Improvements to the Defense Trade Export Control System

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Good afternoon and thank you Arnold [Arnold Kanter-The Scowcroft Group] for that kind introduction. It is my pleasure to be here, and I would like to thank CSIS, the Aerospace Industries Association, the National Association of Manufacturers, and the U. S. Chamber of Commerce for helping to organize this opportunity for me to speak with you today.

I am excited to discuss with you the significant changes that this Administration has undertaken which we believe will maintain the United States' ability to control sensitive military technology and at the same time, permit U.S. companies to export their products in a more timely and predictable manner and collaborate more effectively with foreign companies.

If I may first tell you a bit about my background. My government service began as an analyst in the U.S. intelligence community, and has included work as a staff person to Senator John Kyl, service on the National Security Council, and as the Assistant Secretary of State for International Security and Nonproliferation. Last fall, I was named Acting Under Secretary of State for Arms Control and International Security. My current portfolio is quite wide-ranging, and includes the responsibility for administering the Department of State's defense export licensing program, and providing foreign policy input to the dual-use export licensing program administered by the Department of Commerce.

Today, I want to discuss three areas related to defense trade reform that have been a primary focus for me since last May: changes related to the way the State Department's Directorate of Defense Trade Controls does business, the recent Presidential Directive on defense trade reform, and the treaties on defense trade cooperation that President Bush signed with the United Kingdom and Australia. I would like to first give you some context about the effort to create these treaties and several related Administration initiatives in export controls.

It is of paramount importance that we protect truly sensitive U.S. technologies in order to maintain U.S. military superiority in the world. Threats to the United States and our allies grow daily. We must always be able to arm our military forces with the very best defense technology available to meet these threats, and at the same time we must keep that technology from our enemies.

We also must strike the right balance to ensure that the measures we take to protect technology against diversion do not undermine the ability of U.S. companies to conduct legitimate business transactions. To have the resources available to develop and produce leading edge technologies, companies must be able to reliably fulfill their customers' requests.

U.S. industry has the first part of this equation "down cold", as they say. Your companies have equipped U.S. military forces with cutting edge technology for decades. The Bush Administration recognizes that work was needed on the second part of the equation – ensuring that our export control system for U.S. defense goods and technologies is administered in a timely, transparent and predictable manner that protects sensitive technology and which permits U.S. companies to remain competitive.

Improving the responsiveness and consistency of the U.S. export control systems is a priority for me, and I believe we have made significant headway in accomplishing this goal since May 2007. I'd like to discuss some important efforts the State Department has undertaken this year as part of the Administration's effort to modernize the U.S. export control system.

DDTC Process Improvements

In FY 2008, the Bureau of Political Military Affairs expects to license up to $96 billion in authorized exports for direct commercial sales. The number of applications received has increased at about 8% annually. We anticipate that total licenses received will rise from **69,000 in FY 2006** to up to **85,000 in FY 2008**.

This is a huge responsibility – first and foremost, we must ensure our licensing decisions protect U.S. national security interests. At the same time, as I noted, we should strive to make this process timely and, to the extent possible, predictable.

Accomplishing this is a challenge. The State Department already has implemented a series of process and management reforms that have had a dramatic impact on improving the munitions licensing process.

We have brought a new management team on board. Acting Assistant Secretary Steve Mull has overseen this effort, with very good results. Our Deputy Assistant Secretary in charge of this area in Frank Ruggiero. Frank is a veteran of the U.S. national security community, and I know he is dedicated to making the State system efficient, responsive, and rational. Frank recently hired a Managing Director, Bob Kovac, who is dedicated to ensuring the State process meets its licensing deadlines in a thoughtful, consistent manner. Bob's efforts will be key to making sure we meet deadlines set by the President's recent directive. The Directorate of Defense Trade Controls, is understaffed, we are working to increase staffing. More on that when I discuss the President's directive.

Since last May, we have seen impressive improvements in the munitions licensing system:

The Directorate for Defense Trade Controls has reduced its licensing backlog by 51%, from **7,200 pending cases to 3,450**.

All export license applications for OIF and OEF are now being complete within 7 days.

We have a Managing Director-level review of all applications pending over 60 days, thus reducing the number of electronic licensing cases pending over 60 days from 400 **to 20 (a 95% reduction**).

We also have been examining longstanding policies with a view to updating them, and recently implemented the first change as a result of this review. We changed our licensing policy so that employees of foreign companies who are nationals from NATO or EU countries, Japan, Australia and New Zealand are now considered authorized under an approved license or TAA.

This will alleviate the need for companies to seek non-disclosure agreements for such nationals and recognizes the inherent low risk of transferring technologies to nationals of these countries under an approved license or TAA.

