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FUTURE OF THE EXPORT ADMINISTRATION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
INTERNATIONAL ECONOMIC POLICY AND TRADE

OF THE

COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

MARCH 22 AND APRIL 4, 2000

Serial No. 106–149

Printed for the use of the Committee on International Relations



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

U.S. GOVERNMENT PRINTING OFFICE
67–392 CC WASHINGTON : 2000

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THE FUTURE OF THE EXPORT ADMINISTRATION ACT—PART I

WEDNESDAY, MARCH 22, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1 p.m., in room 2200 Rayburn House Office Building, Hon. Ros-Lehtinen, (Chairman of the Subcommittee) presiding.

Ms. ROS-LEHTINEN [presiding]. The Subcommittee will come to order. Thank you so much for your patience, the panelists, the Members especially, and the audience. Thank you.

The export of dual use commodities has been and continues to be a priority. In light of recent technological advancements and the continuing demand for American merchandise, apprehensions have intensified about the loss of future markets for American industries, as well as the potential for U.S. exports to contribute to the military capabilities of foreign adversaries. Export controls in the form of the Export Administration Act have been the pivotal instruments used to address these dual, yet converging concerns.

The Export Administration Act of 1979 was based upon legislation devised at the onset of the Cold War for the purpose of regulating the export of dual use items to provide safeguards for U.S. national security. Since 1990, when the Act expired, there have been several attempts to develop legislation which meets the needs of both a rapidly developing marketplace, as well as a rapidly changing global security environment with new and different threats.

These efforts have failed to find consensus in both the House and Senate. Thus, the Export Administration Act has been maintained through a series of executive orders issued under the International Emergency Economic Powers Act. The dilemma we continue to face is how to restrict the spread of potentially destructive technologies, how to deter terrorism and other rogue behavior, while allowing legitimate sales to go forward, to preserve the ability of U.S. technology exporters to develop their markets, and to foster U.S. technological leadership.

Critics of the current U.S. export control system say that the existing policies promote interagency gridlock, causing conflicts between the various entities responsible for licensing and enforcement. They argue that the solution to a more efficient export con-

trol mechanism lies in streamlining the process and consolidating regulatory power.

Recent statements by Bruce Middleton, managing director of the Australia-based Asia Pacific Aerospace Consultants, illustrates the challenges facing American industries and the impending need for reform of the licensing process. He states, "Frankly, America is no longer seen as a reliable supplier or partner. American companies can neither guarantee export permission nor estimate how long getting that permission might take."

One alternative which has been proposed is for the licensing review and approval process to take into account policy precedent. That is, if licenses for exports of particular products to specific countries are routinely approved, then new requests which fall under this precedent should be expedited for approval.

Industry and scientific experts underscore the need for better definitions of products and national security risks to better focus on technologies that should be protected. We cannot continue to, for example, treat simple metal mounting brackets for the avionics bays of aircraft equal to sophisticated satellite technologies.

In the case of computers, we need to move away from an MTOP-based system to a more responsive approach which reflects technological realities and provides a more accurate measure than offered by current performance-based controls. Other areas which, I'm sure that we will hear today, need to be addressed are: reductions in the congressional review periods; targeting post-shipment verification of products and recipient countries posting the greatest national security threat; and issues such as the foreign availability and mass market status.

There are some who use the foreign availability argument to advocate the removal of all export controls for everything and for all countries. However, we as policymakers must be careful not to make such broad, far-reaching generalizations, and take into consideration the type of technology or product to be exported; how the product will be used; and the nature of the importing and recipient country.

The recent agreement between the Secretary of Defense Cohen and his British counterpart hints at the goal of waiving U.S. export controls over time. What some observers will point to as perhaps more pertinent to the discussions regarding the Export Administration process is the underlying distinction made between friends and foes in the U.S.-U.K. agreement. Perhaps proposals to give preferential export control treatment to NATO members and close non-NATO allies such as Australia, New Zealand, and Japan to expedite the export process is another option? Perhaps there are better alternatives? But one thing is certain, we must focus on a balanced approach which targets those countries, the recipients, the technologies, and the products which are of concern to our national security, and define those within the new global environment.

A clear distinction must be made between products and technologies, taking into account the rapid pace of technological change. We must differentiate between the longstanding U.S. allies and pariah states which continue to support international terrorism; which conduct espionage activities against us in the United States; which develop biological weapons or engage in the proliferation of

weapons of mass destruction, among other threatening behaviors. Enemies should not be rewarded.

Nevertheless, the balance must and can be achieved. As Senator Michael Enzi, one of the current cosponsors of S. 1712, has remarked concerning a new export administration system, "Industry needs reliability and predictability. Industry needs to be able to make into it into the marketplace at least the same time that the competitor does." However, a new Export Administration Act must ensure that "items that can be used against our country do not fall into the wrong hands."

That is the task at hand as we look into our distinguished panelists today for insight and recommendation on how we in Congress can achieve these goals. We look forward to all of your testimony today.

I now would like to yield to the Ranking Member of our Subcommittee, Mr. Robert Menendez of New Jersey.

Mr. MENENDEZ. Thank you, Madam Chairlady. Thank you for holding the hearing, continuing in our efforts in this regard. I am very pleased to have the distinguished Ranking Member of the Full Committee with us today. This is an issue that he has been pursuing for quite some time as the former chairman of this Subcommittee, and now as the Ranking Member of the Full Committee. I am sure we'll hear from him in a few moments.

The Export Administration Act and export control policy are amongst the areas of greatest importance to this Subcommittee. The challenge of the EAA is to strike a balance between our national security interests and our commercial interests. I believe that goal is achievable, as I have said in the past. We have a new bill that is out there, Senate bill 1712, for example. I think it seeks to achieve that precarious balance. There are some issues I still have with it, but I see it as making much-needed changes to our antiquated export control laws, particularly in the area of enhanced penalties for illicit export sales.

I think the Congress' failure to reauthorize the EAA has left the Congress without a voice in an area of increasing importance to our national security and to U.S. industry. Moreover, I believe it's a breach of our constitutional duties. The Constitution clearly gives authority to Congress in the regulation of foreign commerce. By not reauthorizing, we have ceded this authority to the executive branch.

Now clearly no one would advocate a policy that would undermine our national security, but often the lines between security and commerce are not quite clear. Where there is a discernible national security threat and where the technology is clear, clearly not available from any other source, the licensing decision I would submit is simple. However, licensing is usually significantly more complicated. Licensing decisions have to consider not only the intended use of the export and who the end user is, but whether a foreign country is likely to permit the sale if we do not.

The United States is a leader of the global economy, and many businesses rely on exports for a large portion of their business. American businesses in this field are rightly concerned about losing business to less scrupulous nations or being seen as unreliable suppliers. Already the American computer industry has been stymied

and sales of basic desktop computers due to inflexible export controls. If the United States wants to continue to be the world leader in the field of technology, our export control system must be able to differentiate between exports of sophisticated satellite systems and the export of a desktop computer.

The bill developed by Senators Enzi and Graham go a long way toward addressing our national security concerns and our commercial concerns. Creation of a national security control list developed in conjunction with the Secretary of Defense is one way of streamlining the licensing process to focus on exports to countries of concern and exports of items that pose a national security concern, I think addressing the issues of mass market items and foreign availability to ensure that items which are not exclusively available from American companies and are not controlled by our export system when they are available elsewhere is of importance.

In a perfect world, the United States would be the sole manufacturer and supplier of sensitive technologies, and we could and would control all sales. However, in today's global economy, if the United States prohibits the sale of a certain technology, for example, encryption just to use one, Israeli, Japanese or Chinese firms would most certainly make the sale if we do not.

Last, the bill proposed makes some important improvements in the area of penalties and enforcement. By substantially increasing penalties, we hope to discourage individuals and companies from making illicit export sales and to severely punish them if they violate the law.

Let me close by saying we Democrats will be pressing very hard to have an EAA that meets the balance necessary, but that preserves the well dominance of the technology field that we presently enjoy. I don't believe that we should be sacrificing that to any other country, any other entity, any other part of the world. We look forward to hearing from all of our panelists and the industry and making sure that we meet that goal.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Menendez.

I now would like to recognize the Ranking Member of the Full Committee, who joins us today, Mr. Gejdenson of Connecticut.

Thank you, Sam.

Mr. GEJDENSON. Thank you, Madam Chair, Mr. Menendez, Mr. Delahunt. I will be very brief. But I do think this is an incredibly important element in our economy and the continued ability for the United States to stay dominant in many of these fields.

