A STRATEGIC AND ECONOMIC REVIEW OF AEROSPACE EXPORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION AND TRADE

OF THE

COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

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A STRATEGIC AND ECONOMIC REVIEW OF AEROSPACE EXPORTS

WEDNESDAY, DECEMBER 9, 2009

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

The subcommittee met, pursuant to notice, at 2:03 p.m. in room 2200, Rayburn House Office Building, Hon. Brad J. Sherman (chairman of the subcommittee) presiding.

Mr. SHERMAN. I want to thank everyone for being here. As one of our largest sources of exports, the aerospace industry plays a vital role in securing our military strength and bolstering the economic competitiveness of the United States. Today's hearing is to examine the strategic and economic impact of our current policy on this industry. This is part of an ongoing effort by this subcommittee. We have held hearings on this issue; in July 2007, May 2008 and earlier this year, both in April and in July. These hearings have led to changes in policy and procedure in the Executive Branch and to the passage, through at least the House, of important legislation that has yet to make it through the Senate.

This includes the Defense Trade Controls Improvement Performance Act, which has passed the House twice, the second time as part of the Foreign Relations Authorization Act, which is pending in the Senate. That act pending before the Senate has the work of this subcommittee and collegially several of us in the Section 826, which provides authority to remove satellites and related components from State Department control to Commerce control, while at the same time protecting our technology from China. We are also in the process of including in a larger bill the Export Controls Improvement Act. The aerospace industry has been a particular focus, not only of myself, but Mr. Royce, our ranking member, Mr. Manzullo, who has focused on small business, and our vice chairman, Mr. Scott.

We have seen important changes involving Section 17(c) related to civilian aviation equipment in response to the concerns of this subcommittee. The Commerce and State Departments, both of which are with us today, worked together to issue a rule in August 2008 that clarifies jurisdiction significantly. Moving forward, ongoing clarification in this arena from the Departments of State and Commerce would be beneficial, as will a timely review of control items. Also, as a result of this subcommittee's previous work with the directorate of defense trade controls, the DDTC, I am pleased

to see that the State Department has decreased the average license application processing time to one-third of the 2006 average, so you are to be commended.

I want to commend both agencies represented here for responsiveness to congressional concern. Not only does the aerospace industry contribute to the economic output of the U.S. and provide high paying jobs, it also is critical to the defense strategic capacity of the United States, to that of our allies, and the fact that we are building the planes means that some other country isn't and that we are preventing the development of technology in hands that we might not control. In fact, organizations, such as the International Association of Machinists and Aerospace Workers, warned at our last hearing on this subject that failure to consider the employment impact in export control policy may exacerbate the existing job crisis in the United States.

I want to submit for the record a letter sent to us by the Machinists' Union which states, in part, mindful that policies that encourage or facilitate further outsourcing of technology and production can, and do, have a detrimental impact on U.S. workers and will impede our nation's recovery. Clearly, in deciding what our policy in this area ought to be we should be weighing on the one hand any possible, or even remotely possible, diminution in our national security by shipping abroad sensitive technologies versus the jobs impact. Where we have a circumstance where something has a negative jobs impact, then we should not accept even the tiniest and most theoretical diminution in our national security.

Now, currently there is no legal requirement for the export control process to take into account the employment impact when assessing licensing decisions or the consequences that certain transfers will have to the stability of the defense industrial base. While companies need licenses through the DDTC to manufacture certain munitions overseas, it is time to start thinking about making a similar requirement for dual-use items, and whether it is Commerce or State, no license should be issued that doesn't take into consideration the affect on jobs. As I have said before, there is no reason to issue a license if it is going to have a detrimental impact on jobs.

We need to insure that we are not outsourcing our critical national security infrastructure or facilitating the outsourcing of U.S. jobs and perpetuating our trade deficit. A particular issue arises over the defense needs of Japan, their prior interest in the F–22, their possible future interest in the F–35. I know that we have refused past Japanese Government's requests for them to purchase, for us to sell, the F–22. Every year since 1998, Congress has imposed a year long ban on foreign sales of the F–22. This has not been done by the Foreign Affairs Committee, but rather, through the appropriations process.

I can't blame the Appropriations Committee for taking this action when our committee has not stepped forward with a clear policy answer to the question of whether, and what, should be the limitations on the export of the F–22. When we don't act, they do. Congress works best when the different roles of the appropriations and authorizing committees are followed, and I look forward to a return to regular order on that issue. The 2010 National Defense

Authorization bill includes reporting language, rather, a reporting requirement to detail the feasibility, cost and impact of selling the F–22s abroad showing that the other relevant authorizing committee is, in fact, taking a look at whether we should sell these F–22s in certain circumstances.

As I said, there may be interest in the F–35. I would say that it is in the U.S. national security interest for Japan to have a major qualitative advantage over China and other potential Japanese adversaries, and to enhance Japanese security is, for the most part, to enhance American security. Notably, due to a recent change in the ruling party, the Japanese Government, which had expressed continuing interest in purchasing the F–22, may or may not be interested at the present time. They had been interested in purchasing 40 to 60 aircraft. Taiwan has also expressed an interest in purchasing F–16 aircraft. Given the violence done to the American economy by the illegal actions of China in so many economic spheres, for us to accede to the Chinese concerns in not providing the F–16 to Taiwan seems to add, not insult to injury, but injury to injury.

U.S. aerospace companies have had significant financial interest in the export of their commercial products. Our industry today faces foreign competition for these sales. The Europeans unfairly subsidize their industry. I believe the United States has a vested interest in supporting our domestic producers. For example, markets in China and Russia have potentially high demand for U.S. commercial aircraft. In particular, the Chinese may have a demand for as many as 3,700 new civilian aircraft in the next 20 years. That represents $40 billion in potential sales. Additionally, new Russian airline Rossiya, and I am sure I mispronounced that name, has solicited bids for up to 65 aircraft.

I have long advocated for a better relationship between the United States and Russia, and the integration of U.S. commercial planes into the Russian civil aviation carriers would be a real signal of an improvement in increased U.S./Russian cooperation. Finally, I want to comment on the possibility that GE might want to move various facilities to China, perhaps to take advantage of the Chinese market. We have a strategic decision to make. One is do we try to compete against the Europeans to see who can hand more technology to China on the thickest silver platter, or do we want to cooperate with Europe to say that as long as China is running such a huge trade surplus with the world, that perhaps this is one area of economics that they should not be expanding into.

None of the arguments in favor of cooperating with China should assume that cooperation with Europe on this is impossible until we at least try. I look forward to hearing from today's witnesses, and I especially look forward to hearing the opening remarks of our ranking member, Mr. Royce.

Mr. ROYCE. Thank you very much, Mr. Chairman. This is the latest hearing on export controls. The subcommittee is, I think, very well positioned should the committee move ahead with broad export control legislation. Let me just make a couple of observations, and one is that aerospace is one of our nation's key industries, both economically, but certainly national security-wise as well. Of course, American dominance and leadership can't be assumed here.

Russia and China are focused on developing exportable aircraft. India has a vibrant space program. Our export control system was crafted during our economic and technological dominance. That has changed, unfortunately.

The question today is whether the system has evolved appropriately in a way that doesn't choke innovation and competitiveness, yet protects critical technology. There have been some helpful reforms, made mainly by the past administration, and there have been encouraging words by the current administration, but more is needed to manage rapidly evolving technology and crafty foes. A witness at our satellite hearing called the system broken, very bureaucratic and unable to distinguish what is commercially available and what is not. The GAO has observed an inherently complex system having what they call significant vulnerabilities. Meanwhile, the GAO keeps rattling the system.

GAO put out a June report that explained how its investigators beat export controls by buying sensitive technology and illegally shipping fake versions abroad. It was very easy for them to pull that off, and this is a big problem. The full House has approved an authorization bill giving the President authority to remove satellites from the State Department managed munitions list, except for technologies that could be transferred or launched into space by China. This change reflects the view of the Pentagon and others that satellite export controls have hurt U.S. innovation. Excluding China is smart, though. For one, China is working with Iran on space and satellite programs. I have expressed concerns about China before, particularly the validated end-user program, which expedites tech exports to China, yet lacks strong monitoring capacity.

There is too much trust. But it is not just in export controls that China is naively viewed. A recent Time Magazine story analyzed what a lousy decade we are finishing. We had 9/11, two market collapses, the financial crisis, Katrina, and so forth. On the plus side of its ledger, one of the few "amazingly great" things was the, "stunning rise of China." "Amazingly great," as if China is not a totalitarian country aggressively stealing our technology. We need more realism about China across the board in this society. I want U.S. companies to be world class. That means killing the bureaucratic excess. I want to deny terrorists, and Iran, critical technology, and that means being efficient. These aren't contradictory goals. We won't get near them unless export control betterment is a key administration goal. I hope to be proved wrong in my skepticism. Let us start today. Thank you very much, Mr. Chairman, and I yield back.

Mr. SHERMAN. Thank you. With that, let us see who else has an opening statement. I assume Mr. Scott does.

Mr. SCOTT. Thank you, Mr. Chairman. I appreciate this hearing, the commercial and military aerospace industries are very significant in terms of our export, but also in terms of vital employment, for our aerospace industries employ hundreds of thousands of workers in the United States. The recent economic downturn has affected a great number of Americans with unemployment exceeding well over 10 percent, so it is timely, and it is a pleasure to be with you here. I would like to join you in welcoming our distin-

guished witnesses as we tackle the subject of strategic and economic review of aerospace exports. The topic of today's hearing is one that we have broadly been considering for quite a while.

The specific aspects of today's hearing, particularly the economic impact of aerospace exports, is one that I am keenly interested in. So I thank you once again, Mr. Chairman, for providing this forum to discuss these important issues. As I said, the boom and bust of aerospace exports has played out on the stage, particularly of my congressional district where Lockheed Martin and the people of Georgia build some of the finest planes in the world. As a matter of fact, Lockheed has long been the structural backbone of the reason why the United States has the air superiority that we have today which means we have the military superiority in the world today.

Let me tell you, Mr. Chairman, the Obama administration dealt a mighty blow to my district when it decided to terminate a program that employed thousands of workers, not just in Georgia, but all across this country, impacting over 85,000 employees, and that is in the building of the F–22. The F–22. That platform that gives us, and has given us, that competitive edge, that has helped us to maintain our military superiority. Myself and hundreds of other Members of Congress, both in the House and the Senate, implored the President. I visited the White House on three different occasions to plead with the President and Secretary Gates to consider the economic consequences of closing this production line.

Our entreaties were roundly ignored by this administration, though. During a time when our economy is hemorrhaging jobs left and right, they decided to kill thousands of more jobs. And so what is left for these workers? Is there any hope that their jobs might be saved? Well, we do have the F–35 coming on line, but when? It is my understanding that the Japanese, for example, wanted to purchase F–22s, but the administration has told them no. Of course, that makes little sense on any front. The Japanese are a close friend, and they are a close ally who wish to help out the United States economy by purchasing high value products from us, but we tell them no.

Mr. Chairman, I do want to add one other point at this time, that I think it is very important for us and the Foreign Affairs Committee, and us, particularly on our subcommittee, for it is our subcommittee that deals with international trade, and while I have great respect for the Appropriations Committee, they are appropriators. It is the Foreign Affairs Committee that provides the analytical information, the thoughtful embrace of these decisions dealing with our military and our defense needs and relations to our foreign policy, interwoven with the very important issue of international trade, and I think it is very important that if there is a final say so in terms of the F–22 and others that will come on line regarding international trade, that it should be done in the committee of jurisdiction, which is the Foreign Affairs Committee, and certainly in the bosom of the subcommittee of which we sit today.

As I said, the Japanese are close friends and they are allies. By purchasing these high value products from us it helps us. Moreover, this administration has stated a commitment to helping our partners build their capacity for defense and security. It has been

pointed out it is important that our partners in the world maintain the qualitative edge, whether it is Japan on one hand, or perhaps Israel and the Middle East on another hand. So it is even more cresotic that this administration would tell the Japanese that they can't buy what they want, and especially with the Japanese being our friend. Admittedly, the United States Government does not have a responsibility to promote exports from one particular company or another, and economic concerns shouldn't always trump national security concerns. In fact, they must not.

When our economy is struggling and a friend offers us a win/win solution and help that creates and preserves jobs and helps ensure our national security at the same time, why not jump at the chance instead of telling them thanks, but no thanks and driving them into the hands of others? So, well again, Mr. Chairman, I have had my say on this, and I hope that my points have been made clear, and I thank you for giving us the chance to explore, and I look forward to the testimony of our witnesses.

Mr. SHERMAN. I agree with the gentleman from Georgia that when we don't sell to one of our friends we drive them into the hands of others. So not only do we not help the development of our industry, we help the development of industry elsewhere which creates a new competitor economically, and, depending upon who that competitor is, a new competitor strategically as well. Mr. Ruppersberger, the chair of the Technical and Tactical Subcommittee of the Intelligence Committee, who helped to bring to our attention the potential impact of ITAR on the domestic satellite industry and the potential ramifications of that for U.S. intelligence would like to submit a statement for the record on that issue, and so, without objection, I would like to have that statement added to the record at the appropriate place. Hearing no objection, it will be done. In addition, I would like unanimous consent to add to the record the Congressional Research Service study of November 25 done at the request of this subcommittee. It is some 32 pages long and is comprehensive and helpful, and, without objection, will be added to the record of this hearing. I guess the gentleman from Illinois does not have an opening statement.

Mr. MANZULLO. I am going to waive mine. I am very anxious to hear the testimony of the witnesses and would like unanimous consent to make it part of the record.

Mr. SHERMAN. Why thank you. I know the gentleman from California is no less anxious to hear the witnesses, but we are anxious to hear his opening statement.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. I want to thank you for your leadership in this very significant issue in terms of exporting American technology and these economic decisions that are also national security decisions, and thank you for letting me be part of this subcommittee hearing today. So many American companies are now American in name only, having sent their manufacturing facilities, along with millions of American jobs, overseas. This has been both an economic and a national security disaster for the people of the United States. The latest move by GE to join forces with a Chinese Government run company to compete with Boeing and Airbus in the sale of avionics technology is particularly unforgivable.

It is a betrayal of American aerospace engineers, and workers and entrepreneurs who over the years have done so much for our prosperity and our national security. It is unforgivable. Mr. Chairman, it was a disastrous economic mistake for this Congress to grant Communist China most favored nation in trading status to begin with. Ever since then, tens of millions of good jobs have been lost to China, which has resulted in the present disastrous situation where Communist dictators control our economy by holding trillions of dollars of U.S. debt. They also have technology available to them to outcompete us and to defeat us militarily, which is, again, a disaster for the people of the United States of America.

The Foreign Affairs Committee should ensure that the greed of a few American businesspeople who have already done so much damage to the American economy, and again, so much damage to the well-being of American engineers and skilled laborers, that we have do what we can to make sure that they are not permitted to render our nation's security in permanent vulnerability. If we end up sending over to Communist China, which is involved with proliferation and involved with sending military equipment to rogue regimes, if we let them have the technology that was developed by hundreds of millions, even billions of dollars worth of U.S. research, shame on us for not stepping in and getting in the way of these so-called Americans who are putting our country at risk. Thank you very much, Mr. Chairman. I am looking forward to the hearing.

Mr. SHERMAN. Thank you. Sometime you will tell us how you really feel. We have with us two acting deputy assistant secretaries. Acting does not comment adversely on the authoritativeness of their pronouncements, but it does reflect on the fact that it has taken a very long time for this administration to gear up and get its people into positions throughout government. We are at the close of 2009. You could blame the administration for the fact that they have been slow to gear up, you could blame the Senate. This is one of the few things going wrong in Washington for which you cannot blame the House of Representatives. I welcome Mr. Matthew S. Borman, acting deputy assistant secretary of commerce for export administration. In this capacity, Mr. Borman is responsible for implementing the Bureau of Industry and Securities, also known as BIS, controls on dual-use items.

After Mr. Borman, we will hear from Robert S. Kovac, acting deputy assistant secretary of state for defense trade and the managing director of the directorate of defense trade controls, also known as DDTC, at the State Department. First Mr. Borman.

STATEMENT OF MATTHEW S. BORMAN, J.D., ACTING DEPUTY ASSISTANT SECRETARY FOR EXPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. BORMAN. Thank you, Mr. Chairman. It is a pleasure to be here before you and the committee again. I commend you for your continued interest in this subject. Chairman Sherman, Ranking Member Royce and distinguished members of the subcommittee, thank you for the opportunity to testify on the Department's role in controlling the exports of aerospace items. The Department's Bureau of Industry and Security, in conjunction with other Federal

agencies, administers controls on a range of dual-use items, including aerospace commodities, software and technology, to further U.S. national security, foreign policy and economic objectives. We administer and enforce the controls through the Export Administration Regulations.

The promotion of the competitiveness of the aerospace industry is the responsibility of the Department's International Trade Administration, which is a different part of the Department of Commerce. The International Trade Administration of Commerce performs several critical functions to help ensure the U.S. aerospace industry remains globally competitive. The aerospace market is the United States' most significant advanced technology export sector. In the last fiscal year, Fiscal Year 2009, over $80 billion worth of aerospace exports were made from the United States. In the aerospace industry sector, of course, there are many dual-use items, items that have both civilian and military applications.

In the last fiscal year, the Bureau of Industry and Security approved 1,230 applications for licenses to export aerospace products worth about $1.3 billion. That constituted more than 7 percent by volume of all of the roughly 20,000 export license applications we processed. Our controls seek to allow U.S. companies to supply secure markets and to benefit from international technology collaboration, while minimizing potential threats to national security and foreign policy. Under the Export Administration Regulations, most civil aircraft and related parts, including virtually all commercial aircraft and engines, can be exported to most of the world without individual export licenses. Individual licenses are required to export these items, however, to Cuba, Iran, North Korea, Syria and Sudan, as well as a range of proscribed persons.

In 2008, the Departments of Commerce and State clarified our respective regulations on the export jurisdiction of certain aerospace components. It appears that the clarification has served its purpose as the number of requests for commodity jurisdiction determinations for aerospace items, which had been significantly increasing, has dropped substantially after the publication of that clarification. We also seek to regularly update our list of controlled items, the Commerce Control List, to ensure that it reflects global realities, including the availability of controlled items from foreign sources. In this regard, our Technical Advisory Committees, and particularly, our Transportation Technical Advisory Committee, has formulated modifications to make sure that aerospace controls are up to date as partnership between the aerospace industry and the Bureau of Industry and Security has been an effective tool in our continuing efforts to more precisely target our controls.

Our enforcement efforts help to ensure compliance with our dual-use aerospace export policy. This includes thwarting potential violations of the regulations by a variety of means, including end-use checks abroad and temporary denial orders. We also vigorously pursue violations of the regulations, and several examples of enforcement actions involving aerospace items are included in my written testimony, which I request, Mr. Chairman, be included in the hearing record. A significant challenge for the Bureau, especially with respect to its enforcement activities, is the longstanding lapse of the Export Administration Act. This lapse hinders the abil-

ity of the bureau to employ up to date authorities to enforce the dual-use export control system.

In August, the President made his annual renewal of our authority to continue our dual-use export control regulations in light of a lapse of the EAA. He also directed that the National Security Council launch a broad-based interagency process for reviewing the overall U.S. export control system. The aim of the review is to ensure that the system best addresses the threats and changing economic and technological landscape we face today. This review is well underway. Thank you for the opportunity to testify on the Department of Commerce's controls on the export of aerospace items. I am, of course, pleased to answer any questions members have. Thank you.

[The prepared statement of Mr. Borman follows:]

Testimony by Matthew S. Borman
Deputy Assistant Secretary for Export Administration
Bureau of Industry and Security
U. S. Department of Commerce

Before the Terrorism, Nonproliferation and Trade Subcommittee
House Foreign Affairs Committee for a Hearing on
A Strategic and Economic Review of Aerospace Exports

December 9, 2009

Introduction

Chairman Sherman, Ranking Member Royce, and distinguished members of the Committee, thank you for the opportunity to testify before the Terrorism, Nonproliferation and Trade Subcommittee of the House Foreign Affairs Committee, on the Department's role in controlling exports of "aerospace" items.