We also are working with the Department of Commerce to clarify the application of U.S. munitions export controls to parts and components certified by the Federal Aviation Administration, an extremely important issue to AIA companies. Last night I signed a Federal Register Notice to clarify this issue. Similarly, we are reviewing internal review processes within the Department with the objective of eliminating internal bottlenecks where they may exist.

Presidential Directive on Defense Trade Reform

I want to praise the Coalition on Security & Competitiveness whose recommendations were a catalyst to the effort that culminated in recent Presidential directives.

On January 22, President Bush signed two directives involving the U.S. munitions and dual-use export control systems. I will discuss the Defense Trade directive, since the dual-use directive is the purview of my colleagues at the Department of Commerce.

The Directive draws from the Administration's internal efforts to improve the system as well as the recommendations provided by the Coalition on Export Control Reform. Agencies carefully reviewed the Coalition's recommendations, and recommended to the President that he adopt many of them. In some ways, I believe the Presidential directive goes farther than actions recommended by U.S. industry.

- **Timed License Review.** Under the new procedure, the Secretary of State will implement guidance to ensure the review, analysis, and decision on export authorization requests for International Traffic in Arm Regulations (ITAR)-controlled articles, services, and technologies will be completed within 60 days from the submission of a complete license application. Certain national security exceptions, such as the need to perform end-use verification or notify Congress of the proposed export, will be outlined specifically. These guidelines likely will be implemented by Executive Order, and thus available publicly.
- **Resource Improvements.** The Department is to provide a plan to the Office of Management and Budget by March 22, which will outline the resources required to carry out the directive without an increase in budgeted funds. The plan will include the financial and personnel resources necessary for the Directorate of Defense Trade Controls to execute its range of responsibilities, and will address the authority for and implementation of additional self-financing mechanisms, which eventually will provide up to 75 percent of the Directorate's mission.
- **Third Country and Dual-Nationals Policy**. The President directed that we will implement a policy to grant access to third country and dual nationals from other NATO countries, European Union Member States, Japan, Australia, and New Zealand to certain licensed defense exports without the need for a separate export authorization. As I mentioned earlier, this policy was implemented on December 19, 2007.
- **Commodity Jurisdiction Process.** The President directed the National Security Council to work with State, Defense, and Commerce to issue revised guidance by February 22 regarding interagency coordination of the commodity jurisdiction process. The goal is to provide for a timely mechanism to complete commodity jurisdiction requests or resolve interagency disputes within 60 days. We intend to work with the NSC and our colleagues from Defense and Commerce to make this process work smoothly.
- **Dispute Resolution Committee.** The President also directed State to establish by March 1 an interagency committee to serve as a forum to facilitate timely consideration and resolution of interagency disputes on defense export authorizations and commodity jurisdiction decisions. The committee will be chaired by the Deputy Assistant Secretary for Defense Trade Controls, with membership at the Deputy Assistant Secretary level. State and Defense will be permanent members of the committee, with Commerce participating when commodity jurisdiction issues are addressed, and Homeland Security participating when the committee addresses compliance, enforcement, and specific commodity jurisdiction issues relating to technologies of homeland security concerns, and other issues as determined by the Secretary of State. Other executive branch agencies may be invited to participate as necessary by the Secretary of State or as directed by the President.
- **Improving Congressional Notification Process.** By May 22, State will brief the National Security Council on its efforts to work with the Congress to improve the current congressional notification processes for notifying munitions licenses as required by the Arms

Export Control Act. The goal is to make these processes as timely, predictable, and transparent as possible.

- **Electronic Licensing System Improvements.** The Directive also provides instruction to State to finish upgrading its electronic licensing system, with the goal of ensuring that all reviewers (within State and in other agencies) can electronically receive, distribute, and respond to the full range of documentation and material that is required or requested in support of the licensing process, including commodity jurisdiction requests. It ensures U.S. industry may interact, as appropriate, with the State Department on a fully electronic basis. In addition, by Jully 22, State, with assistance from Defense, Commerce, and Homeland Security, will provide the NSC with a plan to achieve electronic interoperability among these departments and with other relevant executive branch agencies.

Our efforts to accomplish these actions are well underway, and we look forward to engaging with U.S. industry as we work to implement these efforts over the coming months.

Defense Trade Treaties

And, as you know, the Administration also signed landmark treaties with the United Kingdom and Australia on Defense Trade Cooperation this year. The U.S.-U.K. Treaty was submitted to Parliament in the UK and to the Senate in the United States in late September, and the U.S.-Australia Treaty was submitted to the Senate in early December. We recently provided the Implementing Arrangement, or “IA” for the U.K. Treaty to Congress, and expect to provide the IA for the Australia Treaty to Congress shortly.

In the interests of time, I would like to focus on the U.S.-U.K. Treaty, and note that our goals for concluding these Treaties with the United Kingdom and Australia -- with whom we share exceptionally close defense relationships -- were the same, and that both Treaties are largely the same in content.