You know, at times in human development, change came in millennia, thousands of years between changes in technologies. Then for many years it took hundreds of years for change. Then a period where it took decades to change. When my family came to this country, we bought a dairy farm in 1950 that used technology that was available in 1850. It was a perfectly good and working farm.

Today we can't do that. The shelf life of a computer is often less than the regulatory time it takes to get an upgrade through Congress of super computers. With a shelf life of less than 6 months in a process that can take 180 days here, it is insane what we are doing. In the Senate, they have shelved the bill. The Senate leadership should be pressed by the industry and people to move the bill, and let's see where the votes are.

Should that fail, I think that maybe we should do what we did with encryption, break this down by computers, by satellites, to try to focus on choke points in technologies in a series of small bills, but the industry has to do more than just come and present itself to this panel. It has to do more than get its industry heads to speak. You need to get a grassroots operation going so people understand the consequences back home.

In Members' districts, they ought to be invited to meet with employees and managers who understand what's happening here. Frankly, to some degree, there is an age divide here. Members of Congress who don't have a computer on their desk and haven't gone through XTs and ATs and 286s and 486s and pentiums, don't understand what the differences really mean. Even this Administration, though it's generally been good, has made some mistakes.

I can remember when we first got here, the Chinese wanted to import I think 65 switches for their telephone system. The Administration blocked it. Next thing you know, the Israelis were selling the Chinese 625s. The Chinese were making their own 565s. We accomplished absolutely nothing.

We need to make sure there is a concerted effort to get out of the way because what's going to happen here, and I see a couple of folks who spend a large part of their career working on defense issues, is exactly what happened to the machine tool industry. We told American machine tool manufacturers they couldn't export overseas because we didn't want the Russians to get them. By the time the Russians got around to getting a good machine tool to improve their submarine program, it was a Toshiba they were looking at, and the American Defense Department didn't want American machine tools. They too wanted Japanese machine tools.

If we want to dominate the industry, we have to sell the old technology so we can move into the new technologies. I really think that it is an embarrassment, bipartisanly an embarrassment, that we have not been able to move forward. This is a rational decision. This isn't like many decisions that Congress makes, that you know, there are lots of considerations that are often hard to place into an equation. If you can buy the parts in Radio Shack in Beijing, it's hard to believe that the American Government is going to be able to preclude that product from reaching people that we don't want it to reach, if it is generally available manufactured. If we don't allow our satellites to be launched and we don't sell satellites, do you know what happens? Instead of knowing what's going on, we have to watch other people selling them. We devastate an industry that's very effective and profitable in this country. On top of that, we lose the information we used to have, which is what capability each of these other countries has.

I think the Chairman and the Ranking Member have really laid out where we are. They can't do it alone. One of the reasons I came here today is to ask you all to make a much greater effort at getting the grassroots out there on what is the critical technology for the future. America can't compete at the bottom of the economic ladder. If you need cheap labor, you can go to China, you can go to India, you can go to lots of other places.

We succeed at the top end of technology. If you close that export door, you are going to kill the American economy. Thank you.

Ms. ROS-LEHTINEN. Thank you, Sam.

Mr. Delahunt.

Mr. DELAHUNT. Being an older Member of Congress, I'll sit here and listen to the educated body, the panel and my colleagues.

Ms. ROS-LEHTINEN. OK. Take careful notes then.

I would like to take the opportunity to welcome our five panelists who have taken time out of their schedule to enlighten us on their views on the Export Administration Act. Let us begin with Dr. Daniel Hoydysh, the director of Trade Policy and Government Affairs for UNISYS Corporation, and the co-chair of the Computer Coalition for Responsible Exports. Mr. Hoydysh previously worked with the Bureau of Export Administration where he assisted in the development of export control policy for computers, as well as he helped guide and negotiate multilateral export control agreements.

He will be followed by Mr. David Rose, the director of Export/Import Administration for the Intel Corporation, and also the past chairperson of the American Electronics Association, which he is also representing here this afternoon. In addition to his work for Intel and the AEA, Mr. Rose serves as the chairperson of the Semi-Conductor Industry Association's Export Control Committee, and is active in numerous other industry groups.

We are also fortunate to have with us our dear friend, Mr. Dave McCurdy, president of the Electronic Industries Alliance since 1998, and a former colleague of ours in Congress. Many of us have had the pleasure of working with David, and following his service to the constituents of Oklahoma's fourth district. Mr. McCurdy founded his own consulting firm, the McCurdy Group, and utilizes his expertise on behalf of a variety of businesses and corporations. We thank you for being with us, Dave. Thank you.

Sitting next to Mr. McCurdy is Mr. John Douglass, the president, CEO, and general manager of the Aerospace Industries Association, AIA. In addition to his many responsibilities with that organization, he is also retired Air Force Brigadier General, who has served at the Pentagon as Assistant Secretary of the Navy for Research, Development, and Acquisition. We welcome you today.

Rounding out our distinguished panel today is Dr. Paul Freedenberg, the director of Government Relations for the Association for Manufacturing Technology. As well as having served as the first Under Secretary for the Export Administration at the Department of Commerce, having been appointed to the post by President Reagan in 1987, Dr. Freedenberg is a successful published author, and essayist on the issues of export policy and international banking.

Thank you, all of you, for joining us today. We look forward to hearing your comments on the issue of the EAA.

We have been joined once again by Mr. Cooksey, who I know was here previously. There is a markup going on in the Asia and Pacific Subcommittee, so we'll have Members going back and forth. Joining us is Mr. Cooksey and Mr. Rohrabacher. I don't know if you would like to make some opening statements.

Dana.

Mr. ROHRABACHER. Let me just say I have been disappointed in American industry, and I am very anxious to hear today from American industry. I think the American people have a right to be

disappointed when we realize that the technologies that could be used to kill Americans have been transferred to potential enemies of the United States of America. It's a very serious issue. People try to dismiss the Cox report. I know people have tried to pooh-pooh it, and forget it, and put it under the rug, and pretend that it doesn't exist. But it does exist. In fact, transfer of technologies to potential enemies is worse than what the Cox report has suggested and documented.

Because we want America to be prosperous, and foreign trade is an important component of American prosperity. It is a vital component. We can not cutoff trade. When people express concern about our national security, people come back as if we are isolationists and don't want any trade at all or protectionist, and don't want any trade at all. That is not the case. But trade in no way excuses an American citizen from being involved in the transfer of technology that could kill Americans to a potential enemy of the United States of America. If anybody needs further clarification, Communist China is a potential enemy. It is not an enemy at this time. But there is no one that I know in the foreign policy arena that would rule out Communist China being an enemy of the United States, unlike we would rule out Britain or Belgium or Japan or any of these other democratic powers.

So I am very interested today in hearing this testimony. Also, I think we need a dialogue at the very highest level with American businessmen, to let them know that citizenship is not—just because someone is seeking profit for a company that has to answer to stockholders, that is no excuse for doing things that are contrary to what obligations every citizen has, which is not to do anything to put his country or her country in jeopardy.

With that, I will work with business in every way I can to ensure there's a free flow of trade to those countries that do not pose a threat to the United States of America. But I am aghast at what American corporations have done in terms of the transfer of technology and trading with countries that do pose a threat to our national security. Thank you.

Ms. ROS-LEHTINEN. Thank you very much, Mr. Rohrabacher.

Mr. Cooksey.

Mr. COOKSEY. Thank you, Madam Chairman. I don't really have any statement, but you know, I agree with a lot of what my colleague said. I would encourage each one of you to make a comment on this as you go through your testimony. It would probably be easier for you to make a comment than for us to, I hate to say hammer you with questions or grill you on that, but maybe you could comment as you go through. It would give us some idea about your position on that too. Because I too share Mr. Rohrabacher's concerns on that issue.

Ms. ROS-LEHTINEN. Thank you very much.

Mr. Hoydysh, we will be glad to enter your full statements into the record. Please feel free to summarize your key points.

STATEMENT OF DANIEL A. HOYDYSH, DIRECTOR, UNISYS

Mr. HOYDYSH. Thank you, Madam Chair. I guess I could begin immediately by responding to Congressman Rohrabacher by saying that the members of the Computer Coalition care very deeply about

national security. We are very much concerned about the security of this country. After all, we are citizens. We live here. Our children go to school here. We are dependent on this country for our very survival. We would never do anything consciously that would hurt or damage the security of this country. I just wanted to say that right off the top.