The Department's Bureau of Industry and Security (BIS), in conjunction with other federal agencies, administers controls on the export of a range of items, including "aerospace" commodities, software, and technology (items), to further U.S. national security, foreign policy, and economic objectives. BIS administers and enforces the Export Administration Regulations (EAR). The EAR governs exports, reexports, and transfers of dual-use items - those items that are for civilian use but may have a range of military or terrorist applications.

In the aerospace industry sector, there are many dual-use items. Dual-use aerospace items include composite material and manufacturing technology, certain inertial navigation systems, civil aircraft components and engines, and complete civil aircraft.

The aerospace market is the United States' most significant advanced technology export sector. In fiscal year (FY) 2009, $80.9 billion worth of aerospace exports were made from the United States. These exports constituted approximately 8 percent of all U.S. exports ($1,061 trillion) - the highest percentage of any industry sector. As such, it is one of the more challenging from an export control perspective, particularly because research, development, and production of sophisticated aircraft, engines, systems, and components take place around the globe. Advances in composite materials that can make commercial aircraft stronger and more fuel efficient, for example, might also end up making the fighter aircraft of potential adversaries more deadly. Our controls seek to allow U.S. companies to supply secure markets and to reap the benefits of technology collaboration while minimizing potential threats to national security and foreign policy.

Export Licensing Policy for Aerospace Items

Aerospace items, like all items that are subject to the EAR, are controlled, or classified, based on technical parameters. Export licensing requirements are based upon the item's technical characteristics the destination, and the end-use and user of the item.

Under the EAR, most civil aircraft and related parts, such as virtually all commercial aircraft and engines, can be exported to most of the world without an individual export license. Individual licenses are required to export these items, however, to Cuba, Iran, North Korea, Syria, and Sudan, as well as proscribed persons. Aerospace-related items that do require export licenses to most destinations include various technologies (materials, engine hot section, and navigation), certain instrumentation and navigation systems and hardware, and items for the International Space Station.

In FY 2009, BIS processed approximately 20,353 export license applications, of which 17,088 were approved, valued at about $59.1 billion. Of these approvals, 1,230 (7.2%) were for aerospace products worth about $1.3 billion (2.2%). The average processing time for all license applications approved in FY09 was 26 days, whereas the average processing time for aerospace items was 34 days.

Aero gas turbine engines constituted the highest dollar value of approved licenses. A total of 11 licenses were approved during this time period at an approximate value of $281 million and an average processing time of 43 days. The single most commonly licensed commodities, by number of licenses, were instrumentation and navigation equipment and systems with 251 licenses issued totaling approximately $176.1 million approved in an average processing time of 35 days.

Section 17c of the Export Administration Act

Amendments in 2008 to both the EAR and the State Department's International Traffic in Arms Regulations (ITAR) clarified regulatory jurisdiction of certain aerospace components that have a long history of use on both civil and military aircraft. Specifically, the amendments clarify which parts are controlled by the EAR as well as how the State Department implements criteria in Section 17(c) of the Export Administration Act in deciding commodity jurisdiction requests. Section 17(c) provides that any product: (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft; and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under the Export Administration Act. It appears that the clarification has served its purpose, as the number of commodity jurisdiction requests for the aerospace items in question, which had been significantly increasing, has dropped substantially after publication of the amendments.

Review of Control List

The export control system must continually evolve to address the current challenges of diffuse threats, technologies, and markets. An important aspect of this evolution is regular review of the Commerce Control List (CCL) to ensure that the list reflects global realities, including the availability of controlled items from foreign sources.

Input for updates to the CCL come from a variety of sources. One of the most significant sources is BIS's Technical Advisory Committees (TACs). Our TACs are comprised of industry experts who meet quarterly to provide input on technological developments and availability of controlled items from foreign sources.

In the aerospace area, BIS's Transportation Technical Advisory Committee (TRANSTAC) has been particularly active over the past several years. It has formulated modifications to the controls in the areas of hot section technology, composite materials, and avionics with the objective of making those controls more concise and current with respect to industry's state-of-the-art products. TRANSTAC members provide technical support to the interagency processes that support U.S. participation in two multilateral export control regimes - the Wassenaar Arrangement (WA) and the Missile Technology Control Regime. This past year, due to support from TRANSTAC members from General Electric and Pratt and Whitney, the United States, through the WA technical working group, was able to revise controls on Full Authority Digital Engine Controls for aero gas turbine engines. These simplified regulations will result in more effective control of those elements of greatest national security concern. Similar progress was made due to TRANSTAC support regarding certain composite materials. The successful partnership between the aerospace industry and BIS has been an effective tool in our continuing efforts to more precisely target our controls.

Export Enforcement

BIS's enforcement efforts help to ensure compliance with our dual-use aerospace export control policy.

Prevention

An important focus is on thwarting potential violations of the EAR. BIS conducts several hundred pre-license checks and post-shipment verifications annually to ensure the controlled items will be, or are being, used as authorized. Approximately 4% of these end-use checks last year were on aerospace items. These visits are performed either by BIS Export Control Officers (ECOs) posted in China, Hong Kong, India, the United Arab Emirates, and Russia or by personnel from the United States.

Of the various types of preventive enforcement actions take in Fiscal Year 2009, many were on matters related to aerospace. The Temporary Denial Order (TDO) is one of the types of preventive enforcement actions employed by BIS.

Examples of recent Temporary Denial Orders (TDO) involving aircraft in FY 2009:

Temporary Denial Orders (TDOs) prevent the unauthorized export or reexport of items and the servicing of items illegally exported or reexported.

1. On September 11, 2009, BIS renewed a TDO suspending the export privileges of Mahan Airways (an airline operating in Iran). Evidence obtained by BIS showed that Mahan Airways continues to disregard U.S. export controls. BIS evidence also showed that Mahan Airways violated the EAR and the TDO involving reexports to Iran of U.S. origin aircraft and that such violations have been significant, deliberate and covert, and there is a likelihood of future violations.

   Under the Denial Order, Mahan Airways is prohibited from directly or indirectly participating in or benefiting in any way from any transaction subject to the EAR for 180 days. Moreover, it is also a violation of the EAR for any person to participate in a transaction subject to the EAR involving this denied party. This prohibition is standard in TDOs and is significant because companies that are denied export privileges are prohibited from taking part in any export transaction involving an item subject to the EAR.

2. On December 4, 2008, BIS renewed a TDO suspending the export privileges of Galaxy Aviation Trade Company, three of its shareholders, and Iran Air for 180 days. This TDO was originally issued on June 12, 2008. Evidence obtained by BIS showed that the respondent parties were planning to reexport a U.S.-origin Boeing 747 cargo aircraft from Turkey to Iran in violation of the EAR. The U.S. Government maintains comprehensive economic sanctions on Iran as a result of Iran's sponsorship of international terrorism and its pursuit of weapons of mass destruction. The order also imposed a non-standard denial on Ankair, a Turkish airline involved in the reexport, which applies only to any transactions involving this specific aircraft.

   Under the Denial Order, Galaxy Aviation Trade Company, its shareholders, and Iran Air, were prohibited from directly or indirectly participating in or benefiting in any way from any transaction subject to the EAR and again it was stated that it would be a violation of the EAR for any person to participate in a transaction subject to the EAR involving this denied party. Ankair, under the Denial Order, was prohibited from participating in or benefiting from any transaction involving the Boeing 747 at issue.

Prosecution

BIS also vigorously pursues violations of the EAR. In 2008, investigations resulted in the criminal conviction of 33 individuals and businesses for export control violations. The penalties for these convictions came to over $452,409 in criminal fines, over $1.5 million in forfeitures and over 993 months of imprisonment. Additionally, BIS investigations resulted in the completion of 51 administrative cases against individuals and businesses and over $7.4 million in administrative penalties.

Examples of recent prosecutions involving aircraft or aerospace related items:

1. Three men were sentenced on October 8, 2009 in federal court for exporting high-modulus, carbon-fiber material to the China Academy of Space Technology in violation of United States export laws and regulations. According to their plea agreements, the defendants conspired to violate the EAR between March 23, 2007, and April 6, 2008, by exporting and attempting to export high-modulus carbon-fiber material without an appropriate license. For national security, nuclear proliferation and antiterrorism reasons, the U.S. Government requires a license to export that material because it has applications for rockets, satellites, spacecraft and uranium enrichment.

2. A Dutch aviation services company, its director and sales manager pleaded guilty on September 24, 2009 in the District of Columbia to federal charges related to a conspiracy to illegally export aircraft components and other items from the United States to entities in Iran via the Netherlands, the United Arab Emirates and Cyprus.

3. On June 11, 2009, defendant Traian Bujduveanu was sentenced in Miami federal court for his role in a conspiracy to illegally export military and dual use aircraft parts to Iran. Bujduveanu's co-defendant, Hassan Keshari, and his corporation, Kesh Air International, were sentenced in May 2009.

Export Administration Act

A significant challenge for BIS, especially with respect to its enforcement activities, is the long-standing lapse of the Export Administration Act of 1979, as amended (EAA). This lapse hinders the ability of BIS to employ up-to-date authorities to enforce the dual-use export control system. While in lapse, the EAA cannot be updated and thus the enforcement authorities of BIS Special Agents have not kept pace with an ever changing criminal landscape.

It is vital that BIS Special Agents acquire updated enforcement authorities to combat proliferation in an era of globalization. For example, BIS's agents are currently unable to work directly with their foreign law enforcement counterparts. In addition, they do not have the authority to conduct undercover operations - or even make a simple arrest - in the United States without undergoing a cumbersome bureaucratic process. While effective cooperation between U.S. law enforcement agencies has enabled our agents to overcome some of these hurdles, they need updated enforcement authorities to enhance our national security by enabling domestic and international investigations and enforcement actions to proceed more quickly, efficiently, and effectively.

Export Control Reform

On August 13, 2009, the President again signed an order to continue application of the EAR pursuant to emergency authorities given the lapse of the EAA. This is done on an annual basis. In addition to continuing our authority, the President also directed that the National Security Council launch a broad-based interagency process for reviewing the overall U.S. export control

system, including the dual-use process. The aim of the review is to consider reforms to the system to ensure that we are effectively promoting national security and foreign policy by addressing the threats and changing economic and technological landscape that we face today.

This review is well underway. The goal is to devise an export control system to best address the diffuse threats, technology, and markets of the 21st century.

Conclusion

Thank you for the opportunity to testify on the Department of Commerce's application of controls on the export of aerospace items.

I would be pleased to answer any questions you have.

Mr. SHERMAN. Thank you.

STATEMENT OF MR. ROBERT S. KOVAC, ACTING DEPUTY ASSISTANT SECRETARY FOR DEFENSE TRADE, BUREAU OF POLITICAL-MILITARY AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. KOVAC. Thank you, Chairman Sherman, and members of the subcommittee for the opportunity to testify on the export control processes and policies of the Department of State. Directorate of defense trade controls and the Department of State administers the U.S. defense trade system. Its mission is to advance national security and foreign policy through the licensing of direct commercial sales for defense articles and services and the development and enforcement of defense trade control laws, policies and regulations. Like any regulatory agency, our goal is to ensure that this mission is performed in a manner that is transparent, efficient and predictable as possible while preventing exports or retransfers of defense articles and technologies that are counter to, or could undercut, U.S. national security and foreign policy interests.

Several years ago, without justification, the directorate had a less than stellar reputation for the processing of licensing applications. During calendar year 2006 the directorate processed 70,000 license applications with an average processing time of 43 days. This does not tell the whole story, however. At one point in 2006, the directorate had over 10,000 license applications open and awaiting final action. I am proud to say that the situation has changed radically and for the better. In 2008, the Department processed over 84,000 license applications while decreasing the average processing time to just over 16 calendar days. The number of applications open at any one time average 3,400, and the number of cases that took over 60 days were reduced to just 1,100 during that year.

I am also extremely proud to note that this was not an isolated event or the result of extraordinary exertions that could not be sustained. So far in 2009 the Department has processed over 70,000 license applications at an average processing time of just 15 days. The number of open cases at one time has also dropped. Improvement of this magnitude requires changes to process, policy and practices, as well as a sustained effort on the part of all those involved in the export process. The promulgation of NSPD–56 provided the impetuous for many changes in policy in the processing of licenses, including the establishment of the 60 day limit in processing unless national security or foreign policy concerns apply, and the requirement for applicants to utilize electronic licensing.

Department of Defense support in the policy and process improvements has also been critical. The Department's Defense Technology Security Administration has been a steadfast partner in all of the regulatory and policy changes, and most importantly, in its own process improvements, which included the use and continued refinement of a do not staff list identifying technologies and circumstances that do not require DOD review. Finally, and most importantly, these improvements have been the result of actions within the directorate itself. We have done a detailed review of the processes, policies and practices used in licensing, developed internal standard operating procedures, published guidelines and policy

notices to the exporting community and maintained a sustained effort on all fronts to improve the process on a daily basis.

Kevin Maloney and his team in the office of Defense Trade Controls, Licensing, deserve much of the credit for these improvements. Regulatory changes have, and will, play a part in these improvements. As I already mentioned, Section 17(c) changes last year have significantly reduced the number of aircraft-related commodity jurisdiction requests. Expansion of the exemption that permits retransfers without prior approval to include NATO agencies has likewise had a positive impact. The Department has recently published a draft rule to clarify the exemption for exports in furtherance of foreign military sales cases and work was just completed on a draft rule to clarify exports exempt from licensing when buying for the United States Government.

Other improvements are on the drawing board. In summary, the improvements that have taken place have been impressive, and will continue. The Department is committed to making the system efficient, transparent and predictable. Our goal is threefold. First, to establish a regulatory regime that requires licenses only when required by law or when U.S. national security and foreign policy concerns are a factor that the applicant cannot address. Second, to make the process as expeditious as possible when a license is required. Finally, to design the process to support enforcement. Any specific future improvement be implemented will depend on a number of factors, including the impact of any legislation that might be forthcoming. However, any improvement, as Under Secretary Tauscher and Assistant Secretary Shapiro have made clear, will be executed with the U.S. national security being the primary consideration. I would be happy to respond to your questions.

[The prepared statement of Mr. Kovac follows:]

Statement By

Robert S. Kovac
Acting Deputy Assistant Secretary of State for Defense Trade,
Before the
House Foreign Affairs Committee
Subcommittee on Terrorism, Nonproliferation and Trade
December 9, 2009

Thank you Chairman Sherman and members of the subcommittee for this opportunity to testify on the export control processes and policies of the Department of State.

The Directorate of Defense Trade Controls (DDTC) in the Department of State administers the U.S. Defense Trade system. Its mission is to advance U.S. national security and foreign policy through the licensing of direct commercial sales of defense articles and services, and the development and enforcement of defense trade export control laws, regulations, and policies. Like any regulatory agency, our goal is to perform that mission in a manner that is as efficient, transparent, and predictable as possible while preventing exports or retransfers of U.S.-origin military equipment and technology that are counter to or could undercut U.S. national security and foreign policy interests.

Several years ago, and not without justification, the Directorate had a less than stellar reputation for its processing of license applications. In Calendar Year 2006, the Directorate processed 70,000 license applications with an average processing time of 43 calendar days. This does not tell the whole story, however. At one point in September of 2006, the Directorate had over ten thousand license applications open and awaiting final action. Also during that year, over fifteen thousand applications took over 60 days to be resolved.

I am proud to say that the situation has changed radically for the better. In 2008, the Department processed almost 84,000 license applications while decreasing the average processing time to just over 16 calendar days; the number of applications open at any one time averaged 3400; and, the number of cases that took over 60 days to resolve was reduced to 1100. I am also extremely proud to note that this was not an isolated event or the result of extraordinary exertions that cannot be sustained. So far in 2009, the Department has processed over 70,000 licenses with an average processing time of just 15 calendar days. The number of open cases at any one time has dropped to an average of 3300—that is less than the number of cases we receive in a typical two week period.

Improvement of this magnitude requires changes to process, policy, and practices as well as a sustained effort on the part of all those involved in export controls. The promulgation of National Security Presidential Decision (NSPD) -56 provided the impetus for many changes in the policy and processing of licenses, including the establishment of a 60-day limit on processing unless national security and foreign policy concerns required additional scrutiny, and the requirement for applicants to utilize electronic licensing.

Department of Defense support of the policy and process improvements was also critical. The Defense Technology Security Administration has been a steadfast partner in all the regulatory and policy changes; and, most importantly, in its own process improvements, which includes the use and continued refinement of a "do not staff list" identifying the technologies and circumstances that do not require DoD review.

Finally, and most importantly, these improvements have been the result of actions within the Directorate itself. We have done a detailed review of processes,

policies, and practices used in licensing; developed internal standard operating procedures; published guidelines and policy notices to the exporting community; and, maintain a sustained effort on all fronts to improve the process on a daily basis. Kevin Maloney and his team in the Office of Defense Trade Controls Licensing deserve much of the credit for these improvements.

Regulatory changes have and will continue to play a part in the improvements. For example, changes to the U.S. Munitions List to better explain the existing policy used to establish jurisdiction over aircraft parts and components consistent with the Export Administration Act Section 17(c), have significantly reduced the number of aircraft related commodity jurisdiction requests. Expansion of the exemption that permits retransfers without prior approval, to include NATO agencies, has likewise had a positive impact. The Department recently published a draft rule to clarify the exemption for exports in furtherance of Foreign Military Sales cases, and work has just been completed on a draft rule to clarify exports exempt from licensing when "by or for" the United States Government. Other improvements are on the drawing board.

In summary, improvements to date have been impressive and will continue. The Department is committed to making the system efficient, transparent, and predictable. Our goals are three fold: first, to establish a regulatory regime that requires licenses only when required by law or when the U.S. national security and foreign policy concerns are a factor; second, to make the process as expeditious as possible when a license is required; and finally, to design the process to support enforcement. Any specific future improvement that may be implemented will depend upon a number of factors, including the impact of any legislation that might be forthcoming. However, any improvement, as Under Secretary Tauscher

and Assistant Secretary Shapiro have made clear, will be executed with U.S. national security being the primary consideration.

I would be happy to respond to your questions.

Mr. SHERMAN. I thank you both for your testimony. Our export control system is based on the idea of controlling that which is exported. Therefore, an awful lot of items, important dual-use items, can be purchased by any American for any reason, or for no reason, no matter who they are, and then we are going to hope that that person doesn't then ship it abroad without permission. Mr. Borman, given the fact that many of these dual-use items could be put in a pick up truck and trucked to the Iranian Ambassador in Ottawa any day of the week, are we just fooling ourselves with the idea that we can allow these items to be purchased by anybody who can go on the internet in the United States, and then that somehow we are going to prevent their export?

Mr. BORMAN. Well, Mr. Chairman, I can tell you how we currently try to deal with that situation. There are two aspects. As it relates to release of controlled technology to foreign nationals in the United States, there is a part of the regulations that covers that. So if an individual in the United States seeks to get access to technology information that would require a license——

Mr. SHERMAN. For many years there was stuff at sale at Egghead. This shows how far back, when Egghead was where you bought your software, but it was illegal to ship abroad, so the Iranian Ambassador to the United Nations was free to buy it at Egghead, but somehow we were going to prevent him from sending it, or the electrons on the disk, back to Tehran. Are you saying that we make sure, or at least have a system to make sure, that any American buying something has a good use for it and a legitimate reason to buy it if that is something that we would not allow the export of?

Mr. BORMAN. No. What I am saying is the current system requires a license if a foreign national who is in the United States——

Mr. SHERMAN. Foreign national.

Mr. BORMAN [continuing]. Could get access to controlled technology.