Before I discuss details, I would like to briefly outline our rationale for concluding the Treaties. We have a special relationship with both these countries – the relationships are special because of our shared values, our shared outlook on the world, and because of our deep and longstanding cooperation over the decades to deal with threats to our way of life. For example, we have engaged in innovative defense trade arrangements and sharing of cutting edge technologies with the United Kingdom from the early stages of World War II, now some seventy years ago, as our countries fought to defeat fascism, to our deep cooperation during the Cold War, where the U.S. and U.K. worked extraordinarily closely to successfully defeat another threat to our liberty and way of life: the threat from communism.

Today, our nations are engaged in a struggle against another threat to our liberty, values and way of life: the fight against terrorism and Islamic extremism. Both the U.S. and the U.K. have experienced significant terror attacks on our soil. Australia has experienced significant terror attack against its citizens on foreign soil. The September 11 attacks in the US, the 7/7 attacks on the U.K., and the Bali bombing demonstrate the emergence of a significant transnational threat which uses unconventional fighting methods. Al Qaeda and other Terrorist organizations will use whatever technology they can acquire to accomplish this goal. As we have seen in thwarted attacks in the U.K. and elsewhere, they are a resourceful foe, using traditional military hardware and technology, as well as adapting less sophisticated technologies, like the ubiquitous cell phone and other common items.

This is a conflict that is global with several “fronts.” The United Kingdom as been our staunchest ally in this struggle, with Australia and other coalition partners critical to U.S. efforts in Iraq and Afghanistan, and in efforts to combat terrorism and the causes of Islamic extremism internationally.

In this contemporary security environment, it is essential that we take steps to achieve more rapid movement of defense items and technologies and enable our nations to more efficiently pool resources and leverage the technological strengths of U.S. and U. K. industries.

Our military, intelligence, and other security personnel need to be able to work together seamlessly, to efficiently share information about combined operations, and the men and women on the “front lines” need to have interoperable equipment to successfully accomplish the mission—whether they are on the “front line” in Basra, Kandahar, London, Sydney, or New York.

In addition, our defense and security companies must be able to collaborate in the development of technologies that will effectively counter both conventional and unconventional threats.

It was against this backdrop that we began considering ways to put in place a more effective and efficient defense trade regime. We were mindful of the security environment, but as we sought a solution we also needed to take into account the large scale of economic trade between our countries, and the large volume of defense trade.

For example, the United Kingdom is the largest foreign investor in the U.S. (over $250 billion), and the United States is the largest foreign investor in the United Kingdom (over $350 billion). Moreover, the U.K. is our largest defense trade partner. The Department of State approved over 9,400 licenses for defense exports to the UK in 2007, worth over $11.9 billion.

We also looked at how we were handling this large volume of defense trade and discovered that we needed to take into account the costs and benefits of continuing to perform case-by-base reviews of export license requests. Over the past two years, the State Department has processed over 15,000 such exports licenses for defense trade with the U.K. Over 99.9% of these requests were approved. (Licensing volume for exports to Australia is lower, but with the same extraordinarily high approval rate.)

We were also mindful of the less-than-hoped for results of the numerous defense trade reform initiatives of the past decade. As John Maynard Keynes observed, “the Difficulty lies not so much in developing new ideas as in escaping from old ones.”

With this in mind, the President directed we take bold action and negotiate a Treaty with the U.K. and Australia that would:

- support joint U.S.-U.K. military and counterterrorism operations
- speed U.S.-U.K. research, development, production, and support of the next generation of interoperable defense technologies;
- enable development of the most effective countermeasures possible to combat terrorist attacks, at home and against our partners in the war on terror, and
- leverage each other’s experience, and reduce duplication of efforts in research, development, production, and support.

The goal was to create the ability for our respective militaries and security authorities, and companies, to freely exchange information and technologies. To accomplish this, we have created an entirely new structure for most defense exports. I will outline how the Treaties will work, using the U.K. treats as the example, but the mechanisms described apply also the Australian Treaty.

The Treaty will create a community of the U.S. government and Her Majesty’s Government, including the various Ministries, Departments, and agencies, as well as the defense and security companies and facilities in both countries. Exports of most classified and unclassified U.S. defense goods, technology, and services will be permitted to go into, and to move freely within this community, without the need for government approvals and export licenses, when in support of:

- Combined military and counterterrorism operations;
- Cooperative security and defense research, development, production, and support projects;
- Specific security and defense projects where HMG is the end-user; and
- U.S. Government only end-uses.

This will be a big change from today's export licensing system where numerous government approvals are often necessary for companies to hold discussions about potential projects, to pursue joint activities, to ship hardware and know-how to one another, and even sometimes to move engineers and other personnel within branches of the same company on both sides of the Atlantic. These numerous export licenses and the weeks and months waiting for review and approvals make the task of transatlantic cooperation more difficult.