Anything that we are proposing, everything that we are proposing, we feel is in the best interest of the United States. We feel that the export control system needs to be balanced in such a way that we can compete effectively in the global marketplace while still protecting our national security. I realize that that's an easy statement to make and the devil is in the details. I would like to provide you some information that would help you in your deliberations on where that line should be drawn.

Let me just emphasize a couple of facts. First, we are No. 1. The U.S. computer industry dominates the global computer market. There is no question about that. We are the leaders in market share and technology because we are able to beat our foreign competitors to the market. Also, a healthy and vibrant United States IT industry is the principal driver of our economic and industrial, and ultimately military strength. So our security, we believe, is very closely tied to a healthy computer and IT industry.

But to maintain this leadership, we must export. Exports equal profits. Profits can be put back into R&D. R&D translates to technological leadership. That simply is an economic equation for which there is no substitute.

According to a study done by the Gartner Group, which was commissioned by the Computer Coalition for Responsible Exports, over 60 percent of the computer market is outside the United States. In other words, two out of every three computers that will be sold over the next several years will be sold not in the United States, but outside the United States. If we want to stay on top, we must compete in this international marketplace.

The second point that I would like to really emphasize is foreign competition exists and it is substantial. If I accomplish nothing else in this testimony, I would like to lay to rest the myth that there is no foreign competition for two and four processor commodity computers that we are talking about when we are talking about the control. Again, the Gartner study projects that over the next 3 years, 30 percent of these commodity systems will be sold by foreign manufacturers. That adds up to over 4.5 million units. We're not talking about thousands. We're talking about millions of units of two and four processor commodities.

Another fact, according to an International Data Corporation study released a few months ago, 4 of the top 10 server vendors, and servers are the kinds of systems that we are talking about, are foreign. They include large world class companies like Fujitsu, NEC, Siemens, and Hitachi. So for this myth to continue, that there is no foreign availability, no foreign competition for the kind of systems that we are talking about, it is simply not supported by the facts.

Point three. The U.S. export control system is broken. It is broken, and it is threatening to undermine the technology leadership upon which our economic, industrial, and ultimately military

strength depends. Let me give you some examples of why the system is broken. First, it's not consistent with technological and competitive reality. The evidence for that is that it continues to control commodity business systems that are widely available from U.S. and foreign sources. To illustrate this point, we are asking for the control of 4 processor business systems, not super computers. This is a critical point, so let me be very clear about what we are talking about. I would like to provide you some examples that were taken from press reports.

Compaq computer company, a U.S. company, one of our members, recently announced that it will install a super computer for the French Atomic Energy Commission. The French will use this supercomputer for simulation programs to ensure the reliability and safety of the French nuclear stockpile without new nuclear tests. This Compaq system will use 2,500 alpha processors and will operate roughly at 5 million MTOPs. That is a supercomputer, not the 2 and 4 processor systems that we are talking about.

Please note that the French are not ordering over the Internet a 4 processor Dell, IBM, or UNISYS server for this work. This is a specially designed, specially made for them 2,500 processors.

Another example. Fujitsu recently announced that it would provide the world's most powerful supercomputer to the Toyota Corporation for automobile design purposes. In its maximum configuration, this system consists of 512 proprietary vector processors, and can operate again at roughly 5 million MTOPs. That is a supercomputer.

Point two. Why is the system broken? It's not effective because it is largely unilateral. U.S. export controls are much stricter than those of our trading competitors. For example, the Wassenaar Agreement, which is really the only multilateral agreement that focuses on computers, as Roger Majak, Assistant Secretary for Export Administration testified, China is generally not regarded as a target of the four multilateral export control regimes, which include the Wassenaar and the missile technology, etc. Wassenaar in particular does not consider China a target with respect to dual use technologies.

So in effect, there is no multilateral regime for computers that targets the countries of concern that are of concern for the United States. So that U.S. controls, whatever they may be, end up being largely unilateral.

The system is also counterproductive. It wastes Government and industry resources, and attempts to control the uncontrollable. Therefore, efforts to police truly sensitive items are diluted. In a sense, it undermines national security by undermining our technological preeminence. According to a Defense Science Board Task Force report, "protection of capabilities in technologies readily available on the world market is at best unhelpful to the maintenance of military dominance, and at worst, counter productive, by undermining the industry upon which U.S. military technological supremacy depends."

The net result of the current export control system is therefore that it creates a competitive advantage for foreign manufacturers that over time will erode our market dominance and technological leadership, and ultimately our military superiority.

That basically is the points that I would like to emphasize. I would be happy to answer any questions.

[The prepared statement of Mr. Hoydysh appears in the appendix.]

Ms. ROS-LEHTINEN. Thank you so much.

Mr. Rose.

STATEMENT OF DAVID ROSE, DIRECTOR OF EXPORT/IMPORT ADMINISTRATION, INTEL

Mr. ROSE. Yes. Thank you very much for the opportunity to testify. My testimony this afternoon is going to focus on three areas. One is the tension between global information technology trends and export controls, the second is the need for fundamental reform of the export control system, and the third is a brief assessment of the Export Administration Act of 1999, the Senate bill, S. 1712.

Today's information technology industry, and the patterns and trends associated with it, presents a number of new and fundamentally distinct challenges to the U.S. export control system. The overwhelming permeation of commodity computers and microprocessors, commodity networking equipment, and other information technology products has basically become interwoven into what is rapidly becoming a global information infrastructure. At my company, we tend to think, for example, about computing rather than computers, or separate products, because of the infrastructural aspect of computing.

This kind of pervasiveness creates a situation in which commodity level information technology is largely uncontrollable. In fact, I believe, and our members believe, such technology is largely unworthy of control. So we have a fundamental tension between the pervasiveness of information technology and the export control system. This has occurred, I think, for a number of reasons. I'll cite four.

First, global mass production and distribution have resulted in the wide availability of information technology products throughout the world. The statistics here tend to be endless, but an estimated 150 million personal computers and other commodity computers were shipped worldwide last year. Global Internet usage has more than doubled in the last 2 years. Even the year 2000 projection for sales of digital wire phones, many of which will be Internet friendly, is 435 million units. My company, Intel, sells microprocessors at a rate of roughly 2 million units a week into a global network of tens of thousands of dealers and distributors.

Three other important factors that drive the pervasiveness of information technology include: world standardization of product design and manufacturing processes; increased access to computers and other products that are linked to the Internet and other global networks; and the wide diffusion of foreign manufacturing capability and resultant foreign availability of products. It is interesting here that the advanced semi-conductors can be produced outside the United States without using a single piece of U.S. production equipment.

In all the decentralization and global nature of information technology, especially commodity level technology, stands in stark contrast to the centralized nature of the export control system. This

conflict is readily apparent in the area of computers, as my colleague has indicated, where MTOPs export controls continually collide with the pace of commodity level performance.

Later this year, Intel will introduce its Itanium processor chip, which I have here, which promises to drive the power of 4 processor commodity computers to about 24,000 MTOPs, well above today's computer decontrol level of 6,500 MTOPs.

So the overall lack of alignment of export controls with commodity level technological and commercial realities, we believe requires fundamental reform of the export control system.

Now in the area of Export Administration Act renewal, AEA believes that several principles ought to be considered. One is a new balance. Export controls should be weighed against economic and competitive costs that can undermine the very technological leadership upon which the U.S. military and our overall security relies. Rather than controlling the uncontrollable, the overriding national security goal should be continued and expanded U.S. technological leadership.

The second is flexibility. An export regulatory system must have a variety of ways to adjust controls, including mechanisms that account for mass market products and changing product performance, foreign availability, and foreign capabilities.

Timeliness is another important element. A control regime needs to operate with the speed of modern information technology as much as possible. Decision making delays measured in weeks and months are unacceptable in many respects.

Simplification. Any modern export control system needs to be clear and understandable. To the extent it's not, it is going to undercut the effectiveness of an export control system.

Finally, multilateral controls. Controls ought to be implemented on a broad multilateral basis in order to be effective in an era of globalism. Unilateral controls are simply self-defeating.

Overall, AEA believes that the Senate EAA bill, S. 1712 as passed by the Senate Banking Committee, generally comports with these principles. On the upside, the bill contains favorable mass market foreign availability provisions, though they could be improved. It contains reasonable provisions for parts and components and technology transfers to foreign nationals. The bill would reduce the 180-day congressional waiting period for computer MTOPs to 60 days, although we believe it should go down to 30.