Mr. SHERMAN. Okay. So the Iranian Ambassador to the U.N. would have to have one American citizen friend willing to do this. So you have got to go on the internet. You can't say ship it to the U.N. Ambassador of Iran, you would have to say send it to this one individual. Given the recent terrorist arrests, are we assuming that every legal citizen and resident of the United States, that not a single one of them would cooperate? Is our whole export control pro-

gram based on the assumption that not a single one of them would cooperate with, say, Iran?

Mr. BORMAN. No. The definition of "export" as it is in the Export Administration Act doesn't give us the authority to control the domestic——

Mr. SHERMAN. Yes. I am not blaming you. I am saying Congress created a really stupid system, which you are doing a great job of administering, where we think we are accomplishing something by saying, you know, if you are sitting in Malaysia or in Denmark, you can't buy this widget, but if you are the Iranian Ambassador to the U.N.'s best friend, you can.

Mr. BORMAN. Well, that would still be a violation of the existing law because if there is a domestic transfer and then there is an attempt to make that——

Mr. SHERMAN. Trust me, whoever is his best friend is willing to violate the law of the great Satan. Basically, any American citizen or resident can buy any one of these things, put it in the back of a pick up truck and drive to Canada or Mexico, and the only person violating the law would be the guy in the pick up truck, right?

Mr. BORMAN. Well, whoever is facilitating that illegal export.

Mr. SHERMAN. Well, you go on the internet, you buy it, it is delivered to your house by UPS, you are not going to put the UPS driver in jail, you know, what he is doing is entirely legitimate, he puts it in his pick up truck and he drives to Mexico City. We have got one person violating the law, we have got terrorist organizations where people are willing to blow themselves up. Here, the chance at being caught is, would you say zero?

Mr. BORMAN. We have had cases. We have had enforcement cases where we have apprehended and prosecuted individuals who have procured things in the United States and tried to do exactly what you have said.

Mr. SHERMAN. Do we have a system that would do that or we just get real lucky?

Mr. BORMAN. No. I mean, we have law enforcement agents, both in our department and other departments, who are on the look out for that. That is what they do.

Mr. SHERMAN. I would say you have got thousands of things on your list you are trying to control. Any one of my staff can buy any of them as long as they can afford them just by going on the internet. They don't have a use for any of them, and thank God none of them is a good friend of the Iranian Ambassador to the United Nations. With that, I will yield to Mr. Royce.

Mr. ROYCE. Thank you, Mr. Chairman. I am going to ask Mr. Borman a couple of questions here and I will start by asking in January the Bureau of Industry and Security announced the full implementation of the validated end-user program with China. There have been concerns that one of those entities, Aviza Technology China, shared an address with a state owned firm that was sanctioned by the State Department in December 2006, and they were sanctioned expressly for illicit sales to Iran and to Syria as well. So I would ask, are you confident that this program is defensible on national security grounds?

Mr. BORMAN. Yes, I am. In that particular case that end-user underwent a thorough intelligence, law enforcement, interagency re-

view and the location is actually a bonded warehouse, and so we have a long record of being able to check and see what they are doing there, and the Intel information, as I said, intelligence, law enforcement information indicated that the bonded warehouse that Aviza uses is a bonded warehouse, which means the items come in, they are secure and then they are sent to their customers. Of course, the company is responsible for informing us if items authorized to go there don't end up at the customer where they are supposed to go, which is a strong business incentive for them.

Mr. ROYCE. But here is part of the catch. You have got to give 60 days notice, I understand, right? You have got to give that notice to the Chinese Government before you subsequently have that opportunity to do that inspection. Now, first I would ask, is that still 60 days? Because that seems like an awful long time to get your ducks in a row if you are notified that the U.S. is tripped to some question here as to the end-use. Let me ask you about that.

Mr. BORMAN. It is 60 days. That is right.

Mr. ROYCE. Must an inspector be accompanied when he goes in there by an official representative of the Chinese Government? Is that also still part of the——

Mr. BORMAN. The Chinese Government can choose to do that. On Aviza, remember that the business model here is the item goes into the facility, which is the bonded warehouse, and then it goes to a customer.

Mr. ROYCE. Right.

Mr. BORMAN. So if it were to go to someone else than the customer, I mean that is a significant business impact for the companies so they have a strong incentive to make sure that the individual item that comes in that is for a specific customer and order then goes there. It is not a stockpile.

Mr. ROYCE. On the other hand, the return on investment can be very, very high. Well, let me ask you one other question. In June, the GAO concluded as a result of its covert testing that sensitive dual-use and military technology can be easily and legally purchased from manufacturers and distributors within the United States and illegally exported without detection. The items in its test included gyro chips, night vision equipment, parts used for smart bombs and nuclear explosives. What are your thoughts on that? Then I will defer to other members.

Mr. BORMAN. Well, as I mentioned to Chairman Sherman, right now, under the legal authority, we don't have authority to regulate domestic transfers of controlled dual-use items. What are illegal, of course, is if there is a domestic transfer and the parties know that they are going to illegally take it out of the country. We have had any number of enforcement cases where we have identified those transactions, apprehended the individuals and prosecuted them.

Mr. ROYCE. Well, these accelerometers, as they are called, are pretty handy for smart bombs, and frankly, for nuclear explosives as well, so we have got a little bit of a problem. Mr. Chairman, I yield back.

Mr. SHERMAN. Thank the ranking member. Recognize our vice chairman, and then we will need to go vote. We will reconvene after the votes.

Mr. SCOTT. Thank you, Mr. Chairman. Let me just ask a question. First of all, I want to deal with the security environment in the Pacific I alluded to in my opening remarks. With North Korea moving with their nuclear program and missile program, China now having, really in the midst of developing a counterpart to the F–22, it seems to me that these events that are on the front pages of our newspapers, what effect would the U.S. sales of military aircraft, like the F–22, to Japan or the F–16s to Taiwan have on the insecurity environment in the Pacific region given what I said about North Korea and China?

Mr. KOVAC. Well, in any export there is going to be a positive and negative effect. Increase your friends, decrease the enemy. In each of those cases, when we receive the request we look at it very seriously to balance both the national security and foreign policy of the United States of that country and the potential regional impacts, as we are required to do by law.

Mr. SCOTT. So, I mean, do you see an imbalance occurring as a result of this? Do you see a need to move more aggressively? Do you see some need for us to look more carefully at this situation? Are you all concerned about the balance in the Pacific and what role we are or are not playing to get a better balance there?

Mr. KOVAC. Yes, sir. We work in very close coordination with the Department of Defense, and, you know, from the Department of Defense, the PAYCOM commander, and what his regional security plan is and how that interplays with any specific request that we receive is taken very seriously.

Mr. SCOTT. So if you had your doubters about this, you would say we need to move ahead and try to respond to Japan's request for our F–22s and Taiwan for F–16s.

Mr. KOVAC. Absolutely, sir. The State Department isn't in the trade advocacy business.

Mr. SCOTT. Right.

Mr. KOVAC. We only evaluate the requests that we do receive, and we evaluate them at the time. For Japan, for example, we have got an extremely loyal, upstanding country. They have got a tremendous record on export controls, they are in a relatively dangerous part of the world, and we have wholeheartedly supported exports there in the past and would in the future, if that was available.

Mr. SCOTT. Okay. Good. I know we have got a vote, Mr. Chairman, but let me just ask a question about the employment impact that I brought up. Given the impact from an employment standpoint in our country, how might including economic impact studies and rendering export control decisions mitigate the harmful effects of outsourcing on the U.S. economy?

Mr. KOVAC. You want to take that one first?

Mr. BORMAN. Well, sir, at least on the dual-use side the economic impact of a proposed transaction is always part of the equation. In the vast majority of cases, frankly, it is an issue for the U.S. company that wants to make the export, and then they typically make the case, or try to make the case, that if the export is not allowed the business goes to a foreign competitor and that has an adverse impact on jobs in the United States. So that is the most typical scenario that we hear about. From time to time, we do studies on spe-

cific industry sectors to evaluate the foreign availability of the product that we are trying to control.

Mr. SCOTT. Okay.

Mr. SHERMAN. The statements of the President that America does not torture apply only to the Executive Branch. We are going to ask our witnesses to remain, and we are going to continue to ask them questions after the votes. Thank you.

[Recess.]

Mr. SHERMAN. Other colleagues will be here when they can be. We will start the second, and for your sakes, hopefully last, round. In an effort to appear to be a nice guy, I am going to start with Mr. Scott in the second round of questions.

Mr. SCOTT. Thank you, Mr. Chairman. I would like to get an idea of a ranking of our exports. I understand Canada is number one, is that correct?

Mr. KOVAC. Yes.

Mr. SCOTT. Could you give us the other top, say, three or four in order?

Mr. KOVAC. I know the UK is high. I would have to get back to you with a specific order in the ranking.

Mr. SCOTT. All right. Let me ask you about then Russia specifically. In recent months, the Obama administration has made overtures toward improving U.S./Russian relations. I am a member of the NATO parliamentary assembly, and I am the general rapporteur in our science and technology area. An area in which we are moving forward on is how do we more progressively bring Russia into a more stronger partnership with the alliance? Could you tell me how might the sale of American made commercial aircraft to Russia improve relationships between the United States and Russia? Mr. Borman?

Mr. BORMAN. I will take a shot at that. On its merits, we would just evaluate the issue of technology transfer, but generally speaking, the sale of full up commercial aircraft to Russia would not even require an export license.

Mr. SCOTT. You said it doesn't?

Mr. BORMAN. It would not. If these are civilian aircraft going for a civilian end-use in Russia, it would not require a license, and so then it is really a business transaction to the parties involved. The U.S. seller and the Russian buyer think that it makes business sense. So that is the perspective that we would bring to that transaction. Now, others may impute additional meaning to such a sale, but from our point of view, the issue is really do the items need a license to go to Russia or not? If they do, you do a national security analysis.

Mr. SCOTT. What do you feel would be the unique challenges to this and the unique opportunities?

Mr. BORMAN. Well, on the challenges side, I suppose if there is an issue of transfer of controlled technology to make sure that it is used for those civilian aircraft. The opportunities, I think, I guess are obvious, that is, you have potentially significant sales for a U.S. company, and then with that there might be other impacts on the bilateral relationship.

Mr. SCOTT. And so how would you categorize the status quo right now?

Mr. BORMAN. Well, it is as I said before. If it is a full up civilian aircraft, it can be exported to a civilian end-user in Russia without any export licensing impediment or implication.

Mr. SCOTT. Okay. Let me ask you if you could give us a bit of an idea of the extent of our Canadian export relationship. It is the largest. It is about $9.7 billion. How would you explain our Canadian exports?

Mr. BORMAN. Well, Canada is our largest export market. In the aerospace area last year, calendar year 2008, there were over $6 billion worth of aerospace exports alone to Canada, and then there is a very strong connection, integration between the industrial base, particularly in the aerospace area, in Canada and the United States. A lot of U.S. companies have facilities in Canada, there are Canadian companies that have facilities in the United States, so from the point of view of the aerospace market, it is almost one market.

Mr. SCOTT. Right. So there is a certain part that is for the licensed products, and then there are unlicensed products. What is the differentiation between that and a one hand holds one, one hand holds the other? How much is the unlicensed?

Mr. KOVAC. Well, sir, in both our cases we have licensed and unlicensed exports. I think the vast majority of what the Commerce Department does is unlicensed.

Mr. BORMAN. To Canada.

Mr. KOVAC. To Canada.

Mr. BORMAN. Sorry. From a dual-use export control viewpoint, we have very, very few export licensing requirements. The companies have to get individual government approval before a transaction for exports to Canada, even in the aerospace area.

Mr. SCOTT. So combined, what are we talking about in dollar figure? Over $10 billion?

Mr. BORMAN. Yes.

Mr. SCOTT. Okay. Let me move to, if I may, Mr. Chairman?

Mr. SHERMAN. For one more question.

Mr. SCOTT. I wanted to while we are moving around to in 2007, the United States signed treaties with the United Kingdom and with Australia that would eliminate the need for the export licenses for certain defense and counterterrorism technologies. One motivation for these treaties was to facilitate collaboration of military aircraft, such as the joint strike fighter. More than 2 years after their signing, the treaties have not been ratified by the Senate. So what impact would ratification of these treaties have on the domestic aerospace industry?

Mr. KOVAC. Basically, determining what the impacts are going to be of the treaties, if ratified, is a little tough to determine far down range. The treaties have certain specific requirements. The end-uses are recorded in the treaty, U.S. Government, the UK MOD, or an approved program, or an operation. They have an approved community which would be a UK approved community, in addition to the U.S. community, whom are our exporters, and then it has an exclusion list of certain technologies that are excluded from being treated as exports under the treaty. Because of all of those variables it would be extraordinarily difficult to predict the impact

of the treaties on a specific sector or a specific area. Time is going to have to tell.

Mr. SCOTT. All right. Thank you, Mr. Chairman.

Mr. SHERMAN. We are in a hybrid situation in that one member has done his second round, but we have got members who haven't done their first round, starting with Mr. Manzullo.

Mr. MANZULLO. Well, thank you, Chairman, for having this meeting, and thank you for collaborating last year on that marvelous victory on 17(c) of the Export Administration Act along with Mr. Blumenauer and Mr. Crowley. The area that I represent used to be known as the machine tool center of the world, and that is Rockford, Illinois. We have probably 2,000 factories in the congressional district. No one really knows because it is kind of hard to quantify them all. Unemployment is officially at 16.9 percent. Add seven points to it, that is 22, 23 percent. I guess what has really bothered me for years is the restriction on exports of the five axis machine tools. When I was elected, the U.S. share of worldwide machine tool sales was around 13–17 percent.

Now it is down to 7 percent. We have a situation in Rockford where a wholly owned Chinese industry bought a machine tool shop, saved 90 jobs directly, indirectly another 180, and that company wanted to make a five axis machine. They couldn't export it back to China even though China owns all the technology and is actually manufacturing it here in the United States. I mean that is lunacy. It has continued over the years as we have tried to rework the Export Administration Act. Year after year we sell fewer and fewer machine tools. It is not that. It is just parts on United States becoming an unreliable supplier. We can never quantify how many sales are lost because the United States is simply an unreliable supplier.

I have seen the brochures come in from Canadian and European companies saying we are ITAR free. I just don't know how long or what it is going to take for this Congress or for the agencies to realize that there is nothing immoral about a five axis machine. Constituents have bought an eight axis cutting tool from a German company. We have one of the most sophisticated laser manufacturers in the world, W.A. Whitney. The laser is so powerful it can cut through one and a quarter inch of bullet proof stock. W.A. Whitney couldn't even manufacture it here because unless you can have an overseas sale, you know, why limit it just to domestic manufacturers?

I mean, you know, I guess my question is why don't we just grow up and realize that the world is more than four axis? People can come in and take a look at these machine tools at EMO in Milan every 2 years or in Chicago and simply copy them by taking a picture of them. Anybody want to tackle that one?

Mr. BORMAN. I guess that is in my bailiwick.

Mr. MANZULLO. There you are.

Mr. BORMAN. I think you are right. I mean, this is a very vivid example of the challenge of export controls because, as you well pointed out, folks in the machine tool industry, I think, would say export controls are significantly responsible for the decrease in market share and the development of foreign competitors. Of course, the challenge is, I think most would agree, that we would

not want a five axis machine tool going to a country for their military programs.

Mr. MANZULLO. No, but you don't know. I mean, you know, Canada was selling the five axis machine and it could be used for military or nonmilitary. I mean, it is almost commoditized. In today's technology you have got to have more than four axis. Even BIS considers the moveable platform to be an axis. I just, you know, those regulations really, I mean, they are regulations, I mean, and so it ends up being used for military application, but Canada can sell the same machine. These are machines that cut pieces. They cut steel, they cut iron, they cut whatever is necessary. They do precision lasering. We lose all the jobs here and the technology.

Mr. BORMAN. Yes. Two further responses. One is we actually are in the process of developing I would call it a short-term revision to the regulation to address this, at least in part, based on a foreign availability study we did. Of course, that is exactly the kind of thing the long-term, the more fundamental reform the President has directed us to do has to look at exactly those kinds of issues. That is exactly right.

Mr. MANZULLO. Okay. The other question is you had published a notice of inquiry on the effects of export controls on decisions by companies abroad to use or not use U.S. parts. Could you comment, Mr. Borman, on the gist of those comments and where we are going with that?

Mr. BORMAN. Yes. We did receive a significant amount of input from foreign companies, and not surprisingly, many of them said their preference would be to avoid U.S. products or U.S. components if they can because they don't want to take the risk that somehow the export control system and policies will impede their ability to do business, and so, again, that is exactly the kind of thing that is being fed into this fundamental review that the President has asked——

Mr. MANZULLO. So what is going to happen after you review it? Can you take the envelope and read through it and give us an idea?

Mr. BORMAN. Well, I can tell you this. I can tell you that the charge to us is don't necessarily just look at the existing system and decide how to make it better, but really look at what would be the best system in light of all these factors, including foreign availability, including design out desires of foreign buyers, to construct a system that really best addresses the security, and technology and economic realities of the 21st century. So, and one of the pieces of the charge is to take a very hard look at the control lists and see, should the control lists be pared down to something less than they are now?

Mr. MANZULLO. Do you anticipate a date by which that will occur? I know we are rewriting the Export Administration Act in our committee.

Mr. BORMAN. Right. Well, the current NSC led process is designed to have a recommendation or a set of recommendations to the agency principals early next year, and then they will have to decide based on those recommendations, how to implement that or what they want to implement. I think the goal is to really do something next year.

Mr. MANZULLO. Thank you.

Mr. SHERMAN. Thank you. Now the gentleman from Virginia.

Mr. CONNOLLY. Thank you, Mr. Chairman, and welcome. This subcommittee had a hearing a number of months ago where we looked at the satellite industry and how export controls have affected the satellite industry. It is not too much of a stretch to say that with the best of intentions in trying to control sensitive technology and the export of it we ended up damaging the domestic satellite industry and unintentionally helping foreign competitors who then had no controls over the technology transfer, and so in an effort to do a noble thing our actions were self-defeating, obviously not intentional, but we hurt both the industry and, frankly, ultimately had trouble achieving the goal behind our actions. What do you think we have learned from that? What do you take away from that experience?

Mr. KOVAC. I will take that first because I have got them. I think that in any, as Matt was saying, the control lists are the key. Narrowing them down, making them specific, making them clearly where there is an edge required to go ahead and maintain that, but not take it down so far that you end up hurting everybody in the process, even those that do not cause a problem in the greater scheme of things. Where the technology is simple, well-known, foreignly available, we take a look at that. The problem we have with our two lists right now is that we look at them very myopically. The structure should be very myopic. I control defense articles. Defense articles, anything specifically designed and developed for, you know, specifically designed and developed for a military end-use, or an end-use, or an end-use that is determined to be military.

The vast majority of firearms, for example, aren't military firearms, but I control all firearms, so therefore, I control all the parts and components of those firearms. When the action was taken in 1999 to move the satellites, it had the identical effect and it controlled things that we did not care about in satellites and things that we cared a lot about in satellites. So with the legislation as currently, you know, the 24/10, if that is able to be realized, and right now the Department of Defense has a study ongoing under Section 1248 of their NDAA to go ahead and look at the industry and separate that wheat from the chaff, to look at those that may receive or require higher controls and those which should be controlled in another manner, if those two things come to fruition, I think we will have a better way to do it.

Mr. CONNOLLY. Yes. I guess I would add, Mr. Kovac, and I certainly concur with what you just said, but I guess I would add one other thing you haven't considered, and that is unintended consequences.

Mr. KOVAC. Absolutely.

Mr. CONNOLLY. Because you could still do what you did and come to the same conclusion and you would be wrong.

Mr. KOVAC. Correct.

Mr. CONNOLLY. In retrospect, I don't think you can argue that our policy vis-à-vis satellites worked. It hurt domestic industry and the technology got transferred anyhow just by other people who are then able to exploit commercial sales and so forth, so that can't be

the intended consequence. I think we have to look at even if the goal is desirable, if we realize that by adopting a policy, you know, the operation is a success but the patient dies, I think we have got to look at that saying that is not something, you know, we want to achieve, that is not a desirable objective.

