very important issue. I intend to be introducing in the House the Export Administration Act of 2001.

I look forward to working with the Chair and those interested Members of the Committee in seeing if we can get some real passage finally, so that we can move ahead and update our competitiveness worldwide, while protecting our national security interests.

Chairman HYDE. Without objection, certainly; thank you, Mr. Menendez.

I asked this question of the previous witness, and I am going to ask it of both of you. Is the memorandum of understanding between the U.S. and China regarding the right to perform post-shipment verifications working effectively? Do either of you know how that is working? Is it working?

Mr. BRYEN. I know a little bit about it, Mr. Chairman. I would defer to Dave Tarbell's comments, except to say that I think there has only been one successful inspection.

Chairman HYDE. It is just an attitudinal thing that the Chinese do not care to have us prowling about, seeing what they are doing with stuff we have sold them.

Mr. BRYEN. Well, actually, the idea behind these checks is to assure that the technology or the goods are being used for a legitimate civilian use and not for any military use. That is really the motivating concept.

Chairman HYDE. Sure.

Mr. BRYEN. I have always taken the view that that was a very thin reed to base an export policy on. That is to say, let us say, a super computer, if you are basing your export approval on the idea that you are going to somehow know how that computer is being used, you are taking a hell of a risk.

Chairman HYDE. Sure.

Mr. BRYEN. And the bottom line, it is non-functional.

Chairman HYDE. Which is what Mr. Tarbell said.

Mr. BRYEN. In so many words; I do not want to get in what he meant.

Chairman HYDE. He fell short of crossing the line and saying it is a disaster, but he certainly was not an advocate.

Mr. BRYEN. Right.

Chairman HYDE. Well, that is my view, too.

Mr. CHRISTENSEN. Could I respond, Mr. Chairman, to part of your question?

Chairman HYDE. Yes, Mr. Christensen.

Mr. CHRISTENSEN. It is pretty clear to me, from conversations with my former colleagues at BXA, that there are two problems with the way the program is structured in legislation now.

One is, and they are related, they are not left with enough discretion to do the post-shipment verifications where they think they are most needed. For example, the lawyers indicated they had to perhaps check the Shanghai Stock Exchange and shut down the computers, so they could verify the operating of the software, rather than not doing it at night.

Whereas, there were other post-shipment verifications they felt needed to be done on non-computers, and they did not have the resources to do them.

I think clearly Congress should do two things. First, give back to the Executive Branch more discretion on when to do the post-shipment checks. Second, if they say they need more resources, carefully consider that.

Now if the Chinese simply will not abide, then I think both the Executive Branch and the Congress have an interest in oversight to see what impact those refusals have.

But my understanding is that there are many, many post-shipment verifications done in China. Most all of them are successful, maybe not as many as we would all like, but certainly more than one.

Chairman HYDE. Well, I want to thank Mr. Bryen and Mr. Christensen for your cogent and very instructive testimony. Your years of experience, in and out of Government service, have clearly enabled you to assist us, and we intend to lean on you in the future.

Mr. CHRISTENSEN. We would be happy to help.

Chairman HYDE. Thanks so much. The Committee stands adjourned.

[Whereupon, at 12:29 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

NOTE: The paper entitled "The Future of Strategic Export Controls," dated April 2001 and written by Dr. Stephen D. Bryen, Study Group on Enhancing Multilateral Export Controls for US National Security, coordinated by the Henry L. Stimson Center in cooperation with the Europe program of the Center for Strategic and International Studies (CSIS), is not reprinted here but is on file with the Committee on International Relations.

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