On the downside, AEA members feel that penalty provisions are excessive in some respects. They do not provide for self disclosure, for example, and for mitigation in the case of mistakes of fact or other inadvertancies.

In sum, AEA believes that the current bill is a good starting point for this Subcommittee to begin consideration of new enabling legislation. Thank you.

[The prepared statement of Mr. Rose appears in the appendix.]

Ms. ROS-LEHTINEN. Thank you so much.

Mr. McCurdy.

STATEMENT OF DAVID MCCURDY, PRESIDENT, ELECTRONIC INDUSTRIES ALLIANCE

Mr. MCCURDY. Thank you, Madam Chair. It's a pleasure to see the Chair and to the Ranking Chair and the former chairman of the Committee, Sam Gejdenson, who left earlier.

I represent Electronic Industries Alliance, which is a partnership of high tech associations and companies committed to shared information and shared influence. We are proud to represent the most dynamic and competitive industry in the world economy today. The companies we represent operate globally and face intense international competition. The fact is, the days when U.S. companies dominated the global high technology industry are over. Similarly, the days when the domestic U.S. market could sustain the industry are also over.

As you can see on the chart to my right here, our industry exported $180 billion in goods last year. This is more than one-third of what our industry produces. The chart also demonstrates how fast technology is changing and becoming pervasive throughout the world. This is especially true in the area of semi-conductor speed, where Moore's Law defines the rapid pace of change. Quite frankly, there are now seminars on beyond Moore's law, what comes next in nanotechnology and other areas.

I thought it was interesting David and I could touch the Itanium chip. My palm computer is about the same. PDA is about the same size as this, virtually almost a supercomputer. So it is incredible the pace of change in the size.

Much of the rhetoric over export controls boils down to national security versus economics in exports. More than ever before, protecting U.S. national security depends on a dynamic and innovative high technology sector. Whether we're talking about weapon systems, intelligence gathering capabilities, or command and control networks, our industry is constantly improving the technologies that keep us a step ahead of our adversaries.

An effective export control policy would recognize the reality that our national security is improved by enabling our high tech industries to thrive. U.S. national security should be based on maintaining our technological edge through innovation, not on a doomed effort to hoard as much technology as possible.

Another key point to keep in mind is that export controls can severely disrupt the business models which sustain our competitive advantage. The U.S. technological advantage is based to a large extent on speed to market, and mass marketing through electronic commerce and the World Wide Web. But the administrative costs of trying to determine what products may go to what end user for what purpose can easily wreak havoc with these models.

Our industry operates in terms of global R&D collaboration, web-based instantaneous order processing, and just-in-time manufacturing. In contrast, our export control system operates in terms of general prohibitions, 6-month notification periods, and inter-agency dispute escalation procedures.

The system in place encourages regulatory complexity. It emphasizes bureaucratic processes and paperwork over coordinating with our allies to prevent the bad end users from acquiring truly sensitive technologies. Effective export control policies should be based

on multilateral cooperation and facilitation of effective corporate compliance. But the hundreds of pages of regulations we now operate under have the effect of penalizing those U.S. companies that try to obey the law.

We appreciate the efforts in Congress to take a fresh look at this system with an eye toward updating it to reflect the economic and political realities of the post-Cold War world. As you know, the Senate Banking Committee unanimously approved the EAA reauthorization last September. EIA has neither endorsed nor opposed the substance of the committee-approved bill. I would like to emphasize that we continue to have serious reservations with several aspects of the bill as reported.

We are especially concerned by a number of proposals being advanced by other Senators and by some in the national security community, aspects of which would be even more restrictive than we experienced during the height of the Cold War. Nevertheless, there are some beneficial aspects of the bill. We have been supportive of the overall effort.

This process has served a valuable educational purpose, I think, for everyone involved. One provision I would like to highlight is that when an item achieves mass market status or becomes readily available from our overseas competitors, that item will automatically be released from controls. This is a provision we have continually advocated. For these types of items, the inevitable bureaucratic tendency is to resist the removal of controls. But we must accept that when an item becomes uncontrollable, it is not just pointless, but harmful to maintain these restrictions.

Clearly, computers and encryption fall under this category, but many types of telecommunications equipment, components, and other items do as well. On this point, we would be deeply skeptical of any so-called carve-out which would perpetuate controls on items in spite of those items being found to have mass market or foreign availability status.

Some proposals we have heard would go so far as to prevent legitimate mass market or foreign availability studies from even being conducted. It is disturbing that some policymakers continue to try to control the uncontrollable in this way.

In closing, I call your attention to my written testimony, which includes our comments on specific provisions of the Senate bill, as well as the general principles we believe should be part of any EAA reauthorization. I hope that you find these comments useful as you continue this effort.

Madam Chair, I was encouraged by your opening comments and those of the Ranking Member, and believe that there is an opportunity to bridge this gap.

If I may, Madam Chair, just to quickly respond to the gentleman from California's earlier question and comment supported by Mr. Cooksey. As a Commissioner on the Weapons of Mass Destruction Commission over the past year-and-a-half, as the former chairman of the Intelligence Committee, as a former member of the Armed Services Committee, I stand with General Douglass here and would bow to no one as far as concern about national security.

There are serious risks. There are serious challenges. There are rogue states. There are rogue actors. There are potential enemies.

It is important that we have a national security apparatus that can speak out when there is that danger and potential transfer of technology that has a material impact on the potential national security or national defense of this country. I think we can look at changing this law in a way that is safe and provides security.

What we really need to be doing is looking at the organization of the Federal Government as a whole to ensure that there are clear delineations of the kinds of technology and look at the end user first, look at those countries that are the real threats, and target the countries and understand through our intelligence capability what their real risk is going to be, and then work back, as opposed to have a blanket kind of wall that we try to impose around our own country, and hopelessly try to prevent the export of technology which is capable of being used in most commercial activities.

So, Madam Chair, again I appreciate the opportunity. I look forward to working with the Subcommittee, and trust that you will make some progress this year.

[The prepared statement of Mr. McCurdy appears in the appendix.]

Ms. ROS-LEHTINEN. Thank you so much, Dave. We appreciate it.

Mr. Douglass.

We have been joined by Mr. Hilliard. Earl, I don't know if you wanted to make some opening statements before Mr. Douglass speaks.

Mr. HILLIARD. No.

Ms. ROS-LEHTINEN. Thank you.

STATEMENT OF JOHN DOUGLASS, PRESIDENT, AEROSPACE INDUSTRIES ASSOCIATION

Mr. DOUGLASS. Thank you, Madam Chairman. I want to thank you for holding these important hearings because this is a subject of enormous importance to the aerospace industry. I am sorry Mr. Gejdenson left because I wanted to thank him as well for the role that he has played in the past. He and I worked together very closely on some of the most sensitive submarine technology that exists in our country today when I was the Assistant Secretary of the Navy.

I would like to also thank Senator Enzi and the others in the Senate, who drafted this bill. My industry thinks they have made a major step forward. We do have a few concerns with the bill, which I will touch on in a minute, but we do believe that this legislation is needed.

In many respects, Senator Rohrabacher, the need for this bill——

Mr. ROHRABACHER. Congressman.

Mr. DOUGLASS. Excuse me. I don't know whether that's a promotion or a demotion, sir. But the need for this bill speaks in large degree to your concerns. One can tell from the passion of your remarks that you feel deeply about this. I can tell you as a former military officer, general officer, and a former Assistant Secretary of the Navy, I share your deep concern for this. It has been my experience that while I have been in the aerospace industry after leaving the Government, that no one, I have not run across a single

person anywhere that condones trading outside of our law or in any way even getting close to the borderlines of that.

Part of the problem, however, is that the processes that we have today are very confusing. It is possible to get lost in the maze, if you will. I will speak to that in a minute.

If the Chair would allow me, ma'am, I would like to also submit to the record—this is a document called "The Final Report of the Defense Science Board."

Ms. ROS-LEHTINEN. Without objection.

Mr. DOUGLASS. "Task Force on Globalization and Security." This is a study done by an independent panel over at the Department of Defense on the subject of this hearing today. Much of what we in the Aerospace Industries Association are advocating is contained in report.

Basically you can sum it up and say that the Defense Department and industry are almost in total agreement on the need for a proper form of export licensing, but one that is substantially different than what we have today.