Mr. KOVAC. Absolutely.

Mr. CONNOLLY. Mr. Borman?

Mr. BORMAN. If I could just add a little bit to that. In the fundamental review that we are undertaking right now on export controls, that is exactly one of the tenants we are applying is we really don't want to have a policy that drives foreign customers to foreign suppliers.

Mr. CONNOLLY. Even at the risk then of technology transfer.

Mr. BORMAN. Yes.

Mr. CONNOLLY. Okay.

Mr. BORMAN. You work to mitigate that as much as you can, but ultimately, if a foreign customer buys a U.S. product, at least we have some control in visibility over that in addition to the economic benefit.

Mr. CONNOLLY. And let me ask, building on that a little bit, a Devil's advocate question. Perhaps the nature of technology today that is very different than when we envisioned the original export control regime in the middle of the Cold War, you can't control it. I mean, it is sort of a hopeless venture, and so there may be some limited things of highly sensitive nature we still control, but Devil's advocate question, maybe you have to basically yield to, you know, the imperative of technology and just say there are just things we can't control, and so we are going to recognize that and move on. The very notion of an export control list is questioned in that Devil's advocate question, obviously. I am just trying to determine how far our thinking is along those lines?

Mr. BORMAN. Well, one of the ways we have been evolving the system, and my sense is we will continue to do this, is you are right, there are strata of technologies that are just not controllable but they still can do us harm, and so another way to get at that is to deal with the foreign parties involved. One of the ways we have dealt with that is we have identified a procurement ring of foreign parties that were buying and trafficking in low level electronic components that were the same type showing up in IEDs in Iraq and Afghanistan. You can't really control them based on their technology level, but we published a list of these parties and made them restricted and that has had some effect. So there may be other ways to get at this because there are technologies, low level, that can do us and our allies harm and we want to deal with them in some way, but you are right, at some point you can't based on technology.

Mr. CONNOLLY. If I may, Mr. Chairman. Just a final point. I hope in your deliberations, and I am very glad we are having this review, keep in mind the burden in private sector, too. You know, I worked in the industry for the last 20 years and I can remember every year the last 6, 7 years I had to take a refresher on export control rules. I will be honest with you, I am a high school graduate, but they were tough to fully get straight and make sure you weren't violating the law, and which falls in which category. When

you multiply that in terms of liability of large companies that, you know, are in various businesses, it is a real burden, it is an economic burden they bear, and so if we can in streamlining our own requirements also streamline the burden on private industry, I think that would be a good thing for the American economy. Thank you, Mr. Chairman.

Mr. SHERMAN. Thank you. I will now start the second round, and then we will have second round for the two that haven't had a chance. Mr. Borman, now and then it seems like we are allowing exports to a particular country with a promise that the goods will only be used for civilian use within that country. Do we put any stock at all if that promise comes from a Chinese company? I mean, if they double promise and cherry on top that they are not going to use it for military purposes, does that ever convince you?

Mr. BORMAN. We don't rely solely on the assertions or promises that a foreign company puts on it. There are license conditions on the U.S. company, and we have the ability to do end-use checks.

Mr. SHERMAN. Mr. Borman, when it comes to China is there any time when you are going to allow the export because you are told that the end-user is not going to be military?

Mr. BORMAN. Not solely because of what the end-user says. There are any number of other sources we look at.

Mr. SHERMAN. If it has not been used by the military today, it will be at any time, it is useful for the military, so there are occasions when if you had two applications, one said we are shipping this to the People's Republic's Army and the other says we are shipping this to a private company that is owned by Chinese interests and located in China, you might treat those two applications differently?

Mr. BORMAN. Well, sure, because there are plenty of end-users in China who have legitimate civilian businesses and there are any number of ways——

Mr. SHERMAN. And is there a single one of them which would defy the People's Liberation Army if that army wanted those goods to be used temporarily or permanently for military purposes?

Mr. BORMAN. Well, you have to remember, most of the things that we license are of course on the dual-use side so they are machine tools or they are——

Mr. SHERMAN. Well, I am not saying that they couldn't be used for civilian purposes from 9 o'clock to 5 o'clock, but can you imagine that they wouldn't be used for military purposes from 5 o'clock to 9 o'clock?

Mr. BORMAN. Well, again, in the interagency review process with State, Defense and Energy, we look at all the available information, including classified information, to make an assessment as to——

Mr. SHERMAN. Well, I would hope that you would be less trusting and would simply recognize that once something is physically located in China, it is available to the People's Liberation Army at their request, at any time, regardless of any promises that have been made to you.

Mr. BORMAN. Right.

Mr. SHERMAN. If you start with that as a starting point, you will have a more—the goal here isn't to paint a pretty picture; the goal

is to actually control this technology, which is why I will shift back to the idea of goods that are widely available in the United States. If something is easily portable and easily purchasable by anybody in the United States, does that factor into whether you think you can actually control the technology by prohibiting its export?

Mr. BORMAN. Well, maybe I ought to take a step back and describe a little bit how we put things on the control list. Our control list, roughly three-quarters of the items are subject to a multilateral export control regime. The process every year that happens is in the United States we, Defense and State Department, look at the list and decide are there items that should come off the list because they are widely available, lower technology now, or they are items that should be added to the list. Then we have to get all of the other members of the regimes to decide. So the items that are on the list are items that really are supposed to have——

Mr. SHERMAN. So there are plenty of things on the list that anybody in the United States could buy on the internet and put in that pick up truck I talked about.

Mr. BORMAN. I wouldn't say that there are plenty of things on the list.

Mr. SHERMAN. Hundreds?

Mr. BORMAN. There clearly are things that could be bought over the internet, but again, you know, people buy them——

Mr. SHERMAN. Do we need to shift to a system where we have a know your customer regime, just as we have opposed a know your customer regime on the bank, where we identify a few hundred items or a few thousand items and say, look, if you want to sell these in the United Stats, it has got to be to a licensed consumer? Yes, hospitals have a reason to buy those isotopes, but you can't just ship them to Jack Jones in Toledo who doesn't own a hospital.

Mr. BORMAN. Yes. And that is the case in some cases. I mean, select biological agents, for example, or some hazardous sales.

Mr. SHERMAN. Isotopes is the wrong example there.

Mr. BORMAN. Yes. The order of magnitude. Last year we processed about 20,000 dual-use export license applications for exports. If we were to look at imposing a similar government vetting before sale review for domestic sales, you are talking——

Mr. SHERMAN. Well, you would license the purchaser and once somebody is a certified purchaser, you wouldn't have to look at it again, and you might very well take hundreds of items off your international control list. I mean, this stuff works bureaucratically, but the fact is anything that a guy named Jack Jones, you know, with a P.O. box in Toledo can buy and truck to Mexico or Canada is not controlled. You can believe it is controlled, you can say it is illegal to do this or that, you can say I have got certificates, and files and a review process, but the other guy has got a pick up truck, and that trumps you.

Mr. BORMAN. Sir, if I could?

Mr. SHERMAN. Yes.

Mr. BORMAN. If ultimately the system comes down to anything that somebody couldn't take out of the country and that magnitude, you are talking about an extremely small list.

Mr. SHERMAN. Well, I am talking about those things for which we cannot identify those customers that have a legitimate use. It is one thing to say it is going to be sold to Jack Jones. It is another thing to say it is going to be sold to a company that is known to the seller and has a legitimate end-use for it. It is extremely easy for a foreign state or a terrorist organization to get a P.O. box in the name of a guy named Jack Jones. It is much more difficult to establish an aircraft manufacturing operation that would have a legitimate use for this or that. We are not going to make it impossible, but so far our enemies have not created whole, large scale dummy companies in the United States. P.O. boxes are a lot easier.

Mr. Kovac, just want to—hope my colleagues indulge me for one last question. The UAE has been a state of concern. It is now claimed that scores of ships have been intercepted by their security forces carrying illicit cargo, and while I doubt that that is not an exaggeration, I note that the UAE hasn't adopted regulations to enforce its 2007 export statute. Malaysia is another key transport hub and hasn't even taken those actions. Can we trust Malaysia with U.S. technology? Should we oppose technology transfer, especially when it facilitates offshore production to Malaysia at this time?

Mr. KOVAC. Yes. You are going to have to because that is a little out of my field.

Mr. BORMAN. Yes. On the UAE, you are right, the UAE now has an export control law. They are in the process of standing up their export control authority. What they have told us when we have discussed this with them is right now, because they don't effectively have regulations in place, any controlled item is prohibited from being transited through the UAE. They are in the process. They have said they have hired a number of people for their export control organization.

Mr. SHERMAN. Do they have an export control list?

Mr. BORMAN. Yes.

Mr. SHERMAN. Have they copied ours?

Mr. BORMAN. No. All the multilateral regime items are on their list.

Mr. SHERMAN. Okay.

Mr. BORMAN. Malaysia, we continue to try to press them to make progress. They are not nearly as far along.

Mr. SHERMAN. Have they made progress?

Mr. BORMAN. Well, they are working on an export control law, they tell us, and we continue to press them to accomplish that.

Mr. SHERMAN. Well, when is the first time they told us that they were working on it?

Mr. BORMAN. They have been working on it for a while.

Mr. SHERMAN. Did I have hair at that time?

Mr. BORMAN. I am not sure. You very well may have.

Mr. SHERMAN. Let me yield to the gentleman from Illinois.

Mr. MANZULLO. I wanted to follow up. You sell a five axis machine to China that is used to make a dump truck, but then the same dump truck has a military application as a truck in the Chinese army. You know, export controls in the United States unfortunately means that we are losing all our technology because of being an unreliable supplier. Assume they are trying to dance on the

head of a needle as to whether that truck that will have parts that are machined or cut from five axis machines are used for civilian or defense, and then they just, you know, why would you recreate a whole new frame, for example, on a military truck when it is going to be the same tonnage of carrying for a civilian truck?

I am sorry. I have got a new Blackberry and I can't figure out the technology of it yet, but it is Canadian technology, I think is what it is, even though at one time the insides were magnesium and were made here in the United States, but now it is plastic, unfortunately. That is why, you know, we sit back, and the arguments have been going on for, I have been for 17 years. How much more of our machine tool industry do we have to lose? You know, you can buy a profiling machine now for $25,000. You just send in your coordinates on your design, and with the layering they can create a product like this for a very small amount of money. So when somebody buys it they know exactly what it is.

In fact, I have got in my bag, it is a man's hand that has been profiled by a laser and then with the layering machine as a composite of a person's hand. That is how exact this stuff is. It goes on all the time. How much more of our machine tool industry are we going to lose because we are losing all the technology? I know you are with me on the issue, but I guess with C–SPAN here, maybe we get the message out more we have got to move faster. I mean, this is really saving American jobs.

Mr. BORMAN. Yes. I mean, the challenge, frankly, with China and machine tools is not really the factory that makes dump truck parts. The challenge is in the aerospace you have to have a lot of colocation facilities that make parts for civilian aircraft and military aircraft. That is one of the challenges. I am not saying that I disagree with you, I am just pointing out the challenges. The other, of course, is that these are multilaterally controlled. We know that other partners apply a different China policy than we do. If they are not multilaterally controlled, then you open up the possibility for these type of machines to go from other countries to a place like Iran. So that is how we have got to try to figure out, how do we address the very legitimate concerns?

Mr. MANZULLO. Well, I don't know if you can stop that either. I mean, at one time knowledge was discovered. Today it is invented. It is not that difficult. You know, you don't want to give the people, the bad guys in Iran, anything, but goodness gracious, with the incredible marsh of technology and the ability to make these machines almost anywhere, and here we are in the United States, we keep on losing more, and more, and more. I mean, I have talked to people that, you know, have been to these machine shows and they say, you know, we would like to buy more from the United States, and, I mean, it even got so dumb here that I had to rewrite the Fastener Quality Act.

We just, you know, wrote off a huge amount of our business here because that footbridge collapsed in Kansas City and it wasn't the problem with the tensile strength of the bolt, it was just the wrong one was put in by the architect on it. That is the whole problem that we have with manufacturing here is that some of my colleagues, and Dana is a good friend of mine, think that because we have got a real gem here, that we can prohibit somebody else from

using it when the same thing is made in a country like Canada that doesn't have the extent of those controls on it. I just wanted to share that with you. I had one further question on deemed export.

Mr. BORMAN. Just to follow-up on that.

Mr. MANZULLO. Go ahead. Then I will stop right here.

Mr. BORMAN. That is exactly the point, though, of the review we are undertaking is exactly to try to grapple with those issues in a way that reflects the 21st century reality. Absolutely.

Mr. MANZULLO. The other issue is that we have University Diacome that has many foreign students and I helped link up that university to a very sophisticated company, and the school is now doing research for the company. The problem is with deemed exports, some of these kids come in from the countries on the list. I mean, the companies are really getting in trouble and the school figures that what are we going to do here? Are you taking a look at the deemed export issue also?

Mr. BORMAN. Absolutely.

Mr. MANZULLO. Okay.

Mr. BORMAN. Yes. In fact, we have a new advisory committee, we call it the Emerging Technologies and Research Advisory Committee, that is specifically looking at the issue of what methodology we should decide to apply to technologies that should be subject to deemed exports. So we are looking very hard at that issue because we know the impact it has on research.

Mr. MANZULLO. Thank you.

Mr. SHERMAN. Gentlemen, thank you. We will now move on to the next panel. Matter of fact, I will sing their praises as they take their seats. We will first hear from Ms. Marion Blakey, president and CEO of the Aerospace Industries Association. Prior to her work with that association, Ms. Blakey served as administrator of the FAA and chair of the National Transportation Safety Board. Next, we will welcome David Berteau, senior advisor and director of the Defense-Industrial Initiatives Group at the Center for Strategic and International Studies. Mr. Berteau was principal deputy assistant secretary of defense for production and logistics.

Lastly, we will welcome Henry Sokolski, executive director of the Nonproliferation Policy Education Center. He currently serves as a member of the Congressional Commission on the Prevention of Weapons of Mass Destruction, Proliferation and Terrorism. Previously, he served as deputy for nonproliferation policy in the Department of Defense. Ms. Blakey?

STATEMENT OF MS. MARION BLAKEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AEROSPACE INDUSTRIES ASSOCIATION

Ms. BLAKEY. Thank you, Mr. Chairman. I do want to thank you and the other members of our panel today for the attention you are paying to this. The Aerospace Industries Association of America appreciates the opportunity to testify today, and I would like to ask that my written statement be submitted for the record, if I might. AIA represents more than 273 member companies with total high technology workforce of 267,600 people. We operate as the largest trade organization in the United States across three lines of business: Space systems, national events, civil aviation. Our industry

consistently generates America's largest manufacturing trade surplus, $57.4 billion in 2008, but continuing this track record of success can't be taken for granted.

So why do aerospace exports matter? Last year, nearly half of the over $205 billion in U.S. aerospace sales went to overseas customers. It is critical to recognize that these exports are necessary to both sustain and increase the capacity for cutting edge innovation in the United States industrial base. We must continue to compete effectively in the international marketplace in order to speed up our economic recovery, increase our jobs and set a trajectory for even greater economic growth. Aerospace exports also serve as a foundation for building key relationships and a shared future for the important international allies and partners. Additionally, our companies rely on exports to provide Americans defending our country and guarding our homeland with the very best technology at the best price for the U.S. taxpayer.

The value of aerospace exports is certainly not lost on members of this subcommittee, nor on other leaders here on Capitol Hill and in the administration. The consistent and sustained efforts of senior leadership in Congress and the administration is crucial to ensuring a level playing field, opening up markets for U.S. products, winning sales opportunities, particularly in the face of strong and determined advocacy from foreign governments on behalf of our international competition.

Presuming our industry is able, with the help of the U.S. Government, to compete successfully for a contract in the international marketplace, one of the last hurdles to cross is the U.S. export control system. This subcommittee has heard from AIA in the past about our ultimate goal for modernization, a more predictable, efficient and transparent system. We have heard that before today, but permit me the opportunity to clarify again what we mean. By efficient, the government must make decisions on export authorizations in a timely manner, eliminating unnecessary administrative delays. By predictable, we mean that the license process must be consistent with applicable laws and policies and that similar export licenses should be considered in similar timeframes.

Transparent means that the rules governing the license process must be interpreted and used consistently, and industry and foreign partners have quick, easy access to the information on the status of their applications. In 2007, our Cold War Era export control system had reached a point where it was paradoxically hurting our national security. It was also hurting our economic strength, and our technological competitiveness had a good chance of worsening. This subcommittee recognizes that it is in our national security interest both to prevent our adversaries from accessing our technology and to facilitate technology trade with our closest allies and trading partners.

So I am pleased to report that your efforts have resulted in a great deal of improvement in how the export control system operates. However, I think it is clear to everyone that additional steps will make the system more predictable, efficient and transparent. AIA continues to be a staunch supporter of Senate ratification of the UK and Australia Defense Trade Cooperation Treaties. Our industry has also welcomed President Obama's call in August for a

comprehensive review of the U.S. export control system. We believe that there are several potential reform initiatives that this committee can actually lead. I encourage the committee to review my submitted testimony for detailed descriptions.

In conclusion, the U.S. aerospace industry has the strength to lift America in these challenging times. Our nation reaps the benefits of aerospace exports in the form of enhanced national security and economic growth. The government/industry partnership supporting aerospace exports is crucial and it can't be taken for granted. As you are aware, previous modernization efforts have met with varying degrees of success. Experience suggests that critical factors and enabling meaningful reform includes sustained oversight by senior administration officials, as well as effective consultation with Congress and the private sector. We stand ready to work with you and the Obama administration to ensure that we continue to make meaningful progress toward a 21st century technology control regime. Thank you very much.

[The prepared statement of Ms. Blakey follows:]

STATEMENT FOR THE RECORD
MS. MARION C. BLAKEY
PRESIDENT AND CHIEF EXECUTIVE OFFICER
AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA

A Strategic and Economic Review of Aerospace Exports

House Committee on Foreign Affairs
Subcommittee on Terrorism, Nonproliferation, and Trade

December 9, 2009

Introduction

Chairman Sherman, Ranking Member Royce, and members of the Terrorism, Nonproliferation, and Trade Subcommittee: the Aerospace Industries Association of America (AIA) appreciates the opportunity to testify at today's hearing evaluating how the Administration and Congress support a critical national security and economic asset: the export competitiveness of the U.S. aerospace industry. AIA represents more than 106 regular and 167 associate member companies with a total high-technology workforce of 652,000. We operate as the largest trade organization in the United States across three lines of manufacturing business: space systems, national defense, and civil aviation. Our industry consistently generates America's largest manufacturing trade surplus ($57.4 billion in 2008), but continuing this track record of success cannot be taken for granted. Today I will address the importance of aerospace exports to our industry and our nation as a whole, and comment on many of the areas where Administration and Congressional action affect our export capabilities. I will conclude with a specific focus on the importance of continuing modernization of the U.S. export control system.

Why Do Aerospace Exports Matter?

Almost half of the $205.1 billion in U.S. aerospace sales of civil, space, and defense products last year went to overseas customers. In these challenging economic times, it is necessary but not sufficient to highlight the fact that these exports create and sustain high-skill, high-wage jobs. It is equally, if not more critical to recognize that these exports are necessary to sustain and increase the capacity for cutting-edge innovation in the U.S. industrial base. Our industry's ability to fund the research and development that underpins next-generation civil aircraft and air traffic management, cutting edge telecommunications, GPS, and earth observation satellites, as well as our military's battlefield advantage benefits tremendously from export opportunities. We must continue to compete effectively in the international marketplace to expedite our economic recovery and set a trajectory for even greater future economic growth.

Our companies rely on exports to provide Americans defending our country and guarding our homeland with the best technology at the best price for the U.S. taxpayer. Exports support technology exchange, allowing our industry to leverage foreign innovation to make our own world-class products even better. Exports also lower unit costs for

systems and components supporting the U.S. military, our intelligence services, and those protecting our nation and patrolling our borders. In challenging economic times, overseas sales keep critical production lines open and available to meet the threats we face now and will face in the future.