Although the specific list of activities and projects that will fall under the Treaty's scope remains to be developed, we envision the Treaty will cover the bulk of our efforts. I believe some good examples of eligible activities and project that will be included are efforts to develop technologies to defeat IED's which our forces face on a daily basis in countries like Iraq and Afghanistan, aspects of US-U.K. Missile Defense cooperation, U.S.-U.K. armor cooperation, U.S.-U.K. surface ship radar development, and the U. S. Joint tactical Radio System—U.K. BOWMAN radio interoperability project.

Regarding U.K. only end-use programs, we believe U.K. programs with significant U..S content, such as ASTOR, would likely qualify. As with any rule, there will be exceptions. Exports of some defense items, technologies, and services will be excluded from coverage under the Treaty, however, and we will identify these exclusions for the exporting public. Excluded items will still require a State Department license under the current process.

One important highlight of the Treaty is that it will include the ability for both governments to effectively enforce it against violators. For example, defense articles exported under the U.K. Treaty will be considered "RESTRICTED" in the U.K,. and the Official Secrets Act will apply to such defense articles. In addition to the Official Secrets Act, U.K. export control laws may also apply and provide an additional level of protection. The defense articles exported under the Treaty may not be transferred or exported to companies or other entities that are not part of the Treaty's approved community without prior permission from the U.K. MOD and USG. A violation of this requirement will, at a minimum, be a violation of the Official Secrets Act, as well as a violation of U. S. export control laws.

Retransfers and reexports outside the approved community will require an HMG and USG authorization. The Treaty provides for an exception to the requirement for reexport authorizations for exports going outside the Treaty's approved community when such exports are in direct support of U.K. forces deployed overseas.

We recognize that it is important to create procedures that protect national security interests, but which also are usable by our respective industries. To that end, we have sought industry feedback as we go through the IA development process. In the U. S., for example, one avenue we have used is the Defense trade Advisory Group, an established channel through which we will seek industry feedback on proposed procedures. We also have sought input in informal discussions with industry.

So how would the Treaty work? With apologies to J.K. Rowling, let's consider that the U.S. and U.K. are each pursuing an independent effort to develop a personal invisibility cloak like that used by Harry Potter. Our DOD and HMG's MOD decide to join forces, hoping to leverage our separate efforts. They negotiate a cooperative MOU to develop the cloak. Our two governments agree to add the invisibility cloak to the list of approved projects, and each government selects its contractor team.

Under the Defense Trade Cooperation Treaty, instead of the US company preparing and seeking U.S. State Department approval of a TAA for this project—which would normally take around 45-60 days—the contractor will check a U.S. Government website. There are three lists to check—is the U.K. industry partner on the list of approved companies/facilities? Check. Is the invisibility project on the list of approved projects? Check. Is the technology on the excluded list? The invisibility cloak technology isn't excluded. Check. With all three boxes checked, the U.S. contractor and U.K. companies can freely cooperate without export licenses.

The U.S. company will be able to send its technical data to the U.K. firm to begin work, using the system established to implement

the Treaty. Subcontractors can be added later without the need for licenses as is the case today, so long as the subcontractor is also a member of the approved community. No need to wait for an amendment to a TAA to add an additional party like today. A few weeks later the U.K. contractor team wants to visit the U.S. company to examine and discuss initial samples. This can also be done under the Treaty, and does not require a license.

All of these activities can all be performed without seeking prior authorization from either government, although records will need to be kept. This is a dramatic departure from the way we do things today. The Treaty goes beyond being a new way of doing business—it establishes a unique defense cooperation environment to reinforce our partnership with our most important allies.

We have much more work to do. The Treaty must still be considered and approved by our Senate and Parliaments in London and Canberra. Implementing agreements must still be negotiated and signed. And the hard work of implementing and making this new arrangement a reality must be accomplished.

Of course, improved defense and security cooperation is not an end in itself. Its value lies in enabling both our countries to develop and field more effective military capabilities, at lower costs, than otherwise would be the case, and to support the ability for our two countries to operate together in pursuit of common security objectives.

But to paraphrase the noted American philosopher and catcher for the New York Yankees Yogi Berra, who once offered this simplistic observation on the need for clear goals, “If you want to get where you’re going, it helps to know where you want to be.” The U.S., U.K. and Australian governments know where we want to be and are moving forward toward that goal.

So, in closing, let me thank you for your attention this afternoon. I hope that I have provided you with useful information about the U.S.-U.K. and U.S.-Australia Treaties on Defense Trade Cooperation, and other actions the Administration is taking to ensure our export control system is the most effective and efficient in the world. I would be pleased to take questions.

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