I would like to begin with a few charts and then talk very briefly about the bill. A lot of the confusion that you hear on this subject stems from the fact that we have two laws. We have one, the Arms Export Control Act, to deal with military products and services, administered by the Department of State. That is not what we are talking about today. We are talking about the Export Administration Act, which is meant to cover dual use products which could be used both as commercial or military products. It is administered by the Department of Commerce.

So the very beginning of this discussion takes you to the right-hand side of the chart, and away from most of those technologies which one would be concerned about in terms of sharing with a potential enemy of the United States.

Ms. ROS-LEHTINEN. And a fine assistant you have there, Mr. John Barsa.

Mr. DOUGLASS. He is a fine young man.

Ms. ROS-LEHTINEN. Formerly of Lincoln Diaz-Balart's office. So finally he found a credible job.

[Laughter.]

Mr. DOUGLASS. Next, John. This next chart gives you an idea of where my industry is in terms of dependence on the global economy. If you were to go back 10 years ago, you would see that 50 percent of everything manufactured in the aerospace industry was sold to the Department of Defense. Only about 30 percent of it was exported outside the United States. Today, that picture is radically different. The Defense Department is down in the mid-20's in terms of our business base. The global economy is somewhere between 40 and 50 percent of our business base. So we are dependent on the global economy. The vast majority of those products manufactured in the aerospace industry for export outside the United States are commercial products like airliners.

Next, please. This is another important chart which speaks to many of the comments made by my colleagues earlier. That is, the economic security of the United States as a critical element to our overall national security. That's our trade balance in 1997 broken down by our Commerce Department by sectors. As you can see, the

industry with the largest positive trade balance in the entire American economy, is our industry, the aerospace industry, that blue line at the top represents almost $35 billion positive trade balance.

Now look what happened in 1 year, from 1997 to 1998. Most of the blue on the chart went away, and all of the other sectors except for the aerospace sector, which grew to almost $45 billion positive trade balance. The reds, as you can see, grew substantially.

I would also submit for the record, ma'am, if I might, an article today in the Washington Post in the business section where the headline says, "U.S. trade deficit rises to a record $28 billion." What this newspaper article is saying is that the situation in 1999 and 2000 continues to worsen. I can also add for the Committee that for my industry, we have seen a reduction of our ability to produce a surplus for the American economy. We are looking at our sales for 1999 in close scrutiny now. Sales are probably going to be somewhere between 8 and 10 percent lower than they were in 1998, meaning that our contribution to the American economy and all that comes from that large, almost $45 billion surplus, is being reduced. One of the reasons why it's being reduced is the increasing confusion in industry over the export licensing laws of our country.

Now to speak very quickly to S. 1712, I share the general concerns that my colleagues have and the general support that they have expressed for S. 1712. We need a new law. I thought it had been elapsed for over 5 years. You mention in your opening testimony, ma'am, that it's been 12 years. I didn't know it had been that long, but clearly, the lack of a legal framework for these dual use items is causing a lot of problems.

There are some things about it that I'll comment on. Section 204 assures that there won't be controls on any items based on small amounts of controlled American content. That is a very positive step forward. Section 211 assures that there will be no controls where items are available on the open market. These mass market provisions are enormously important. My colleagues have spoken to those. I won't say any more except that they should be proactive. We ought to be able to figure this out before we begin to move toward controls, and indeed we can. We know what's out there on the global economy.

Section 301, the contract sanctity section, is very important. Section 304, the Presidential report to Congress prior to the imposition of controls is important, especially those portions of the Presidential report that deal with the economic impact.

Congressman Rohrabacher has been working with the aerospace industry in dealing with satellite licensing because it is something he is very concerned about. I think it's fair to say that when the law was passed moving satellites from Commerce back under State Department control, people didn't really fully understand what the economic impact would be. I am here to tell you that since that happened, our sales have declined by over 40 percent. Hundreds of millions of dollars of high tech sales and jobs have gone from this industry. These are not weapons. These are commercial communication satellites, the kind of satellites that most people credit with spreading news around the world that did such wonderful things as caused the whole Soviet empire to collapse.

Section 307 is an important——

Ms. ROS-LEHTINEN. If you could wrap up your statement, Mr. Douglass.

Mr. DOUGLASS. Yes, ma'am. I will wrap it up very quickly. That is a sunsetting clause. Title 4 contains some humanitarian exemptions. We think there should be an exemption in there for safety of flight for commercial airliners. Title 5 is in procedures. That's a good section. We like its deadlines.

Finally, in title 6, there is a little section in there on enforcement which needs to be strengthened. It has to do with people being able to report violations, and then getting a reward. We think it's important for it to be clear in that section that people can't just stand by and let a violation occur, and then reap a reward. If they know a violation is going to occur, they need to come forward before it occurs so that steps can be taken to stop the export.

So those are the detailed comments. Thank you very much, ma'am.

[The prepared statement of Mr. Douglass appears in the appendix.]

Ms. ROS-LEHTINEN. Thank you, Mr. Douglass.

Dr. Freedenberg.

STATEMENT OF PAUL FREEDENBERG, DIRECTOR OF GOVERNMENT RELATIONS, ASSOCIATION FOR MANUFACTURING TECHNOLOGY

Mr. FREEDENBERG. Thank you, Madam Chair. I can clear up the difference between the 12 years and the 5-years. The 12 years is the time since we passed an Export Administration Act. The last one was Omnibus Trade Act of 1988. I testified before this Subcommittee on that subject on behalf of the Reagan Administration. So I am familiar with it. Five years, and actually now going on 6, is the time since we have had an Export Administration Act in force. There was some extension. Since then, we have been operating on the 6-month-at-a-time International Emergency Economic Powers Act, essentially by Presidential fiat, which I believe having also been involved in the legislation dealing with that, was not the intention of the International Economic Powers Act. It was supposed to put a restraint on the President's use of that rather than give him carte blanche to extend laws through the use of it.

Today I will be talking on behalf of AMT, the Association for Manufacturing Technology, where I am the director of Government Relations. AMT represents 370 member companies, with sales ranging from $10 million to more than $1 billion. We make machine tools, manufacturing software, and measurement devices. Our industry sales are nearly $7 billion, and exports account for more than a third of those sales.

I will also talk about the Graham and Enzi EAA, S. 1712, but I would like to put it in context before I discuss it. There is a myth that's grown up in the popular media that U.S. export control policy toward China is lax. The facts, particularly with regard to machine tools indicate quite the opposite. The assertion that our China export control policy is lax couldn't be further from the truth. The U.S. Government has consistently been the most rigorous with regard to reviewing license applications for exports to

China. Other countries within the Wassenaar arrangement simply do not share our assessment of the risk factors involved in technology transfer to China, and have generally maintained a far less stringent licensing policy. Indeed, one could say without equivocation that our European allies maintain what could only be described as a favorable export licensing policy toward China.

I point out in my testimony that the time it takes the process to license is only part of the problem. Official statistics show that the U.S. Government is far more likely to disapprove machine tool licenses for China than any of our European competitors. While a mere handful of U.S. machine tool licenses have been approved for China over the past 5 years, actually it's about 25 licenses or 5 a year. Our European allies have shipped huge volumes, hundreds more than that to China, to Chinese end users.

The U.S. Government has rigorously enforced the limits on machine tools. This has significantly disadvantaged U.S. machine tool builders in the global marketplace. The most rigorously controlled machine tools are those that possess five axis. A recent survey by AMT has indicated there are 718 models of five axis machine tools manufactured around the world, with 584 manufactured outside the United States in places like Japan and Germany. In fact, there are even six models manufactured in China. This is the most tightly controlled product to China.

Now the fact that these machine tools are denied is quite frustrating for the U.S. machine tool builders and their workers because many of the commercial aircraft factories in China contain joint ventures and co-production arrangements with U.S. airframe and aircraft engine companies. In other words, despite the fact that these Chinese factories are supervised, are monitored by American executives, U.S. Government export control policy creates a situation in which machine tools in those factories are almost certain to be supplied by European machine tool builders. I would ask how that assures or enhances our national security?

I argue in my testimony that the statistics show that European license applications are likely to be approved in a matter of days or weeks by our European allies, while U.S. applications languish for months or even longer. Many companies have told me they forego business in China rather than go through this process because it's so uncertain and so unlikely that they are going to get approval.

The Chinese have learned that. They have been telling U.S. companies not to even come to bid on projects. In fact, they have now put a monetary penalty for failure to obtain a license. This is a further deterrent to doing business in China.