Aerospace exports also serve as a foundation for building key relationships and a shared future with important international allies and partners. American aviation products and services are at the forefront of providing to the world safe, reliable, and environmentally responsible air travel. Our space industry connects the globe, helping us communicate, navigate, and explore together with other nations. As the U.S. asks its allies to take on greater responsibility in a shared effort to protect international security and stability, it is imperative that these key partners be equipped with and trained on the appropriate systems and technologies to ensure engagement and interoperability with U.S. and other coalition forces.

Government and Congressional Activity Affecting Aerospace Exports

The value of aerospace exports is certainly not lost on the members of this Subcommittee, or on other leaders on Capitol Hill and in the Administration. Across all segments of our industry, the biggest asset we have in competing internationally is the advocacy and support provided by our government on behalf of our companies, large and small. The consistent and sustained efforts of senior leadership in Congress, State, Commerce, Defense, Transportation (including FAA and NASA), Treasury, the Office of the U.S. Trade Representative, the U.S. Export-Import Bank – the list goes on and on – is crucial to ensure a level playing field, opening up markets for U.S. products, and winning those sales opportunities, particularly in the face of strong and determined advocacy from foreign governments on behalf of our international competitors.

All of these offices and agencies should consider the return on investment to our industry and to our country when evaluating budget decisions that affect these important functions. The same care must be taken when considering the potentially adverse impacts of "Buy American" policies, visa review policies that create unique barriers for our industry, sanctions, cuts in Foreign Military Financing, and other missed opportunities for international cooperation. "Selling American" (in particular the value of our products and partnership) to other countries is worth it, and there is no such thing as too much support or advocacy.

Export Control Modernization

Presuming our industry is able, with the help of the U.S. government, to compete successfully in the international marketplace to win a contract, one of the last hurdles to cross is the U.S. export control system. This Subcommittee has heard from AIA in the past about our ultimate goal for modernization – a more predictable, efficient, and transparent system – but permit me the opportunity to clarify again what we mean.

By efficient, the government must make decisions on export authorizations in a timely manner, eliminating unnecessary administrative or transit delays. By predictable, we mean that the license process must be consistent with applicable laws, regulations, and policies and consistent in that comparable export applications under the same conditions should receive the same or similar approvals in the same or similar time frames. Transparent means that the rules governing the license process must be clear, interpreted and used consistently, and that industry and foreign partners have quick, easy access to information on the status of their applications.

When my predecessor, John Douglass, testified in front of this Subcommittee in 2007, he said that the export control system we operated under then lacked these three basic qualities. The system in 2007 had reached a point where it was paradoxically hurting our national security, our economic strength, and our technological competitiveness, and had a good chance of getting worse.

For far too long, the conventional wisdom was that Congress did not favor export control modernization because that supposedly meant relaxing controls. Yet this Subcommittee was instrumental in sending a message to the Bush Administration that the status quo was not acceptable – that it is in our national security interest both to prevent our adversaries from accessing our technology AND to facilitate technology trade with our closest allies and trading partners.

I am pleased to report that your efforts in the last Congress have resulted in a great deal of improvement in how the export control system operates, particularly the part of the system governing defense trade. Two major accomplishments of note were a reduction in State Department license processing times (fifteen days is the current average versus multiple months of delay before) and the implementation of regulations affirming Commerce (vs. State) control of components that are FAA-certified, standard, and integral to civil aircraft (the so-called "17C" rule). I would like to take this opportunity to express our thanks to the leadership and staff running the export control system at the State, Defense, and Commerce Departments, as well as this Subcommittee, for your tireless efforts in seeing these improvements through.

However, it is clear to everyone that more can and should be done to make the export control system more predictable, efficient, and transparent. AIA continues to be a staunch supporter of Senate "Advice and Consent" for the United Kingdom and Australian Defense Trade Cooperation Treaties. Our industry has also welcomed President Obama's call in August for a comprehensive review of the U.S. export control system. We believe there are several potential reform initiatives (AIA's letter to the President and related white papers are found in Appendix A) that are ripe for early action by the Administration, and would go a long way towards developing a modern system. As most of our recommendations can be implemented under existing statutes, I will briefly summarize them here for your consideration before turning to specific areas that will require more direct Congressional action.

1. Establishment of transparent and specific criteria to identify those militarily critical and sensitive defense and space technologies that must be subject to the most rigorous controls
2. Facilitation of timely technology flows between the U.S. and our closest allies and partners, particularly in support of defense and national security programs important to the U.S. Government
3. Adoption of procedures to ensure any required Defense Department reviews associated with a proposed release of U.S. technology properly balance both policy and technical considerations, and are completed in a timely and consistent manner
4. Update of the treatment of the next-generation of aerospace and defense technologies, such as Unmanned Aircraft Systems (UAS), under U.S. and multilateral export control regimes
5. Review of export control compliance requirements to improve comprehension and implementation, particularly by small and medium-sized firms, as well as a review of resource requirements to raise confidence in the effectiveness of U.S. enforcement efforts

Short-Term Congressional Actions to Modernize U.S. Export Controls

AIA has registered its support for the export control modernization provisions found in H.R. 2410, and we are encouraging Senate consideration of its reforms, in particular:

- **Amending current law so the State Department's Directorate of Defense Trade Controls can use fees it collects from industry to implement improvements in its licensing and compliance activities.** Last year, the Directorate of Defense Trade Controls (DDTC) substantially increased registration fees levied on all US manufacturers of ITAR-controlled items. At the time, DDTC said higher fees were needed to implement procedural reforms mandated by National Security Presidential Directive 56, issued in January 2008. While DDTC has adequate funds to move forward on modernization, current law restricts the uses to which DDTC can direct these funds, with surplus funds diverted to other purposes. Industry opposed the fee increase, and we continue to believe adequate funding should be provided through normal appropriations channels. We are also concerned about the current fee collection process, which should move to an automated electronic registration system that allows electronic funds transfer for payments and electronic issuance of registration confirmations. For as long as these fees continue to be collected, they should be dedicated to modernizing DDTC operations.

- **Updating Congressional Notification Thresholds and Processes.** Thresholds used to determine which export licenses and foreign military sales must be notified to Congress have not been adjusted for inflation for more than thirty years. As a result, less-sensitive transactions are needlessly delayed. AIA supports H.R. 2410, which would raise thresholds for both foreign military and direct commercial sales. Industry also encourages dialogue between the State Department and the committees of jurisdiction to develop procedures for more efficient and predictable review of

licenses requiring Congressional Notification, including a documented procedure for out-of-session notifications.

- **Streamlining licensing for spare and replacement parts exported to governments in NATO countries, Australia, New Zealand, Japan, South Korea and Israel.** Even after the Administration and Congress approve sales of weapons systems to our allies, individual export licenses are required for spare and replacement parts to support these systems. This adds unnecessary volume to State's licensing caseload. Industry supports more efficient licensing for such spare and replacement parts. However, any measure related to spares and replacement parts that includes a domestic content requirement will prove challenging to industry. Such a restriction is impractical given today's global supply chain and would be too difficult and costly for companies to administer relative to getting a traditional license.

- **Returning authority to the Executive branch to determine licensing jurisdiction for commercial satellites.** A healthy domestic space industrial base is vital to US national security and foreign policy interests. Restrictive controls on all Commercial Satellite (COMSAT) technology have disadvantaged US spacecraft and component manufacturers in the global marketplace - without necessarily having achieved their intended objectives. Taking action will safeguard access to critical space technology for the U.S. defense and intelligence community, strengthen America's ability to compete in the $144 billion global satellite market, and reinforce our nation's global technological leadership. Industry is not seeking any change to current restrictions on exports of satellites to or launch from China, and supports Congressional review of adjustment to controls through the Section 38(f) notification process.

Conclusion

The U.S. aerospace industry has the strength to lift America in these challenging times. Aerospace exports fuel the health of our companies and the competitiveness of the most innovative industrial base in the world. Our nation reaps the benefits of aerospace exports in the form of enhanced national security and economic growth. The government-industry partnership supporting aerospace exports is crucial, and cannot be taken for granted. In the absence of the type of dialogue and collaboration practiced by this Subcommittee and its leadership, it is easy to miss opportunities or even damage international cooperation with our friends and allies overseas.

Export control modernization serves as a perfect example of the promise and perils of sustaining international cooperation as we work together to make the system both secure and appropriately flexible. Previous modernization efforts have met with varying degrees of success. Experience suggests that critical factors in enabling meaningful reform include sustained oversight by senior Administration officials, as well as effective consultation with Congress and the private sector. We stand ready to work with you and the Obama Administration to ensure that we continue to make meaningful progress towards a 21st century technology control regime.

December 2, 2009

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

As members of the Aerospace Industries Association (AIA), we are writing to thank you for setting in motion the interagency review of U.S. export control policy and practice.

AIA strongly endorses the view that the current system must be updated to address both the national security challenges we face today, as well as the evolving technology and competitive landscape. We have long advocated for a more predictable, efficient and transparent technology control regime that advances our national security interests. An effective export control system must safeguard critical technologies, as well as facilitate collaboration with our closest allies and international partners. The review you have called for holds the potential to generate significant progress toward that end.

We believe there are several potential reform initiatives that are ripe for early action by the Administration, would not require new legislation, and would go a long way towards developing such a system, including –

1. Establishment of transparent and specific criteria to identify those militarily critical and sensitive defense and space technologies that must be subject to the most rigorous controls
2. Facilitation of timely technology flows between the U.S. and our closest allies and partners, particularly in support of defense and national security programs important to the U.S. Government
3. Adoption of procedures to ensure any required Defense Department reviews associated with a proposed release of U.S. technology properly balance both policy and technical considerations, and are completed in a timely and consistent manner
4. Update of the treatment of the next-generation of aerospace and defense technologies, such as Unmanned Aircraft Systems (UAS), under U.S. and multilateral export control regimes

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5. Review of export control compliance requirements to improve comprehension and implementation, particularly among small and medium-sized firms, as well as a review of resource requirements to raise confidence in the effectiveness of U.S. enforcement efforts

We believe that immediate attention on these matters, together with ratification of the pending bilateral defense trade cooperation treaties with the United Kingdom and Australia, will advance our country's national security interests.

Previous modernization efforts have met with varying degrees of success. Experience suggests that critical factors in enabling meaningful reform include sustained oversight by senior Administration officials, as well as effective consultation with Congress and the private sector. We stand ready to work with you and your Administration to ensure that this newly initiated review yields meaningful progress towards a 21st century technology control regime.

Thank you for your consideration of our views.

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Cc: The Honorable Hillary Clinton, Secretary of State
The Honorable Robert Gates, Secretary of Defense
The Honorable Gary Locke, Secretary of Commerce
The Honorable James Jones, National Security Adviser
The Honorable Larry Summers, Director, National Economic Council

AIA member companies also supporting the letter to the President:

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White Electronic Design Corporation

Tom Gendron
President & Chief Executive Officer
Woodward Governor Company

Scott Thams
CEO
X-Ray Industries, Inc.

Establishing More Appropriate Treatment of UAS Technology under the Missile Technology Control Regime

ISSUE: Within the multilateral Missile Technology Control Regime (MTCR), the Administration should advocate for more detailed and appropriate guidelines to govern exports of Unmanned Aircraft Systems (UAS) technologies. Such guidelines must draw distinctions between UAS capable of delivering weapons of mass destruction (WMD) and those which are not. Absent such a distinction, the MTCR is needlessly restricting access to critical capabilities that are increasingly essential to successful operations by the U.S. military and our coalition partners.

AIA RECOMMENDATIONS

- Establish performance and survivability criteria in the MTCR, such as Radio Frequency (RF)/Infrared (IR) signature, speed and maneuverability, and absence of weapons delivery systems, which would allow UAS not suitable for WMD delivery to be evaluated for export without a presumption of denial.
- Develop a process to negotiate security arrangements for UAS with specific importing countries before exercising the presumption of denial for export.
- Clarify that lighter-than-air vehicles are not subject to MTCR jurisdiction.
- Review how UAS are covered under the International Traffic in Arms Regulations (ITAR) and make changes to U.S. Munitions List (USML) Category VIII as appropriate.

BACKGROUND

For over 20 years, the multilateral Missile Technology Control Regime (MTCR) has helped slow the proliferation of unmanned WMD delivery vehicles. During that time, however, UAS technology has evolved substantially, leading to the emergence of several systems whose technical parameters make them unsuitable for WMD delivery. Yet these UAS are still subject to MTCR's "strong presumption of denial" for transfer/export because their range and payload meet or exceed the criteria for classification as MTCR Category I vehicles. Applying the MTCR Guidelines to transfers of such UAS does not stem the proliferation of unmanned WMD delivery vehicles. Instead, such constraints needlessly restrict the supply of critical capabilities (such as Intelligence, Surveillance and Reconnaissance, or ISR) that are in very high demand by the U.S. military and our coalition partners. In short, subjecting slow, unarmed UAS with limited maneuverability and performance capability to the same restrictions as cruise missiles is unnecessary and inappropriate.

Ensuring Appropriate Scope and Application of U.S. Export Controls

ISSUE: Industry seeks greater clarity, consistency, and coordination from the U.S. Government and Congress on how technology is identified, evaluated, and controlled for export by the State Department's International Traffic in Arms Regulations (ITAR).

AIA RECOMMENDATIONS

Improve the Commodity Jurisdiction (CJ) Process

The Administration has established a process to resolve interagency differences in CJ determinations in a more timely fashion. Improvements in both definitions and regulatory scope would lend still greater transparency and consistency to the process.

- Affirm that ITAR Section 120.3 criteria for designating and determining defense articles/services serve as the primary policy guidance for CJ determinations.
- Adopt proposed revisions to Section 120.3 and 120.4, as well as clarifications of ITAR terms, put forward by the Defense Trade Advisory Group (DTAG).
- Identify specific criteria, such as military/intelligence sensitivity, risk of diversion, and impact to civilian and defense production lines, as the basis for allowing continued treatment of items as Commerce-controlled if they are the subject of a pending CJ determination.
- Provide more comprehensive explanations to individual CJ applicants regarding the rationale behind jurisdictional determinations in light of Section 120.3 and 120.4.

Transition Technologies from the U.S. Munitions List (USML)

If parts or components are determined via the CJ process to be controlled under Commerce's Export Administration Regulations (EAR), some policymakers have expressed concern that effective controls may not be applied if they are transferred from the USML to the Commerce Control List (CCL). The CCL currently provides for a range of possible controls (some unilateral) based on the technical parameters of the items in question.

- Develop new Export Control Classification Numbers (ECCNs) as needed to include previously ITAR-controlled technologies in the CCL with appropriate control requirements.
- Establish a Commerce/DoD review process to adjust the level of control over time on a specific commodity within these new ECCNs.
- Formalize industry consultative bodies to provide updates on global trends in defense hardware/technology, foreign availability, marketing, and related recommendations for changes to the USML. Such information should be factored into decisions regarding addition of new items, updates to technical parameters of controlled items, and removal of items from the USML with no military or intelligence significance or dual-use items that could be adequately controlled by Commerce.

Support Congressional Action on Commercial Satellites

Commercial communications satellites are the only technology on the USML for which licensing jurisdiction is mandated by law rather than regulation.

- Urge Congress to adopt legislation restoring Executive Branch authority to determine licensing jurisdiction for commercial satellite components and technology.
- Once enacted into law, move expeditiously to identify and remove appropriate items from control on the USML.

Mr. SHERMAN. Thank you. Mr. Berteau?

STATEMENT OF MR. DAVID J. BERTEAU, SENIOR ADVISOR AND DIRECTOR OF THE DEFENSE-INDUSTRIAL INITIATIVES GROUP, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES

Mr. BERTEAU. Thank you, sir. This mike on? Yes. We are adjusted now. Mr. Chairman, thank you for the opportunity to be here today. My statement will stand for the record. I will just make a couple of comments and go there. CSIS has been engaged in looking at export controls for quite a number of years. We have a long record of studies. I cite those in my statement. We have learned a number of lessons for those. They are in there as well. I think all I want to say orally are two things. One is there are some national security issues here that the current regime tends to work in the opposite direction of what we would intend them to do so. I would note three things. One is, in fact, there is a lack of prioritization in the system today that leads us to spend an awful lot of time on things that we should well spend less time on, and perhaps ignore the things that are more important.

Secondly is the effect of globalization, and a number of the committee members brought this up in earlier with the first panel, and the degree to which at some point we may get to the point where we can't get access to what we need because somebody else doesn't want to be subject to our controls. We haven't reached that point yet. We have come close to it a number of times. There is no smoking gun, but the elements of the gun are there. Third is the degree to which we have the unintended consequences of promoting a capability elsewhere that actually works against our national interests rather than in favor of it. These are all tough questions that are hard to wrestle with. I think it is also instructive, and my statement goes into some detail on this, to look at what the Europeans are doing with the new EU directives on both procurement and transfer and the potential to create a situation that would, I think, substantiate some of the comments I made about the national security impacts. With that, Mr. Chairman, I will yield back the rest of my time and proceed to your questions.

[The prepared statement of Mr. Berteau follows:]

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

A Strategic and Economic Review of Aerospace Exports

David J. Berteau
Senior Adviser and Director, Defense-Industrial Initiatives
Center for Strategic and International Studies
Washington DC

December 9, 2009
Room 2200, Rayburn House Office Building

A Strategic and Economic Review of Aerospace Exports

Statement of David J. Berteau
Senior Adviser and Director, Defense-Industrial Initiatives
Center for Strategic and International Studies
Before the Subcommittee on Terrorism, Nonproliferation and Trade of the House Committee on Foreign Affairs

December 9, 2009

Mr. Chairman, Congressman Royce, and Members of the Subcommittee, I appreciate the opportunity to appear before you this afternoon as part of this distinguished panel to offer my views on the strategic and economic issues associated with U.S. aerospace exports. I focus this afternoon on export controls more than export promotion, because that is where we have directed our analyses in the past few years. I would note that my statement draws on the export control studies of the Center for Strategic and International Studies but that the statements and conclusions are my own and do not necessarily represent the views of CSIS.

Administration Review

As you know, Mr. Chairman, in August the Obama Administration announced "a broad-based interagency process for reviewing the overall U. S. export control system, including both the dual-use and defense trade processes." This is a worthy initiative and one applauded by all involved in export promotion and controls. It is particularly important that such an effort be initiated at the start of an administration, because past experience shows that progress in improving export control regimes is slow-moving.

What is needed, of course, is action, not words – within the Executive Branch, with the Congress, with our allies and partners, and with industry. Only by working together better than we have in the past can we expect to make progress.

CSIS Studies

At CSIS, we have called for and supported such efforts in the past. Beginning with our seminal study led by Dr. John Hamre in 2001, "Technology and Security in the Twenty-First Century," we have offered recommendations for improvement.

More recently, our study on the "Health of the U. S. Space Industrial Base and the Impact of Export Controls" was released on February 18, 2008, and is available at http://csis.org/publication/health-us-space-industrial-base-and-impact-export-controls.

On May 15, 2008, we released our briefing "Toward a U. S. Export Control and Technology Transfer System for the 21st Century" at a public event co-led by the Deputy Secretary of Defense and the Deputy Secretary of State. That briefing can be found at http://csis.org/publication/toward-us-export-control-and-technology-transfer-system-21st-century.

The briefing was the culmination of more than a year of working group meetings and sessions involving all of the key Executive Branch agencies and the congressional committees and staff.

Let me summarize the lessons we learned from those recent studies.

First, we learned that progress can come if agencies do a better job of working together. We found that the Departments of State, Commerce, and Defense benefit from a forum for dialogue and from an ability to raise and resolve issues at the staff level.

Second, we found that such progress is enhanced by strong, visible support at the level of the White House, Cabinet Secretaries, and Agency heads.