A recent example will illustrate many of the problems inherent in attempts by U.S. companies to obtain export licenses for machine tool sales to China. Three months ago, an AMT member asked for my assistance in obtaining final approval for an export license that had already been pending for many months. The Chinese who were making purchases for an aircraft engine plant informed the AMT member company that they were at the end of their patience in waiting for U.S. export license approval. This particular company had been delaying the Chinese buyers repeatedly,

while it tried to obtain individual validated license for two 5-axis machine tools.

After waiting many months, the Chinese canceled one of the two orders, but gave the company one last chance to obtain an export license from U.S. authorities for the remaining machine. The owners believed that there would be followup orders for as many as a dozen additional machines that they could prove they could obtain a license for this one. The U.S. Government was aware that a Swiss company had offered to fill the order for these machine tools, and in contrast to the American company, the Swiss made it clear to the Chinese that there would be no security conditions or compulsory visitations by the Swiss company if they were given the business by the Chinese.

In order to create an incentive to approve the license, the AMT member company offered to provide special software that would limit the use of the machines and to only a small group of activities approved by the U.S. Government, and to provide for regular visitations to ensure that the machine tool could only be used for the jobs described in the license. While all this was being negotiated, the State Department refused to demarche the Swiss government to warn them of the U.S. Government's concerns with the sales of the machine tool to the Chinese plant. Negotiations between the AMT member and the Defense Department dragged on for another 2½ months, with none of the AMT members' security or post-shipment visitation proposals deemed adequate by DOD.

Finally, just as this license that had then been pending for 6 months was about to be escalated to the Cabinet level for resolution, the Chinese buyer informed the AMT member company that they lost patience with the U.S. licensing process and canceled the order. As it turned out, the Chinese plant manager decided instead to go with either the Swiss or the French machine tool alternatives, neither of which had required any post-shipment conditions, and both of which had already obtained licenses from their governments earlier.

Reportedly, when informed of the Chinese cancellation and the need to return the license without action, the comment from the Defense representative to the interagency review panel, known as the operating committee, was that he was happy that because DOD had achieved its objective since no U.S. machine tool would be going to the Chinese factory.

Of course the U.S. machine tool that would have gone to that factory would have been under strict conditions, with numerous followup visits to ensure that it was being used for the purposes stated in the license. While there would be no guarantee that Western authorities would be able to check on the projects which the Swiss or the French machine tools would be used. Nonetheless, DOD was apparently happy because it had accomplished the objective of blocked the U.S. sale. I presume the State Department was happy as well, because it didn't have to offend any of our friends or allies by taking a strong position or asking uncomfortable questions of them.

The only ones who are unhappy are the owners of the U.S.-based machine tool company, who may very well move the production off-

shore to avoid a repeat of this ridiculous process. Also, of course the employees who may lose their jobs are not happy either.

I would ask the Subcommittee to consider what this case illustrates about the national security benefits of our current export control policy other than the fact that such a policy is likely to maintain machine tool employment in Switzerland and France. It certainly did not have any appreciable effect on the Chinese ability to obtain machine tools for whatever aerospace projects they deemed appropriate.

I just gave that as a context. I would like to comment briefly on the Senate bill, S. 1712. The one thing that I think is most beneficial in that, and it's related to the issue I just talked about, is that it defines foreign availability as possible to be proven—the foreign availability can come from within the multilateral organization, not just outside it. Currently, you can't prove foreign availability under the law unless you prove that it comes from outside, in this case Wassenaar.

Ms. ROS-LEHTINEN. If you could quickly wrap up, Mr. Freedenberg, because we are going to have a series of votes.

Mr. FREEDENBERG. That's one proposal. The other major thing that it has that would be beneficial—it does not have it in there yet, is that we need to create a mandate to go back to Wassenaar and negotiate a no undercut rule, so that something on the order of what I was talking about couldn't occur. That is, the United States turned down a license. The allies could not approve the license. That was the case in the past. It is the case in other regimes. We need to have a similar provision in our current multilateral organization. I'll leave it at that.

[The prepared statement of Dr. Freedenberg appears in the appendix.]

Ms. ROS-LEHTINEN. Thank you so much.

Do you believe, and I'll ask it for anyone who would like to answer, that legislation addressing penalties alone or only shortening the congressional review period would be sufficient, and realistically speaking, would these offer significant benefits to the industries that you represent? Also, why is it important for the penalties to be imposed per transaction rather than per shipment? If you could be very brief.

Yes, Mr. Hoydysh.

Mr. HOYDYSH. Madam Chair, certainly on behalf of the computer industry we would strongly favor reducing the time period from 180 to 30 days. We think the 180-day period is without precedent. It only affects the computer industry. It's not consistent with any other waiting periods imposed by Congress. It creates, it makes the system unable to respond to rapidly advancing technologies. So we would certainly favor a bill, even if it was just for a 30-day period alone.

Ms. ROS-LEHTINEN. Anyone else? Dr. Freedenberg.

Mr. FREEDENBERG. I could refer to the penalties. Currently you have the penalties are 10,000 and 50,000, but they can be parsed. I was enforcing the system, so I can tell you those penalties can go up to $250,000 or $500,000. So it isn't as if companies have great incentive to break the law. It is still fairly substantial fines. But the more significant penalty which is in the current law al-

ready is that you lose your export privileges. That, since every company has to export, it basically shuts them down. It is an extremely strong deterrent.

So I think in itself, although it sounds very good to have a million dollar penalty, and in some cases it may be justified, that in itself is not such a major accomplishment. We already do have a fairly strong deterrent within the current law.

Ms. ROS-LEHTINEN. Thank you.

Dave, for the last comment?

Mr. MCCURDY. Madam Chair, we are not opposed to increasing penalties for these violations, but unless the regulations are made simpler or easier to comply with, then companies may face some overwhelming liabilities for I think non-intentional violations.

We also urge that companies be fined per transaction as opposed to shipment.

Ms. ROS-LEHTINEN. Mr. Menendez? Hold on.

Mr. DOUGLASS. I just wanted to add that we also have not taken a position on the penalty provisions, but we would strongly support the reduction in the review time. I mean the issue in many, many cases is we can't bid on things because it takes so long to get a license that we can't answer the bid time.

Ms. ROS-LEHTINEN. Thank you.

Mr. Menendez?

Mr. MENENDEZ. Thank you, Madam Chairlady. I want to thank all the panelists.

Mr. Douglass, let me ask you. You said the 40 percent sales drop in satellite sales. Did other countries fill the void in that regard?

Mr. DOUGLASS. Oh absolutely. Yes, sir.

Mr. MENENDEZ. Were their satellites of equal?

Mr. DOUGLASS. Yes, sir.

Mr. MENENDEZ. Abilities—was our technology superior?

Mr. DOUGLASS. Mr. Menendez, there is a lot of confusion about what kind of satellites we're talking about here. Most of the time when the public hears this, they think we're talking about spy satellites or something like that. That is not at all what we're talking about. We are talking about state-of-the-art communication satellites. They are the kind of satellites that in a strange way really help democracy spread around the world. I have had many of my Russian generals that I had to negotiate with when I was a NATO general tell me the reason why the whole Soviet Union collapse was because people in Eastern Europe could watch Western TV, could see what was available.

So when countries around the world want to buy an American satellite so they can broadcast TV to their people or do e-mail and things of that nature, and American companies can't compete on it because it takes too long to get a license or there's some other——

Mr. MENENDEZ. So the satellites that they purchased from a foreign country gave them the same capacity that they would have had, had they purchased ours?

Mr. DOUGLASS. Absolutely. Even if they then were used in a military sense, if they were our satellites, we could shut them off, but if they are somebody else's satellites, we can't. So we doubly lose on this.

Mr. MENENDEZ. If the United States, and this goes to any of the panelists who want to talk about it, if the United States' goods are controlled unilaterally to any country, and other countries sell that same capacity of the item, whether it be a computer, whether it be a satellite, whether it be any of these other equipment that the United States leads on, how do we promote our security, our nonproliferation goals in that regard? Is there something we're missing?

Mr. DOUGLASS. That's a good question. You want to take a crack at it?

Mr. MCCURDY. Yes. Mr. Menendez, it is clear that most unilateral sanctions have been highly ineffective. If you are not getting the cooperation on a multilateral basis, it just flat doesn't work. The only victim in this case or the only one that is injured or harmed is often the United States.

So it's not popular to say, and I know the politics of the Congress and in the country, but it's clear that unilateral sanctions is for the most part, not the answer.

Mr. DOUGLASS. The most important thing, Mr. Menendez, to remember about this debate that we're talking about is there is a lot of confusion between the supremacy of American military technology and the supremacy of American dual use technology. Generally speaking, America's dual use technology is not particularly superior to what you can find in the rest of the world, even though our military products may be.

When I was living in Europe, they had a form of the Internet over there a long time before we did, had e-commerce and all kinds of things a long time before we did. So we tend to be somewhat of an ethnocentric society that believes everything is invented here, and it's not, especially in the commercial environment.

Mr. HOYDYSH. Mr. Menendez, could I respond to the non-proliferation question? Just to put this into context, if we look at the whole universe of technology that's available, the chart that was up here before shows you there's a whole chunk that is military. That subject, the munitions list, it's a very tight regime. That is not under discussion.

If you are talking about missile technology, there is a missile technology control regime, which is adhered to by 17 or 20 countries which is relatively effective. It does not control computers, but it controls everything that everyone deemed is important for missiles.

There is a regime that controls things for nuclear, the Nuclear Suppliers Group. That is a multilateral, fairly effective regime. And there is a regime that controls things for chemical weapons and biological weapons called the Australia Group. Again, a relatively effective group.

So what really is left when you are talking about dual use equipment is the stuff that is like computers and machine tools. That is a relatively narrow slice of industrial equipment over which there is relatively little control, because these are the kinds of things that are absolutely essential if any developing country wants to go into the 21st century. So it makes it very difficult to deny the entry level items, especially in the computer area, when they are available all over. They are cheap, they are transportable,

and you can buy them or make them yourself without too much effort.

Mr. FREEDENBERG. If I could say one other thing. The way you could work on that would be, what I try to say at the end of my testimony, if you could get the allies to do—we can't have a veto over what they export any more. That's gone. That was COCOM. But you could have a no undercut rule, where if you turn down a license, you get the pledge of the others that they will turn down that license as well. Not that you stop their licenses, but that if you already had—say a particular end user is bad, they pledge to at least give you a hearing and in general to turn down that license without at the very least, talk with you about it.

Mr. MENENDEZ. With deference to my colleagues.

Ms. ROS-LEHTINEN. Thank you, Mr. Menendez. Yes, I'm sorry, because of the time.

Mr. Rohrabacher.

Mr. ROHRABACHER. OK. Mr. McCurdy, thank you very much for your comments, your opening statement. I think that your idea or concept of let's try to find out what countries that we're talking about that are potentially adversarial or potential enemies, and let's work back from there, I think that is exactly correct. I appreciate you going out of the way to make comments based on my rather I say loud opening statement.

Mr. MCCURDY. Aim to please, Mr. Rohrabacher.

Mr. ROHRABACHER. Let me say this. First of all, Mr. Douglass, last week a Chinese launched a satellite. It was widely reported that that satellite would have a multiplier effect on the military capabilities of the Communist Chinese because it would permit command and control coordination that they never had in the past.

Do you believe that there was any American technology in that satellite, or that the rocket that lifted it into orbit had American technology in it?

Mr. DOUGLASS. Mr. Rohrabacher, I wish I could give you a more definitive answer because I'm not aware of the precise launch that you are talking about. But it is entirely possible that the satellite and the missile had some derivative American technology. Everyone knows that we lead the field here, and once proof of concept is demonstrated by a country, it is much easier for others to follow along.

Mr. ROHRABACHER. I've only got a couple minutes, but let me point out yes, it is possible. Not only is it possible, it is probable that the Chinese rocket that lifted that up was perfected by American technology, American aerospace engineers that were over there with either Hughes or Loral, and that the satellite that went up had not only spinoff or not only things that they copied, but actually components that were sold to them by our corporations.

If America—just note why this is important, and you expressed this in your opening statement. Again, I appreciate you again giving me the courtesy of commenting on what I had to say. American lives are going to be lost if we get into some sort of a conflict with China because technology has been transferred to that country. I disagree totally with our final witness. I'm sorry. You can't compare somebody who has no controls whatsoever and then say well, ours can't be considered lax because we are comparing it to people

in Europe who have no controls whatsoever on what goes over to Communist China. That does not make logical sense. It doesn't make sense for our country's national security.

This is a very important issue. I agree we have got to take it seriously in a way so we can control the technology flow to potential enemies, like China, without hindering. What's happened is we have hindered our ability to do business with countries that pose no threat, that are democratic nations. I am very happy to have worked with all of you to achieve that end.

I'm sorry. We have got to go.

Mr. DOUGLASS. Mr. Rohrabacher, if I could make one comment though that strikes to the heart of what we have said here today. I don't think there is any technology in the satellite or the booster that they could not have gotten from another source.

I would also add, sir, that it's a two-way street. I was recently——

Ms. ROS-LEHTINEN. Thank you, Mr. Douglass. Thank you so much. We apologize. We have 1 minute left to go vote on the floor. The Subcommittee is adjourned. Thank you so much for your excellent testimony.

[Whereupon, at 2:29 p.m., the Subcommittee was adjourned.]

FUTURE OF THE EXPORT ADMINISTRATION ACT—PART 2

TUESDAY, APRIL 4, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC
POLICY AND TRADE,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3 p.m., in room 2128 Rayburn House Office Building, Hon. Ileana Ros-Lehtinen (Chairman of the Subcommittee) presiding.

Mrs. ROS-LEHTINEN [presiding]. The Subcommittee will come to order.

American industry continues to create and realize an astonishing array of new and improved technologies. With these wonderful improvements come both opportunities as well as responsibilities, given that these advancements may pose new and yet unknown threats to U.S. national security.

In an effort to address the needs of American companies and to capitalize on the advantages that new technologies offer, this Subcommittee has been holding a series of hearings to discuss ways in which a new Export Administration Act may best manage export controls.

Based on the Cold War need to restrict access to sensitive technologies and the ability to control its proliferation due to U.S. predominance, the original Export Administration Act was drafted. That legislation lapsed in 1990, leaving the U.S. to operate export control regulations through a series of executive orders issued under the International Emergency Economic Powers Act. This was never intended to replace an EAA. However attempts to reauthorize the bill have not been able to achieve the necessary consensus for passage.

The advent of the 21st century underscores the inadequacy of an export control system devised for a rigidly structured bipolar world prefacing the onset of the technological revolution. The world of the 21st century is one marked by a borderless, fast-paced marketplace which requires a system to avoid the pitfalls of gridlock and regulatory bureaucracy.

By the same token, however, some experts contend that the new millennium is a much more dangerous world, devoid of clearly defined security parameters and riddled with new weapons, methods, and rogue states.

Some suggest that these competing needs can be reconciled and that the answer to effective regulation lies in concentrating regu-

latory authority in fewer agencies. Other approaches include giving preferential export control treatment to NATO members and such non-NATO allies as Australia, New Zealand, and Japan.

Some see unilateral export controls as self-injurious and instead would look to multilateral agreements as the only effective tools for nonproliferation. Still others refer to their criteria, which takes into account mass-market and foreign availability, as well as risk factors, end-use, diversion, and recipient countries.

We must avoid vast generalizations in formulating a new approach and refrain from removing restrictions and licensing requirements on controls or controls which threaten and seek to undermine our U.S. national security.

There are differences of opinions on the specifics of the approach to be undertaken, however, all agree on the urgent need to develop a judicious, explicit, and understandable policy which will govern the licensing, oversight, and review of dual-use technologies to be exported to foreign markets.

We look forward to the testimony from our witnesses in this, which is the second in a series of hearings on this issue.

Before we proceed to other opening statements and our witness presentation, I'd like to advise our Subcommittee Members about a markup that our Subcommittee will hold this Thursday, April 6, at 2 p.m. on H.R. 3680, the Dreier bill, which seeks to shorten the congressional review period to 30 days from the export of supercomputers. Some of us are already cosponsors of this measure, but we need the attendance of our Subcommittee Members for this very important markup and a markup notice will go out later today.

It is my pleasure to recognize for his opening statements the Ranking Member of our Subcommittee, Mr. Robert Menendez of New Jersey.

[The prepared statement of Representative Ros-Lehtinen appears in the appendix.]

Mr. MENENDEZ. Thank you, Madam Chairlady. I want to thank you for hosting a second EAA hearing. The future of our export control laws is an important commercial and national security issue and I believe we need to hear from the broad range of public and private sector entities that are impacted by the EAA.