These are not new observations, Mr. Chairman, but it is important to reiterate them, because with the press of issues at the beginning of a new administration, they can be too easily relegated to the back burner.

Third, we found that the primary driver for export controls is national security, and the system properly tries to achieve the two goals of preventing our adversaries from accessing our technology while enabling technology interaction with our allies and partners. That said, we further found that there are at least three ways in which the current export control regimes may serve to undermine U.S. national security rather than strengthen it. This is a crucial finding, Mr. Chairman, and I want to expand on that.

National Security Concerns

One undermining effect is that the current regimes make it difficult to prioritize administration efforts. The regimes concentrate far too much effort and attention on controlling items that pose little threat and therefore are unable to identify and concentrate on the technology areas that pose the greatest threat and contain the most prominent vulnerabilities. With too few people to do everything, we cannot afford a situation in which we might succeed in controlling the spread of weapons in one region but fail to address larger global threats.

A second undermining effect serves to limit the U.S. ability to access the global innovation base and to operate interactively with our allies. Based on the flawed assumption that all new defense-related technologies are being created and developed in the U.S., our export control regimes continue to be structured in a way that makes both collaborative R&D and coalition operations harder to undertake. Meanwhile, the globalization of technology development and application means that many advanced capabilities are coming from other countries, and the primacy of the commercial market means that defense does not always have the cutting edge in areas like communications, electronics, microprocessing, software development, and optics. In addition, to handle the threats of the 21st century, the U.S. is finding it to be increasingly important to be able to operate with allies in a coordinated manner. Yet our system of controls continues to operate as if globalization has not occurred.

A third undermining effect arises as a direct result of the success of our existing control regimes. Nations that are unable to obtain technology from the U.S. are left with two choices: do without, or develop their own. Several have chosen to develop their own. Let me give you just one example: space launch and payloads. During the CSIS study on the U.S. space industrial base, representatives from more than one nation expressed gratitude to the U.S. for limiting export of U.S. space technology and in essence forcing them to develop their own indigenous satellite

launch capability. That may or may not be in U.S. interests, but it certainly was not a direct goal of U.S. policy.

System Characteristics

Concerns about the export control process can be addressed by a system that takes into account the undermining effects. In order to do so, we need an export control regime with the following characteristics:

- focuses on the most critical technologies
- recognizes that the U.S. no longer has a monopoly on new defense technology
- considers the secondary impact of restrictions that end up producing potentially undesirable competitors
- permits the U.S. defense industry to draw from commercial technology without penalizing commercial suppliers

These characteristics do carry some inherent risk, and the existing regime seems to put a premium on minimizing risk. Reducing risk at the technology export level can in fact produce an increase in overall national risk in the long run. Our system needs to focus on overall national risk.

European Union Directives

It is perhaps instructive to examine what steps the European Union is taking on defense technology and export controls. Two new directives were passed by the European Parliament this summer.

The first, Directive 2009/81/EC on defense and security procurement entered into force on August 21, 2009. The overarching objective of the directive is to open the fragmented EU defense market to EU-wide competition. The directive does not mandate an explicit European preference, and therefore U.S. defense companies would in theory be eligible to benefit from it. However, it does include a security-of-supply provision as a selection criterion for awarding contracts. In practice, this could mean that U.S. companies are put at a comparative disadvantage based on ITAR regulations, which could be judged negatively with regard to guaranteeing security of supply.

The second, Directive 2009/43/EC on simplifying the transfers of defense related products within the EU, addresses the issue of transfer of defense-related goods between EU member states by introducing a new standard of general and global licenses to govern such transfers. Within the EU, cross border transfers have traditionally required the issuance of individual export licenses, which restricted the free circulation of defense goods. At the same time, the bureaucratic burden and the associated delays and costs did not yield any tangible gains in safety, based on a zero per cent denial rate for transfers between EU member states. The new types of licenses would provide a pre-approved authorization framework by bundling certain categories of transfers in one single license. This system will introduce a greater level of predictability for transfers, satisfy security-of-supply concerns, reduce bureaucratic procedures, and consequently eliminate time and cost frictions for most intra-EU transfers.

U.S. companies and their European subsidiaries will probably not benefit from this directive due to the incompatibility of US export controls with the EU transfer directive. In fact the net effect might also be the creation of a comparative disadvantage for U.S. defense companies vis-à-vis their European peers.

Far more importantly, though, at the national security level, these directives could create and sustain conditions in Europe that would accelerate the development of defense technology to which the U.S. would not have access. They could create a pan-European defense market and make it easier for European companies to gain a critical mass in research funding and market share. This could in turn foster the development of new technology that is not subject to U.S. export controls and make it unpalatable for that technology to be incorporated into U.S. equipment (and then subject to U.S. restrictions). The directives could leave the U.S. without direct access to the latest defense technology. Were that to happen, the risks in my view would outweigh the benefits of the restrictions.

As of today, these new EU directives have not yet been implemented. It is unclear what their impact will be first on the overall international efforts to control the proliferation of technology and second on the technology available to U.S. subsidiaries of European firms and to the European subsidiaries of U.S. firms. However, there may still be time for the U.S. to engage with the EU on implementation, and I believe that such engagement would be welcome. The implementation of these directives bears close watching and analysis, and we at CSIS intend to do that.

Conclusion

Mr. Chairman and Congressman Royce, the time is right for improvements in the implementation of today's U.S. export control regimes. It is also time to consider updates to the enabling legislation, including the Export Administration Act and the Arms Export Control Act. At CSIS, we will continue to work on generating new ideas and on providing a forum for interaction across the Executive branch and between the Executive and Legislative branches. With that, I conclude my remarks and await your questions.

Mr. SHERMAN. Thank you. Let us move on to the third witness.

STATEMENT OF MR. HENRY SOKOLSKI, EXECUTIVE DIRECTOR, NONPROLIFERATION POLICY EDUCATION CENTER

Mr. SOKOLSKI. Thank you, Mr. Chairman, for holding this hearing. I note the presence of my congressman, at least indirectly. My mother lives in Palos Verdes, so you have been there a long time. We actually are contemporaries. I went to PV High. Not quite the same school, but close. Mr. Chairman, I want to thank you again, and the ranking member, for inviting me to speak today on this issue of controlling U.S. aerospace controls, and ask that the full statement that I have written be placed in the record. My general recommendation, which is based on my experience over the last 20 years initially working in the Defense Department licensing a lot of aerospace items, particularly missile tech, is that it would generally be a mistake to encourage more U.S. aerospace exports to go license free or to reduce our ability at least to detract them.

After 9/11, and at least three post-Cold War rounds of export control decontrols, we now are at a point where according to the GAO 99.5 percent of the goods subject to Commerce Department regulation are already being exported license free. As for munition items, the U.S. last year sold at least 10 times more than any other country, capturing 68 percent of the world's arms market. This suggests that we are holding our own against our competition even under current export control. More important, I think such controls are still warranted. This is my role, I believe, on this panel, to make that case.

At the high end there is plenty of aerospace technology that the U.S. should only export with the greatest care and only in support of the most critical security alliance and cooperative undertaking. These technologies, and they are explicated in much greater length in the testimony, include things like software codes, aerospace black art skills, there is systems integration insights, satellite technology relating to the design, integration and satellite subsystems of satellites that we use in our military, unmanned air vehicles and related ground equipment and technology, stealth technology and air and missile defense penetration aides, and advanced missile and air defense systems.

It should be noted that most of these military-related technologies and their subsystems are controlled by the Missile Technology Control Regime, and that when you do decontrol, you have to attend to that. We talk generally about reducing nuclear arms. This will inevitably lead to some kinds of limits, I suspect, on missile technology and missiles. The instrument for doing that will be very heavily dependent on the MTCR. Now, it could be that we get rid of the MTCR, but then we are in a bit of a bind with regard to our general goals on doing strategic arms reductions. There are still difficult adversaries out there and they may try to acquire our goods and they cannot get them anywhere else.

In fact, there have been 50 to 75 Federal prosecutions last year of individuals attempting to export these items illicitly out of the U.S. Despite all of the reasonable points the chairman points out, I sympathize with what he is commenting on, still the law does get exercised. Also, after 9/11, the transhipment of dual-use and mili-

tary technology directly from the U.S. has become a much greater security concern. At the very low end we have this example of bin Laden buying a surplus military transport, which is, to my knowledge, I am not sure if it is a controlled technology. Even now I think it is still possible. He used it for transport purposes. The General Accounting Office study was cited. I won't go into that.

Meanwhile, I think neither State, nor Commerce, has yet to reassess what a complete list of items might be that terrorists might be seeking. Slightly different point. In other words, I think they have got their eye on the commercial ball, and that is important, but I am not sure they have their eye on the other ball which they have to balance. Why then is there a push for decontrol? I think one reason has to do with the integration of U.S. with European aerospace firms. The EU-based consortiums that operate throughout the EU and the U.S. no longer have a very high interest after the Cold War in investing heavily to develop defense capabilities.

As a result, they are falling further and further behind the U.S. in key leading military-related technologies, including the list I just gave you, and they have a clear interest in gaining access to this technology without having to pay for the research and development themselves. These same EU-based vendors are among those most interested in decontrolling military exports to places like China. They tried to do so several years ago. Let me get to the recommendations. I think, by the way, doing a totally license free approach, even with regard to Australia, my wife is Australian so I say this with hesitation, would probably be a mistake. You still want to keep track of things.

I don't think you want to hold things up, but you want to keep track of things and you don't want to send things without a trace, even to good neighbors like Australia. I say that hesitantly. My wife will talk to me later. Recommendations. I think you need to clarify what is being controlled before authorizing any further decontrol. What specifically might be shipped out under decontrols needs to be specified by industry before government pushes to change broad categories to reform the export control system. Second, I think we need to consider ways we might share the benefits of controlled technology without transferring the technology itself. In the case of space launch vehicle services, the services relating to UAVs and the intelligence they might gather, there is, in fact, something of a burgeoning industry already.

I think we need to investigate how much more can be done. Finally, I think we need to strengthen, rather than undermine, certain critical multilateral aerospace control efforts, such as the MTCR. In particular, if we are going to have missile defenses, it would be nice if the technology to defeat them wasn't going around license free or uncontrolled. The MTCR doesn't cover all of that yet. It ought to. With that, I conclude. I should make one last comment. I certainly sympathize with the previous panel's need to make things transparent and to expedite. I was a little astonished after so many years looking at the system to see how many inefficiencies it still has. They are doing better, though.

[The prepared statement of Mr. Sokolski follows:]

US Aerospace Exports: The Case for Further Controls

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Mr. Chairman, I want to thank you and the ranking member for inviting me to speak today on the critical issue of how we should control U.S. aerospace exports. My general recommendation is that it would be a mistake to allow more US aerospace exports to go license-free or to further reduce our ability to track them. Instead, this Committee and the our government should

- ***Clarify what should be controlled before authorizing any further decontrol of US aerospace exports,***

- ***Consider new ways the US might share the benefits of controlled technology without transferring the technology itself,***

- ***Strengthen rather than undermine critical multilateral aerospace control efforts, such as the MTCR,***

- ***Encourage the State and Commerce Departments to meet current guidance regarding export licensing efficiency, predictability, and transparency rather than relieve them of their need to improve by simply decontrolling more goods.***

These recommendations are based on the following findings:

1. **US aerospace exports warrant more, not less control**.

Conventional wisdom has it that we need higher fences around fewer goods that truly need protecting rather than a large number of ineffective controls over a large number of goods that hurts our aerospace industry's ability to compete. Yet, after 911 and at least three Post-Cold War rounds of decontrols, over 99.5 percent of the goods subject to Commerce Department regulations are already being exported license-free. Meanwhile, the U.S. last year sold at least ten times more munitions items than any other country (and captured over 68 percent of the world arms market). These munitions items, moreover, remain under State Department munitions control and are clearly of sufficient military importance to warrant the kind of close tracking and subsequent U.S. consent for retransfer that individual validated licensing (IVL) requires. Under no circumstances should Congress reduce controls over subcomponents of fully assembled military systems by shifting their control over their export to Commerce Department. If adversaries of the US can get their hands on subcomponents of known complete weapons systems, they can build any number of threatening weapons themselves. If anything, growing concerns about terrorist use of dual use and low technology warrants a review to tighten, rather than loosen U.S. export controls over critical aerospace technology. Such a review is needed to assure that such goods are not transshipped illegally out of the U.S or allowed to go unmonitored when shipped abroad. Either misstep could allow these goods to end up in

the wrong hands with no notice at all. A case can and should be made for expediting and making more transparent the licensing of militarily sensitive goods to our closest allies. But this calls for having State and Commerce follow existing Congressional guidance rather than having Congress authorize more decontrols that would relieve the Executive of their legal responsibility to make the licensing process more efficient, transparent, and expeditious.

2. **At the high end, there still is plenty aerospace technology that the US should only export with the greatest care and only in support of the most critical security alliance and cooperative undertakings.** These technologies include:

- ***Software source codes*** relating to U.S. weapons systems. These codes capture years of U.S. taxpayer-paid experimentation and modification of our most important weapons systems and are essential for modifying and upgrading U.S. weapons systems. Under no circumstances should this technology be exported without an IVL, which requires the tightest post-export monitoring procedures nor should this technology be exported to any state unless it is necessary for military cooperation to maintain a critical U.S. military security alliance relation. This technology is often missile production technology, which under The Missile Technology Control Regime (MTCR), is banned from being exported except for foreign programs exempted by superseding treaties in force among the original members of the MTCR.

- ***Aerospace black arts skills*** or systems integration insights usually are the domain of systems engineers and are critical for making complex aerospace systems, such as satellites, rockets, and advanced jet planes work. These complex systems have many subsystems that are subject to a variety of worrisome stresses that can produce system failures unless the builder and operator have access to the integration insights of experienced builders. Much of this "black art" can and is conveyed in face-to-face meetings between skilled practioners and novice engineers. This can and does happen in the normal course of special skills training, specialized instruction, and consultancy visits. Each type of visit or exchange listed should require prior governmental consent and the closest oversight and monitoring.

- ***Satellite technology*** relating to design, integration, and satellite sub-systems (if it is on US military satellites) is among the crown jewels of America's ability to use and command the ultimate high ground of space. In the late 1980s and early and mid 1990s, the US risked sharing this know how with China with disastrous results. As a result, our military (including our naval battle groups) will be targeted with more precise maneuverable conventional Chinese ballistic missiles and more reliable, accurate nuclear-

capable missiles. More could yet be gained from U.S. export of such goods to China and other countries in the name of "peaceful space launch and satellite cooperation". Some of the candidates for such space cooperation are hardly close military allies and are known to have shared U.S. missile technology with states such as China, Iran, Iraq, and Libya. This technology often is missile production technology whose transfer is prohibited under the MTCR to most states.

- ***Unmanned air vehicles*** and related ground equipment and technology. These and their related subsystems are one of America's key comparative military advantages in fighting both large conventional wars and in combating terrorist operations. It is critical that the US preserve its lead in this field. Again, the MTCR requires a strong presumption of denial to the export of large unmanned air systems and their related subsystems.

- ***Stealth technology and penetration aids.*** Staying ahead in these technologies and keeping them from spreading are also critical to America's ability to command battle airspace and to assure our missile defense systems are not defeated. Many of these technologies are not currently controlled under the MTCR but the US has the greatest interest in preventing their illicit transfer.

- ***Advance missile and air defense systems.*** These and their related subsystems are becoming critical to dealing with emerging missile states, e.g., Iran and North Korea, and to defend our NATO allies and South Korea, Australia, Israel, the GCC states, Taiwan, and Japan. The largest of these systems are category one missiles under the MTCR and their export is subject to a strong presumption of denial under the MTCR.

3. **These military critical systems and their related subsystems are still difficult for our adversaries to acquire anywhere else and continued controls make those who export them illicitly subject to arrest.**

- Each year there between 50 to 75 federal prosecutions of individuals attempting to export these items illicitly out of the US to states such as Iran and China. These prosecutions would be most unlikely were it not for licensing of these exports.

- So long as key military systems and their subsystems require licenses, the tracking of these items' export will continue to be much more difficult to defeat or obscure than would otherwise be the case.

4. **After 911, the transshipment of dual use and military technology directly from the US has become much greater security concern.**

Bin Laden managed to buy a surplus T 39 US military transport plane that he subsequently used to ferry weapons and to transport al Qaeda personnel from Khartoum to Nairobi, and other areas in East Africa. Even after this event, our government wanted to decontrol the export of such aircraft.

- This year, the Government Accountability Office legally purchased and transshipped variety of Commerce and State controlled dual use and military goods that we know terrorist state agents and terrorist organization have attempted to buy from the US. These goods included an F-16 aircraft computer, gyro chips that can be used to precisely guide crude unmanned aircraft, and accelerometers suitable for use in smart bombs.

- Meanwhile, neither State nor Commerce has yet to reassess what a complete list of items that terrorists might be seeking.

5. **Those most interested in reducing controls over U.S. aerospace technologies and goods are not those most heavily vested in strengthening U.S. and allied military capabilities.** Conversely, those most interested in keeping controls on US aerospace technology are.

- EU-based consortiums that operate throughout the EU and with US no longer have as high an interest after the Cold War in investing heavily to develop defense capabilities. As a result, they are falling further and further behind the US in key leading military-related technologies (see the list above) and have a clear interest in gaining access to this technology without having to pay for the research and development themselves.

- These same EU-based vendors were among those most interested in decontrolling military exports to China several years ago. In the end, the US said no because of such sales could reduce the security of the U.S. and its allies. These same EU-based vendors, however, knew that they could make such sales to China without directly increasing security risks for Europe.

- Japan, in contrast, has long been worried about possible arms technology transfers to China. Moreover, Japan is vitally interested in strengthening and in investing in strengthening its military capabilities visa vis China and North Korea. Having suffered the embarrassment of the Toshiba case during the Cold War, Japan is relatively tighter in its export controls than the EU and currently is cooperating closely with the US on a number of cutting edge defense projects.

6. **In theory, eliminating export controls to our closest military allies seems attractive but, in practice it would be self-defeating**. In fact, sending them militarily significant technologies and goods license-free would only increase

- Demand from states that are not close US military allies to get similar treatment,

- the risks of transshipment from these locations to our adversaries "without a trace".

- The inclination of other countries to decontrol key goods that could harm the U.S. as well. Here, I have been approached by at least one major allied government warning that it would be forced to decontrol its aerospace exports, if the US did so, even though it otherwise would not be inclined to do so.

7. **Although those pushing for decontrol give specific examples of export control excesses, they offer only general descriptions of what they want to see decontrolled and how much this might profit the U.S.**

- Instead of describing how much security and commerce the US might lose by further decontrolling aerospace exports, they give vague descriptions of how much commerce decontrol might assure.
- Instead of specific examples of sales they want to make, they give only broad categories of aerospace technology they wish to free from licensing requirements.
- Thus, some talk about wanting to export satellite systems. Yet, this could include whole satellites, key subsystems used on US military satellites, or integration technology that is critical to validating the design of ICBM capable rockets, etc. You would hope the broad category of "satellite systems" would not include any of the above specific categories, since if it did, it would be a relatively small step to calling for the building of US-designed satellites in places like China – something the industry quietly argued for back in the l990s but that the Congress wisely rejected.

8. Recommendations:

- Clarify what should be controlled before authorizing any further decontrol of US aerospace exports

o What specifically might be shipped under decontrols needs to be specified by industry before government pushes to change broad categories to "reform" the export control system.

- A proper review of what low and medium-technology items might need to be controlled more carefully is required make sure any export reform prevents exploitation of the control system by terrorists and other potential adversaries.

- ***Consider new ways we might share the benefits of controlled technology without transferring the technology itself***

- The US can launch satellites for others without giving them space launch technologies (aka. MRBM and ICBM-capable rockets controlled by the MTCR).
- This is also the case regarding the information that can be collected with unmanned surveillance drones, the learning that space science research can foster, and the security missile defenses through unified US operations or turnkey US contracted services in situ can afford.

- ***Strengthen rather than undermine critical multilateral aerospace control efforts, such as the MTCR,***

- US and its allies have an interest in increasing controls over space launch vehicles (and related technologies), stealth, pen aides, and UAV technologies. Such controls would help to curb missile proliferation, strengthen our missile defense capabilities relative to offensive missiles threats, and prevent non-state theft or exploitation of unmanned systems.
- Consider developing a multilateral effort to limit the transfer of lower tech and smaller missile related systems to prevent terrorist exploitation.

- ***Encourage the State and Commerce Departments to meet current guidance regarding export licensing efficiency, predictability, and transparency rather than relieve them of their need to improve by simply decontrolling more goods.***

- Follow current law, which favors expedited procedures for the licensing of exports to allies
- Meet clear deadlines
- Make the computer systems and processes work to let industry know what is happening to their licenses in real time
- Contract out more and hire more government officials, where appropriate, to help make this happen.

Mr. SHERMAN. I want to thank you. I am going to have to step out in a few minutes for a few minutes and our vice chair will take over chairing the hearing in that interim. Ms. Blakey, reading the detailed testimony that you referred us to, I am looking for things we can do here in Congress and you basically have said pass H.R. 2410. Been there, done that. Is there anything else for the House of Representatives to do?

Ms. BLAKEY. Well, we think at this point of course we would like to ask you, of course, to be as persuasive as possible with your set of colleagues because I do think a lot of the actions, as you are undoubtedly noting here, rightly sits there.

Mr. SHERMAN. My advocacy for a unicameral legislature has not been taken well by the state.

Ms. BLAKEY. You know, but I do think we do think there are a number of things that might be very helpful in all of this. We would like to see more flexibility in the way DDTC can use the fees that are being collected because we want to see the system modernized, and we do want to see the kind of updated computer system that the State Department needs.

Mr. SHERMAN. Now, does H.R. 2410 provide that flexibility on the fees?

Ms. BLAKEY. It is my understanding you do, so, you know, I would—all right, let me go to one that is a tiny bit harder. Again, this is something that is a multilateral issue, but it is one that I think, you know, as we are discussing things here with the panel, when we are talking about the Missile Technology Control Regime, right now we are catching all forms of UAVs as missiles there. This goes to things that are essentially blimps.

Mr. SHERMAN. Essentially you say blimp?

Ms. BLAKEY. Blimps.

Mr. SHERMAN. Blimps. Got you.

Ms. BLAKEY. You know, dirigibles. I mean things that none of us would ever recognize or consider to be a missile. It is the way the language is constructed. The definitions are not as precise, and they certainly are not up-to-date with regard to these kinds of technologies. Now, again, advocacy on that part and helping to instruct that we take that on, it is a task that needs to be done.

Mr. SHERMAN. So if we deleted from the definition of missile anything that travelled at under 200 miles an hour we would pretty much solve this problem?

Ms. BLAKEY. You know, I don't want to try to pin down that definition, I am certainly not the one who can conjecture all the potential issues there, but we do see that this is not up-to-date, it is not clear, and it is certainly something that is not to our advantage as it is currently constructed. So, you know, among the things that I would point out, those are some of the things that I think we would very much appreciate congressional action on across the board.

Mr. SHERMAN. I have been concerned with Iran being able to get its hands on various technologies, including aircraft parts. We made a mistake in allowing Boeing to just ship them aircraft parts. We don't necessarily have to make that mistake again. Now, I posited to the last panel the fact that it is not tough for Iran to just get a P.O. box in the name of Jack Jones, maybe print up some letterhead on a computer, Jack Jones Aircraft Repair, Incorporated.

How much of a burden would it be if there were certain items produced by your members where they weren't just allowed to ship it to anybody who claimed to have a company and a use for it, they would actually have to know something about the customer.

Ms. BLAKEY. The circumstances I am familiar with are going, of course, to commercial aircraft, and they are going to the issue of safety of flight. This is a situation where I think we all understand that we have enormous issues with the Iranian regime, but we certainly don't want to undermine the safety of passengers flying——

Mr. SHERMAN. Well, if I could interrupt, though, that is outside the scope of this hearing. What we should have done is said Iran should ground its fleet as long as it is developing nuclear weapons and that anybody who dies on one of those planes dies at the hands of the Ayatollah, not at the hands of the United States. We made a clear mistake in instead telling Iran that they can have commercial aircraft functioning and a nuclear program. That is a mistake we made. It is outside the scope of these hearings. Let us return to the scope of the hearing. How much of a burden would it be if your members had to know the difference between a real user of their product, on the one hand, and some guy with a P.O. box and some letterhead he printed up on his own printer?

Ms. BLAKEY. I think at this point in the defense arena there is no question about the fact that our companies do know who the end-users are. Defense products are not shipped willy-nilly to Jack Smith at a P.O. box, and that is something that I really do not think we are encountering difficulty on.

Mr. SHERMAN. I am focusing more on the dual-use items.

Ms. BLAKEY. Even on dual-use. I mean, I think, again, for things that are at real issue that have defense and military sensitivities of higher order, I don't think we are running into an issue there, but when you get down to what I think is at the heart of this, it is an enforcement issue, and, you know, how do you track those issues when someone violates U.S. law?

Mr. SHERMAN. We will never be able to enforce against a guy named Jack Jones who drove his pick up truck to Mexico City, so the question then is do we have a list of companies that you are allowed to ship to? Do we just say that it is your obligation to know your customer? We have to put the burden, unfortunately, on legitimate actors saying that Jack Jones, the guy in his pick up truck, is subject to criminal prosecution. It is not going to deter Jack Jones. So we have got to control things at the factory gate of legitimate factories, not just hope that we can—in any case, I think I am over time, as my staff has identified. It is now time to recognize Mr. Rohrabacher, and I will return in just a few minutes.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. Let me identify myself with your very good idea of making sure that when we state a policy toward Iran there is teeth behind it. Mr. Chairman, I identify with your statements about grounding the Iranian airline fleet, which it should have been. If we were going to actually be serious about putting pressure on them not to develop nuclear weapons, that would have been a very good way to do it and a safe way to do it. It sounds like we didn't have courage enough at that time to move forward with that policy. Let me just ask, there is a debate been going on about whether or not we should

have a two-tiered system of controls on exports of aerospace and other technologies, that one tier would be a tier which would have somewhat controls on it to undemocratic and potentially hostile governments versus the other tier which would be clearly democratic governments and it would be had with somewhat unlimited restrictions.

China has been the one element that has prevented us from having that system because there are so many companies, large American companies, that are making huge short-term profits by dealing with that gangster regime. What does the panel think about two-tiered system and whether or not China should be treated any differently than Belgium when exporting potentially dangerous technology?

Mr. BERTEAU. Mr. Rohrabacher, let me take a first crack at that. I think there are two issues associated with the idea of the two-tiered system that are very hard to solve. It is pretty easy to put most countries in the world into one category or the other. As you note, it is the ones at that boundary, plus China, which is a different question that come into play. The two issues are at the boundary. Number one is where exactly do you draw that line? The second is, in fact, as you know, sometimes countries move from one of those categories into another without a whole lot of warning, and so the system would have to be able to accommodate both of those things. Neither of those would solve your China issue, however, where the question of short-term versus long-term clearly needs to be addressed.

Mr. ROHRABACHER. Well, our refusal to define China as a potential enemy, even as it is still the world's worst human rights abuser, and expanding their own military capabilities, I think, has had a dramatic negative impact on the security of the United States in the long run, but go ahead. The question is still on the table.

Mr. SOKOLSKI. I think, first, we do differentiate the lobbying, if you will, when we are getting someone on the good or the naughty list is always an act of policy issue. I would warn you, though, having administered export controls, it is end-use controls, and destination controls are something that you have and you use, but in the end, for the really important stuff there is an expression: It is like kissing your sister, it is not serious. The reason why is if something is worthwhile and important it will move, and it will move from the destination you have okayed to destinations you don't want it to move. If you don't have a way of tracking that, and that usually means an individual validated analysis, your goose is cooked.

A lot of these schemes where you send things to the EU, or Great Britain, or, I say again Australia, license free means it is over to them, and if they don't have a tracking system and we don't as to what was received, it is over.

Mr. ROHRABACHER. Well, I agree with that, so we are talking about necessarily for everybody that we have to know who the end-user is going to be and ably have a system to determine that. I agree with that. What about you on a two-tiered system?

Ms. BLAKEY. I don't think any of us are advocating license free per se. I mean, the UK and Australia treaties that we are very

much in favor of still stipulate appropriate technologies and, of course, trusted end-users there, so, and that is the highest echelon here.

Mr. ROHRABACHER. Well, let us just take a look at this, what we have got now. General Electric announces they are going to go into the, and as a partnership with producing aerospace parts in China. Is this not against the national security interest of the United States considering that China is still a vicious dictatorship and considering that China's relationship with the regimes, like Iran, and North Korea, et cetera, that where we traced very irresponsible, if not hostile, actions, Burma, et cetera, is this not in against the interests of the United States of America national security, as well as economic?

Ms. BLAKEY. My understanding of the new joint venture that General Electric has entered into is that it is entirely on the commercial side, commercial avionics is what we are talking about. We are talking about, again, technologies that are appropriate and widely available worldwide. In speaking about the economic interest, the issue in the long run is that you are going to have a healthier industry and you are going to have, also, both jobs in the United States that are created when you do have a vibrant vigil like this.

Mr. ROHRABACHER. Okay. Let me just note for the record, and of course I have strong disagreement with you this, the idea that you can now differentiate between the avionics going into a modern jet airliner and the avionics that will go into a bomber that will deliver a weapon on Taiwan, or somebody else, or the United States, or Japan, I don't think that there is this distinction. I think that number one, anybody in our, and our big corporations have been doing this, anybody who builds up the avionics and the aviation aerospace capabilities of China at this time is: (1) betraying their employees who have been loyal to them all this time, rather than having them buy parts from us, they are going to now manufacture it in China; and (2) it is not only bad for us economically, but our national security will suffer greatly in the long run unless, of course, there is, like you mentioned, countries have a way of changing.

China could well have some sort of a, Tiananmen Square might have succeeded. Of course, the Bush administration back then decided not to wade in on the side of democracy and decided to side basically, with their silence, with the people who murdered the democracy movement. So, anyway, let me ask you one question, and then I know we will move on. I am using my time. I see, it is my perception, that the high level decision makers in the aerospace industry are not considering the national security interests of the United States and not even considering the long-term interest of their employees, much less their own stockholders who in the end we are ending up building an industry that will compete with ours in China. Can we logically say, then, that it is not a good thing to leave these decisions up to people in the industry, but instead, we should be trying to establish a policy to make sure our country, and our countrymen, are not betrayed?

Ms. BLAKEY. Well, I would take complete and enormous exception, of course, to the characterization of the aerospace interest in

terms of our national security. I think we are the bailiwick on that, and I do believe, in fact, that we with the kind of innovation and the kind of ability to compete, which we have great confidence in, that with appropriate technologies, not all technologies, the United States can increase our national security because, in fact, we will be able to continue to innovate. We will have the kind of economic engine that allows us to continue to have the technological edge. That is inherent in the system that we are currently using. I would refer you back again to $57.6 billion of trade surplus, which is what is driven by our ability to also, appropriate technology, share with allies.

Mr. ROHRABACHER. Well, when the Chinese can manufacture this and pay their people, unlike our own very well paid aerospace engineers who deserve the pay they get, if we ship those jobs over there, we are not going to have that trade surplus anymore because people are going to be able to buy Chinese made airplanes. I think this is a catastrophe in the making, and every patriotic American should stand up to the aerospace industry. I am someone who stands in awe of the accomplishments of the aerospace industry in the past. Let us just hope they are not doing things that are going to put my children in jeopardy and make sure that we don't have good paying jobs for our own people. Any other comments?

Ms. BLAKEY. Could I make one other comment about this, though?

Mr. ROHRABACHER. Sure.

Ms. BLAKEY. We are talking about a situation in which we actually cannot control the world dynamic on this. The fact of the matter is that the Chinese are entering the aviation and aerospace market. Whether we are there or not, that will happen. It is not a situation we control. What I have tremendous confidence in, and I think that is shared among the leadership of our industry, is our ability to innovate and to compete is something that will keep us in the leadership as long as we are not trying to pull back into a shell and hold on tight to only what we have now. We will evolve, and exports will help us evolve.

Mr. ROHRABACHER. I will leave you with the last word on that. Go right ahead.

Mr. SOKOLSKI. I would like to make one comment.

Mr. ROHRABACHER. Yes.

Mr. SOKOLSKI. I am old enough to have been here before during the Loral Hughes controversy. I think you were here. That was not a pretty time for the American aerospace industry. We made mistakes, and they were very, very significant. We are still paying for those.

Mr. ROHRABACHER. Just a note. Fifteen years ago when that happened and we had a more open policy of trade, and I supported it originally because I bought on to the argument let them launch the satellites, there is not going to be any tech transfer, in the end now, there was so much technology transfer that Chinese rockets today can outcompete American rockets because they have got technologies which either they have stolen from us or transferred back in those days that give them tremendous capabilities based on, what, research and development paid for by the United States taxpayer. We just hand it over to them or they come in and steal

it, and now they are using it to put us out of work and outcompete us. I am glad you brought that up. Thank you very much, Mr. Chairman. I appreciate this hearing.

Mr. SCOTT [presiding]. Well, thank you. I am always continually impressed with my good friend from California and his intellect and depth of these issues. I enjoy our travels together, and you continue to make some excellent points. I might add that it might be perhaps our laissez faire attitude with China might have something to do with the fact they control over $1 trillion of our debt right now. Doesn't necessarily put us in the best position, and it is something we both are working hard to address. Let me go back to the economic issue here a little bit. Would each of you agree that it makes sense to support U.S. jobs and the manufacturer of U.S. goods as a part of our national security policy?

Mr. BERTEAU. Mr. Scott, I think that that is clearly a very significant issue associated with that. One of the real challenges this entire question of the export control system faces is that we don't have a good definition from a national security point of view of what defense industrial base we really do need to protect and at what level. It is not just a technology question. It is a question of skill, it is a question of supplier base, it is a question of access to materials and technology as well. We tend, as a government, to look at these kinds of questions on a program by program basis rather than in a comprehensive manner across the board. Until, and unless, we tackle this from a more comprehensive approach, your question is just an academic one.

Mr. SCOTT. Yes, Mr. Sokolski.

Mr. SOKOLSKI. If I was out of work, it wouldn't be academic.

Mr. SCOTT. That is right.

Mr. SOKOLSKI. I think we are losing, though, scope on what we really want to focus on. I think I actually sympathize with what you I think were trying to say. What you want to do in all business ventures and military, diplomatic, and probably even social ventures, is build up your comparative advantage. Sometimes that means letting go. I think that was industry's point. But, how shall I put it, they might let go a lot earlier than I would. That is where we differ. But just saving jobs and industries, that wouldn't be a complete thought, I don't think. What you want to do is say, hey, we are really good here, we can compete here, let us build on that strength. How do we do that? So you have got to identify where you are strong.

Mr. SCOTT. Well, let us take a specific situation, you said a specific situation, in terms of strengthening the U.S. industrial base. Doesn't it make sense for a United States company, a United States company, to build the next tanker for the United States Air Force as opposed to building it by the Europeans through Airbus even knowing that some of the production will be in the United States?

Mr. SOKOLSKI. Well, they are nervous, I am not. I have lots of cars. I have actually five. I have a big carbon footprint, potentially. I don't drive them, I collect them. Two of them are American, the other three are Japanese. Japanese car is a lot better. I think on this we have to be fair. If the Japanese are willing to build plants here and get us to build these wonderful cars even though they are

their design, even though they include, on the other hand, American materials, science and other things, I mean, it is a kind of collaborative thing that car, should we care? If they are trusted allies, I don't think so. I think when you get to the Chinese and some of these other things, I think you have to worry. So I am a little agnostic on that one. By the way, I still have the two old cars.

Mr. SCOTT. What about you, Ms. Blakey? How do you feel about that?

Ms. BLAKEY. Well, we are certainly, because, as you know, we represent the industry on all fronts and we are not in a position to comment on the tanker competition, but I do think it is important, going to this issue of what our industrial base should be capable of doing, and preserving those capabilities is a very important consideration as DOD is making choices that we do need to be certain that we continue to be able to preserve the technological edge that this country has always had. I would simply say that it is something that as tough choices and tough budget choices are being made, I hope that will be very much a part of their strategy and the consideration it needs to be.

Mr. SCOTT. Well, in examining the rationale of the United States' policy for doing something like this, like awarding the U.S. Air Force tanker contract to a foreign company, the question to the man on the street is why would we do that, particularly if it is for our own armed forces? That is a major issue, it is a concern. We hear it from our union members. How do we grapple with that?

Mr. BERTEAU. We have spent a lot of time looking at questions like that, not just only for the tanker, but for, in fact, most defense systems. I think you have got to start from the very strong starting point that this is not about who wins the contract but about what the military requirements are and whether or not those military requirements will be satisfied. Now, we could have a whole different conversation about whether the draft request for proposals that was put out by the Defense Department for the tanker actually does the right job of defining those requirements and whether or not the source selection criteria and the source evaluation criteria will align with satisfying those requirements. That is a different issue. I think the primacy of the military requirements has got to be where we start from here, not the question of who wins the work.

Mr. SCOTT. Do we have any empirical data or information to do any comparative analysis on the number of jobs in the aerospace industry 20 years ago, or the percentage of those jobs that were here in the United States, as opposed to jobs we have lost outside of the United States due to our export policies?

Mr. BERTEAU. There is a lot of data that you could use to analyze that. Unfortunately, a lot of that data is provided not necessarily by the government, but by those who are participating in the process. Back during the 1990s, in part as a cost saver, we no longer required companies to provide that level of information, particularly for subcontractors when they had a government contract because the government had to pay for the companies to collect and provide that information, so we saved the money by no longer getting that data. We can create estimates, we can look at estimates. I am not aware of anything that looks particularly at the answer

to your question, but we will check and see what is available on the record and provide that for you.

Mr. SCOTT. We currently have very searing unemployment in this country, loss of jobs. Do you see anything that needs to be changed in our export policy dealing with the aerospace industry that could help us with the unemployment in this country? Do you see any need of change?

Mr. BERTEAU. I think it is a very timely question. I would actually call the attention of the subcommittee to a front page article on the Wall Street Journal today; in fact, you might want to consider including it in the record at this point, on the value of the Export-Import Bank in promoting aerospace exports from the U.S. I think it is a very positive indication of how you can have a countercyclical, from an economic point of view, benefit from export promotions. I would note that the article itself doesn't cite this but that the level of default on those is essentially zero. It is almost a win/win situation. I think the degree to which we could look for other opportunities to do that would be something that would behoove us.

Ms. BLAKEY. I certainly think, you know, when you look at the drop in market share in the commercial satellite arena, the steps this committee and this House has taken are very constructive, as well as the significant improvements that DDTC has made in terms of license processing. There are a lot of levels to this, but in the long run, our jobs are depending upon a very significant export ability.

Mr. SOKOLSKI. I would suggest one change in recognition of a trend. Another article I would recommend is in the Economist. In there, they describe the provision of intelligence gathering and UAV-related services. I think we think too much about selling hardware and not enough about what probably is easily very significant, maybe even more significant, which are things that are not hardware. Much of the concern we are going to be facing regarding Iran is going to be dealing with all kinds of missiles. That technology goes there because folks are selling a lot of hardware. I am not sure you should be doing that. I think there is a lot more industry to be had and a lot more high paying jobs to be had if we build on the comparative advantage of the services that we can provide with the hardware, but not leaving it or shipping it overseas.

Mr. SCOTT. Okay. Mr. Chairman, I just had one——

Mr. SHERMAN [presiding]. One more point.

Mr. SCOTT [continuing]. More point. I know you just came in at the time, but those moments were shared with the other questioner. I wanted to go back for a moment and get a good, clear understanding of your thoughts on the deemed exports, if I may. I wanted to get your opinions on what type of security threat, in your opinion, is posed by foreign nationals inside the United States who are working on or purchasing controlled technologies.

Ms. BLAKEY. Well, in the area of working on technologies, I mean, there is a very tiny percentage of foreign nationals who are involved in defense and production, and therefore, in the area of controlled technologies. There is a very definite distinction in facilities across the board in our companies between what foreign na-

tionals may do on the commercial side where there is certainly a significant workforce, but it also again contributes to the expertise, the pool, if you will, of talent, but strictly on the commercial side when you look at the numbers.

Mr. SCOTT. Do you feel that our security is tight enough? In a kind of a halfway related way, we had an incident, for example, at Ft. Hood. Who would have thought that even within our own military we would have that kind of terrorist mentality at work? This individual engaged in communications with a known terrorist in getting this. So it begs the question if we have this happening right within our military units, how sure we don't have this kind of situation happening let us say in this area where we have sensitive technologies? Do you believe that our security is strong enough in place to prevent any sensitive material from getting into the hands of individuals, like Iran or others, who might not be on the same page with us?

Mr. SOKOLSKI. If I may. I think what has changed in the industry, aerospace field, is the most valuable things no longer are tangible, they are intangible things. This presents an immense problem for control, and it doesn't get any better if you can't keep track of who is working where on what. That is a very difficult problem, but I think it is worth bearing down on because that is at least as important as some of the physical things that we are worried about.

Mr. SCOTT. Yes. I am glad that you mentioned that because in my district, if you all recall, it was in the news, we had Georgia Tech students who were arrested on terrorism charges because of a similar incident in dealing with sensitive materials and trying to get it back out. So I think it is good that we brought that up as a part of the record. It is good to hear that you all feel that we are not as secure. It is an area we certainly need to tighten up on. With that, I yield back to you, Mr. Chairman.

Mr. SHERMAN. Thank you. My initial questions will relate to your district more than mine, and that is on this tanker deal. I understand Ms. Blakey can't talk about it and our other two witnesses, I am, frankly, disagree with their position. Since I introduced them I am aware of their qualifications, but, I hate to say it, also lack of qualifications in the sense that we here in Congress are responsible for jobs and the economy, you spent your lives a step away from those constituent concerns, and we are concerned, especially in this subcommittee, on the unfair trade practices that are used to create the enormous national debt.

If we don't fight back, we are going to see a hollowing out of the U.S. economy even more than what we face now. Finally, I don't think either of you have been involved in trying to explain to a town hall why it is a good thing that we spend so much on military hardware. One of those arguments is that we build it here, we build our companies here, we build jobs here, and so being an agnostic as to whether the tankers are built here in the United States or not, or whether they are built by U.S. companies or foreign companies makes it hard for you to be an Evangelist for the idea of us having the tankers at all. I am sure that even though you have spent time, at least one of you, at the Pentagon, nobody in there is screaming stop spending money on the military.

I would hope that, I mean, looking at everything involved you cannot be an agnostic on the economic impact of where we get our tankers. Now, Mr. Sokolski, I couldn't agree with you more, it is not all about hardware. Software, you don't even need that pick up truck to take the stuff to Mexico.

Mr. SOKOLSKI. Do not.

Mr. SHERMAN. So there is an even greater concern to making sure that those who are legally in the United States who get their hands on stuff should get their hands on things for the right purposes with the right restrictions. The idea that, and this harkens back to the 1990s, it could be sold at Egghead, which was a place they bought software back long ago——

Mr. BERTEAU. I used to buy a lot from Egghead.

Mr. SHERMAN. Yes, but will let anybody who walks in with cash to Egghead to buy it but we are going to prevent its export—may have heard of this thing, it is called the internet. You can just, any program you have got. So now I would like to shift to coproduction and talk about things Ms. Blakey may be allowed to talk about. We import from China five times what they are willing to buy from us, or they buy from us only one-fifth of what they sell. That, if anything, overstates the amount they are willing to buy from us because when they are willing to buy from us it is the subject of these coproduction agreements.

In fact, U.S. companies reported some 9,200 offset transactions worth $45 billion from 1993 to 2007. Not all of those are with China. Now we see them saying well, of course, we will have free access to U.S. markets whenever we want, but Americans will sell aerospace products to us only subject to coproduction agreements. Ms. Blakey, is it entirely legal for China to be demanding these coproduction agreements in order to purchase U.S. products?

Ms. BLAKEY. I think we see a tendency around the world for developing countries and developing markets to want to share in the development of technologies and of these capabilities. Their proposition, of course, is: (1) it is an open market, and those who refuse to enter will do so. If U.S. firms do not, others will.

Mr. SHERMAN. So what we could do is say if you insist on coproduction agreements as to aerospace, we immediately close our markets to all Chinese exports. That would be an effective response if our Government was capable of fighting for America rather than kowtowing to those few Americans who make a lot of money importing things into the United States. Since we don't do that, the very few exports that we do have to China only can be counted as exports in the short term. They are really imports in the long term. Either we don't sell to China at all or we are allowed to slit our own throats. In particular, we have this GE announcement. Is it in the interest of the total employment in your industry that we equip China with this capability?

Ms. BLAKEY. I think a more robust capability on the part of our companies, U.S. companies, and certainly GE is one, in the long run will allow for a much greater share of the Chinese market. It is an enormous market from an aviation standpoint, and they already have sophisticated avionics. It is not as though avionics are not present on Chinese aircraft, and, in a multiplicity of ways, very competitive ones. This is all in the commercial arena. I would sim-

ply say that I think an argument certainly is a very strong one that in the long run this benefits U.S. economic terms and benefits our economy and benefits U.S. work.

Mr. SHERMAN. So right now our companies face competition from Europe, just a little bit from Brazil. Are we conjuring up a world 20 years from now where the Chinese can take a good half, three-quarters of the world's commercial airplane business. Is that in America's interest?

Ms. BLAKEY. Well, the Chinese market itself, which they have a great deal of control over, is an enormous market.

Mr. SHERMAN. Well, if I can interrupt there. They have control of it as long as we are total wimps. Once we say you can't import anything into the United States unless you buy American aircraft, then we have control. Of course, that would require us to assert some fortitude, and it is unlikely that we will do so. So we live in a world where we have decided to bleed to death slowly, and the question is who will prosper during that process?

Ms. BLAKEY. You are arguing broader economic policy than just the aerospace industry by a long shot; things that would quake the terms of trade and our economy itself.

Mr. SHERMAN. So, but do you expect that your industry is going to face a loss of half of the world market due to Chinese exports 20 years from now?

Ms. BLAKEY. No, we don't because we believe that, again, U.S. technology and U.S. capabilities are incredibly strong. We will continue to compete as long as we have——

Mr. SHERMAN. Well, wait a minute. If you give all those capabilities to China so that they have the low labor cost, the ridiculously low currency and government subsidies, why do you think that you can give them the technology and you are still not going to face them as an international competitor?

Ms. BLAKEY. I certainly can't speak to the specific technologies that may be involved in the terms that General Electric has set up, but again, we are talking about commercial technologies that are widely available there and do evolve, and will evolve on global basis. I do believe the United States and our capabilities when it comes to everything from, you know, the avionics itself, which is at issue here, all the way through composites, all the way through advanced designs, we will continue to maintain a technological edge, and therefore, an advantage in exports, which we have now, as long as we have the resources to do so. That, again, is fueled by this trade.

Mr. SHERMAN. Is there any technology that we have in avionics that GE is holding back? Are we just shipping them our old and bad stuff or is GE fully cooperating with the Aviation Industry Corp. of China and providing them with avionics capabilities fully at the level that GE is able to provide?

Ms. BLAKEY. Well, representing the industry as a whole, I can't speak specifically for the terms of this deal with GE, but what I would like to do is certainly ask that your question go to them directly and we will see about facilitating some further information.

Mr. SHERMAN. Assuming U.S. companies fall over each other in an effort to get a short term advantage for a little while in China and provide to the Chinese all the technology that they are legally

allowed to do so and presumably get the licenses that are envisioned by this GE agreement, why do you assume that we are not going to lose half the market or more to China 20 years from now?

Ms. BLAKEY. I think because, again, it comes back to do we have our capabilities that have proven over time to be those that will be to our ultimate advantage? I think that has proven the case so far and it will continue to do.

Mr. SHERMAN. We have certainly proven the ability to develop great aircraft. We have also proven the ability in every other industry to ship our technology to China and give it to them and to lose the market. We had great technology in a lot of other fields. The one thing American companies have proven the ability to do is to offshore. As a matter of fact, almost all the profits that are made are made from offshoring. Why do you think that your industry is incapable of immediately transferring in a very profitable way to China all the great technology that you and I are confident that they can develop? Why are you guys so bad at offshoring?

Ms. BLAKEY. I can't suggest that I think it really comes down to that. I think, you know, when you are talking about a sophisticated set of technologies, which is what aerospace is all about, it is not making widgets, it is not going and giving them a singular technology that suddenly gives a tremendous advantage—I also think our companies are very intelligent about what makes sense in terms of strategic advantage and what does not. Again, I would be happy to get more specific information on this from General Electric's standpoint, but as a broad matter we are projecting that we can hold our market share very well using the kind of strategies that we are taking these days to the world market.

Mr. SHERMAN. Well, you have lost a good share to Airbus, and there the Euro is 1½ to the dollar and is allowed to float. Assume that the Chinese currency is not only under priced by 40 percent, but let us say they decide to underprice their currency by 60 or 70 percent next decade. How confident are you that planes can be manufactured in the United States profitably to continue our level of the world market share?

Ms. BLAKEY. You know, some of these are the dynamics of world trade that I honestly will tell you are not within the control of a singular industry, or even the kind of projections that any of us can make. You are conjecturing a future that I believe is not one that is necessary or reality, but at the same time, we are all going to have to be aware that there are bigger dynamics in this that are beyond, as I say, any single industry.

Mr. SHERMAN. Are there elements in your coalition that are pushing for a denial of the licenses that are necessary in order to export all of our aerospace technology to China?

Ms. BLAKEY. There is very little aerospace technology that is controlled technology that is going to China at this point. Again, we have been talking in the commercial arena almost exclusively today as regards China. Our companies are very serious about not only maintaining, but enhancing controls on sensitive technologies. It is something we are advocating. As a part of export control reform, we believe there needs to be greater scrutiny, and, in fact, something that may be somewhat counterintuitive even when it comes to the Commerce controlled items. We would like to see a gradation

with some controls there that may be higher controls so that it is not simply a one size fits all approach.

Mr. SHERMAN. So at the present point do you have an association position on whether we should grant the licenses necessary for this joint venture to go forward?

Ms. BLAKEY. The joint venture has just been announced and I am not aware that there are licenses at issue. We can try to find out more and be more specific for you on it.

Mr. SHERMAN. If you could get back to us and either say grease the skids or use every tactic to delay, which I would sure like to know your position on this joint venture. I have just begun to look at whether this is good for American jobs. They say it is going to provide 200 American jobs. That is a very few jobs to take in return for losing a big chunk of our technological advantage. Mr. Berteau, I think you——

Mr. BERTEAU. Mr. Chairman, you have raised over the course of the last few minutes a broad array of very significant issues and I know that both Mr. Sokolski and myself have been busily jotting down notes of what we would like to say in response to these issues. I think that in light of the time and the pressure of that that I would request that we be allowed to provide for the record a number of comments on——

Mr. SHERMAN. All three witnesses, and our two earlier witnesses, are all invited and urged to provide written comments for the record for 5 business days. In addition, if either of you recently ignored witnesses can have 1 minute to make an oral statement, that is fine. Otherwise, we will get your comments for the record.

Mr. SOKOLSKI. One comment. I think there is a one word or two word answer to your question. What has kept, or what will keep, whatever it is that you are worried about from happening would be export controls. So if the review is done properly, you might get the results you want. If it is not done or you get rid of the controls, caddie bar the door.

Mr. SHERMAN. Not only do we need to maintain our export control system and make it better, we have got to put into that review an explicit jobs component on both what State, as well as Commerce, does.

Mr. BERTEAU. And, Mr. Chairman, there is one area where we have stayed ahead of the global curve in terms of competitive advantage flowing to places other than the U.S. and that is in national security. I think that is the core issue why we have export controls in the first place. We have done it by investing in the research necessary to keep us ahead of the technology curve that others have developed. You asked earlier on what the Congress can do and I will expand a little bit on that in my written remarks because I think that is the key question.

There are other industries where we have done the same. They are not a lot of them. I think the larger questions of how we maintain a competitive advantage not only against China, but against the rest of the world is a very significant challenge facing America. I think national security and the national defense arena plays an important role in that, both from an economic and a technology perspective, as well as from a defending America perspective. I will be glad to expand on that.

Mr. SHERMAN. I look forward to getting your comments. Just as concluding comments, we have devoted hundreds of billions of dollars to national security research, chiefly in aerospace. This has given our companies an edge. That edge is important in order to maintain our national security and needs to be preserved. That edge has also been important to maintaining one of the last few industries where the United States is a major exporter, and we have to make sure that our national security research dollars not only keep us ahead in national security technology, but also preserve for the United States the lion's share of the jobs that are made available by the civilian exploitation of that technology. I want to thank you all for being here. These hearings are concluded.

[Whereupon, at 5:13 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SUBCOMMITTEE HEARING NOTICE
Committee on Foreign Affairs
Subcommittee on Terrorism, Nonproliferation and Trade
U.S. House of Representatives
Washington, D.C. 20515-0128

Brad J. Sherman (D-CA), Chairman

December 2, 2009

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Subcommittee on Terrorism, Nonproliferation and Trade, to be held in **Room 2200 of the Rayburn House Office Building:**

DATE: Wednesday, December 9, 2009

TIME: 2:00 p.m.

SUBJECT: A Strategic and Economic Review of Aerospace Exports

WITNESSES: **Panel I:**
Matthew S. Borman, J.D.
Acting Deputy Assistant Secretary for Export Administration
U.S. Department of Commerce

Mr. Robert S. Kovac
Acting Deputy Assistant Secretary for Defense Trade
Bureau of Political-Military Affairs
U.S. Department of State

Panel II:
Ms. Marion Blakey
President and Chief Executive Officer
Aerospace Industries Association

Mr. David J. Berteau
Senior Advisor and Director of the Defense-Industrial Initiatives Group
Center for Strategic and International Studies

Mr. Henry Sokolski
Executive Director
Nonproliferation Policy Education Center

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Terrorism, Nonproliferation and Trade* MEETING

Day *Wednesday* Date *12/09/09* Room *2200*

Starting Time *2:03 p.m.* Ending Time *5:13 p.m.*

Recesses *1* (*2:55p* to *3:32p*)

Presiding Member(s) *Mr. Sherman, Mr. Scott*

CHECK ALL OF THE FOLLOWING THAT APPLY:

Open Session ☑
Executive (closed) Session ☐
Televised ☑

Electronically Recorded (taped) ☐
Stenographic Record ☑

TITLE OF HEARING or BILLS FOR MARKUP: *(Include bill number(s) and title(s) of legislation.)*
A Strategic and Economic Review of Aerospace Exports

SUBCOMMITTEE MEMBERS PRESENT:
Mr. Sherman, Mr. Connolly, Mr. Scott, Ms. Watson, Mr. Royce, Mr. Manzullo, Mr. Boozman

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not Members of HIRC.)*
Mr. Rohrabacher

HEARING WITNESSES: Same as meeting notice attached? Yes ☑ No ☐
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*
Mr. Connolly Opening Statement, AIA supplemental statement documents

ACTIONS TAKEN DURING THE MARKUP: *(Attach copies of legislation and amendments.)*

RECORDED VOTES TAKEN (FOR MARKUP): *(Attach final vote tally sheet listing each member.)*

Subject	Yeas	Nays	Present	Not Voting

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *5:13 p.m.*

Subcommittee Staff Director

The Honorable Gerald E. Connolly (VA-11)

TNT Hearing: A Strategic and Economic Review of Aerospace Exports
Wednesday, Dec. 9, 2009
2pm

Thank you, Mr. Chairman (for your leadership in addressing the consequences of an outdated export policy).

In April, this subcommittee heard testimony about the ramifications of export controls on satellites. At that hearing, I stated that the practical effect of the International Traffic in Arms Regulations appeared to have stifled innovation and America's competitive edge in the global satellite market place. In July, I expressed a similar viewpoint at a subcommittee hearing on the Export Administration Act. Fortunately, the Administration has recognized the need to review the U.S. export control system. To that end, it has called for a broad-based interagency process to review U.S. policy.

The U.S. Census Bureau reports sales by aerospace manufacturers in the United States totaled $241.1 billion in 2008. Moreover, aerospace manufacturing comprised 7.7% of all manufactured goods exported in 2008. But our export control regulations affect more than our aerospace industry. The manufacturing sector of the defense industry, for example, has made a cogent point with regard to the Export Administration Act—if we restrict access to technology, companies in other nations can begin to fill American companies' market niche. This leads to two unintended consequences: a weak U.S industry and the unintended spread of technology to potentially hostile nations. Though we must be mindful of national security, we must not stifle our defense industry.

After reviewing the history of the Export Administration Act and its effects on the dual-use export control industry, my assessment is that our defense industry is suffering unintended consequences of regulation. These businesses are integral to our national defense and often work hand and hand with our military. It is against our long-term national security and economic interests to weaken this industry.

The Export Administration Act of 1979 is receiving the analysis it needs. It expired in 1989 and has been reauthorized for short periods of time, first by Congress and then by the President through the authority contained in the International Emergency Economic Powers Act (IEEPA). I do think that we, as a Committee, have been making progress. Title VIII of the Foreign Relations Authorization calls for a review of arms export policy. I hope that through this hearing and future action, we can address dual-use items and the effects of export control regime on U.S.-based businesses.

International
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Machinists and
Aerospace Workers

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OFFICE OF THE INTERNATIONAL PRESIDENT

October 16, 2009

Congressman Howard L. Berman
Chairman, Committee on Foreign Affairs
U.S. House of Representatives
2170 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am wiring on behalf of several hundred thousand active and retired members of the International Association of Machinists and Aerospace Workers (IAM) in response to reports that your Committee is undertaking a review of our Nation's export control policies.

In view of the increasing job crisis facing U.S. workers (over 7 million workers have lost their jobs since December 2007, many in manufacturing) our entire export strategy must be refocused to ensure the creation and maintenance of good jobs here at home. A key component of our export strategy concerns export controls. As we emphasized in our testimony this summer before the House Subcommittee on Terrorism, Nonproliferation, and Trade (attached), current export control decisions are made without consideration of the employment impact that the decisions could have on U.S. workers.

The failure to include employment impact studies in export control decisions can lead to decisions that have a negative effect on U.S. workers. If an export involves the transfer of technology or production, it could negatively impact U.S. workers immediately as U.S. jobs are transferred to another country. The transfer of technology and production can also have long-term consequences as other countries use the transferred technology and production to develop their own industries. As reflected by the Bureau of Industry and Security's reports on the impact of offsets (are defined as the transfer of technology and production in return for market access) in the defense industry, these transfers cost U.S. workers thousands of jobs per year. And this number does not even include the numbers of jobs that have been lost due to offsets in the commercial sector.

While current export controls are in need of reform, we must be mindful that policies that encourage or facilitate further outsourcing of technology (especially technology funded by U.S. taxpayers) and production can and do have a detrimental impact on U.S. workers and will impede our Nation's recovery. As you proceed in your review of export controls, we urge you to incorporate regulations and policies that reflect the need for examining employment impact and that will in fact result in creating and maintaining good jobs here at home.

Sincerely

R. Thomas Buffenbarger
INTERNATIONAL PRESIDENT

cc: The Honorable Gary Locke, Secretary of Commerce
Congressman Brad Sherman, Chairman, House Subcommittee on Terrorism, Nonproliferation and Trade