For that reason, I am sorry that this Subcommittee's work has been stymied by our inability to hear from witnesses from the Department of Defense and from the sponsors of the Senate's EAA bill. I know that the Chairlady has been working with the Full Committee to bring these witnesses before the Subcommittee and I appreciate your efforts to address this issue. But I'm disappointed that we, the subcommittee of jurisdiction, have been censured by the Full Committee.

As I said at our previous hearing, the challenge of the EAA is to strike a balance between our national security interests and commercial interests. I do believe that this precarious balance is achievable, not to mention necessary.

For far too long, we have been operating under a system developed for the Cold War era. Today's technology era demands a system that is responsive to change, that acknowledges America's world leadership in the technology industry, and that recognizes the importance of exports to the American economy.

Senate Bill 1712 is a step toward achieving that balance. The bills developed by Senators Graham and Enzi begins to address our national security concerns and our commercial concerns. It creates a national security control list developed in conjunction with the Secretary of Defense that will streamline the licensing process to focus on exports to countries of concern and on exports of items that pose a national security concern.

The bill also addresses the issue of mass market items and foreign availability to ensure that items which are not exclusively available from American companies are not controlled by our export control system when they are available elsewhere. In today's global economy, if the United States prohibits the sale of a certain encryption technology, for example, an Israeli, Japanese, or Chinese firm will most certainly make the sale if we do not.

Last, the bill makes important improvements in the area of penalties and enforcement. The United States is a member of the global economy. It's its leader. Many business rely on exports for a large portion of their businesses.

At our last hearing, we heard from a representative from the Aerospace Industries Association who noted the shift in the make up of their sales. In 1989, 58 percent of the aerospace company sales were to the Department of Defense and the U.S. Government. Only 32 percent of their sales were exports. A decade later in 1999, 42 percent of the aerospace company sales were exports and only 35 percent were to the Department of Defense or the U.S. Government.

American businesses are rightly concerned about losing business to less scrupulous nations or being seen as an unreliable supplier. Already the American computer industry has been stymied in sales of basic desktop computers due to inflexible export controls. If the United States wants to continue to be a world leader in the field of technology, our export control system must be able to differentiate between exports of sophisticated satellite systems and the export of a desktop computer.

The reauthorization of the EAA is a serious matter that demands our attention. American industry deserves laws that are responsive to today's global economy, not laws that were created over two decades ago to respond to Cold War era threats. I, along with many of my Democratic colleagues, will be pressing for such a reauthorization and I look forward to working with the Chairlady on this challenge to renewing Congress' voice on this important topic. I believe we've lost some of our jurisdiction over the issue by not speaking to it. We look forward to the Secretary's testimony.

Thank you, Madam.

[The prepared statement of Representative Menendez appears in the appendix.]

Mrs. ROS-LEHTINEN. Thank you so much, Mr. Menendez. Our ever-faithful Member of our Subcommittee, Mr. Sherman.

Mr. SHERMAN. Thank you, Madam Chairwoman. I think it is important that we reauthorize. It is a small affront to our constitutional system that for so many years this important area of Federal responsibility is handled by executive fiat instead of pursuant to legislation. This is an important issue. Everyone in the country knows that we need to balance our economic with our security in-

terests and they expect Congress to draft laws that will do that, not simply punt due to concerns about which committee or whatever other concerns have stymied the reauthorization of this Act.

I do think that it is often said that technology is, "available elsewhere," we do need and have often worked with our allies around the world so that we work together to make sure that rogue states and dangerous states do not get a dual-use technology and that it should not be a circumstance where in Britain or France, an exporter is saying, well, we'd better sell because the Americans will sell and vice versa. All of those concerned with world security should work together. That will not, of course, always happen.

The great enemy in this area is delay, because where Americans exports are stopped for good security reasons, that's the price we pay for working for national security. But where there are just interminable delays, not only are we depriving ourselves of jobs, but we are also building high technology industries in countries that have less reluctance to export. So it is imperative, from a national security perspective and an economic perspective, that nothing gets done quicker in the Federal Government than a review for an export license.

I look forward, as we reauthorize, that we design it in such a way and obtain whatever appropriations are necessary so that we make the right decisions and we make them quickly. Thank you.

Mrs. ROS-LEHTINEN. Thank you so much, Mr. Sherman. I'd like to take this opportunity to introduce our panelist, Mr. Roger Majak, who will share his insight and expertise on the Export Administration Act.

Mr. Majak serves as assistant secretary of Commerce for Export Administration. A political economist who has specialized in international trade and national security policy, Mr. Majak has served in a variety of capacities throughout his career, including having served as the staff director this Subcommittee from 1975 to 1985.

We thank you for joining us today, Roger, and we look forward to your informative and engaging hearing over the issue of the EAA. Due to a previously scheduled appointment that could not be moved, I will leave sometime during this hearing and a very able vice chair of this Subcommittee, Mr. Manzullo, will chair.

Thank you so much, Mr. Majak, and you may proceed. Your full statement will be entered into the record, without objection.

STATEMENT OF ROGER MAJAK, ASSISTANT SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. MAJAK. Thank you, Madam Chairwoman. It's a great pleasure to be back before this Subcommittee where I spent so much time from 1975 to 1985. Of course, the Administration appreciates the interest and concern of this Subcommittee and, indeed, the full House International Relations Committee in the subject of export controls.

Since August 1994, when the Export Administration Act expired, as you noted, Madam Chairwoman, we have maintained export controls on dual-use goods and technologies through a combination of emergency statutory authority, executive orders, and our regula-

tions. The Cold War has ended and export control legislation reflecting that reality is long overdue.

A new Export Administration Act should recognize the current realities of today's intricate, fast-paced markets. Such a new law is needed in order to help ensure our national security, to enhance U.S. leadership and credibility throughout the world, and to avoid legal challenges that we are now facing under the International Economic Emergency Powers Act statute.

The Administration's export control vision is to continue to maintain military superiority in the face of more diffuse adversaries and less multilateral agreement on precise security threats. We seek to maintain the gap between our capabilities and those of our adversaries by both retarding their progress and accelerating our own.

National security has become a direct function of our economic strength in this global economy. Our military alone no longer purchases enough to maintain healthy suppliers. Failure to export means fewer profits for today's high-tech companies to pour into new technologies which are needed for, among other things, our defense.

At the same time, the ubiquity of many technologies and their ease of transfer makes controlling exports all the more difficult. Semiconductors and computers are just two examples among many. Large capital items like machine tools, semiconductor manufacturing equipment, satellites, and aerospace items are more susceptible to controls, but there again, controls that are too broad can cripple companies that are critical for our own military development and security.

Our lead in these crucial product sectors is based on the quality and efficiency of our production, not on any monopoly. Close any part of the world market for any of these products and competitors will move in, using China or India, whatever markets we restrict or abandon, to gain market share to eventually challenge our global leadership.

This Administration believes that our continuing ability to stay at the cutting edge of technology is the key to our security. This is very different from the Cold War approach of simply denying products to a clearly identified adversary. In short, the Administration's equation has become exports equals healthy high-tech companies equals strong defense.

Operating under these emergency authorities, Madam Chairwoman, leaves important aspects of our export control system and thus our national security at risk. Penalties for violations, both civil and criminal, are too low, eroding the deterrent effect of controls by tempting some companies to view penalties as just another cost of doing business.

Even the penalties in the EAA of 1979, as it was amended over the years, are now outdated. The Administration proposed significant increases, which were reflected in H.R. 361, which was passed by the House in 1996, but not enacted into law. Our enforcement agents are without adequate police powers: Powers to make arrests, powers to execute search warrants, and to carry firearms. They must obtain special deputy U.S. marshal status in order to do their job, consuming limited resources that could be better used on enforcement activities.

The Emergency Powers statute under which we're operating has no explicit confidentiality provisions, which jeopardizes both national security and business competitiveness. As Under Secretary Reinsch predicted before this same Subcommittee in 1997, lawsuits have now been brought under the Freedom of Information Act seeking public release of detailed export licensing information. Similarly, respondents in anti-boycott cases argue, so far unsuccessfully, that the Administration has no authority to implement and enforce the anti-boycott provisions of the Export Administration Act and our regulations.

These challenges are directly related to the absence of specific authorities in the International Economic Emergency Powers Act.

The Administration's proposed EAA, as well as H.R. 361 and now S. 1712, currently under consideration in the Senate, would restore these various crucial powers. In so doing, such legislation would also restore a level of certainty about export controls that our companies need and deserve. We have made considerable progress in eliminating unnecessary controls while enhancing our ability to control truly sensitive items. Industry has the right to expect these reforms to be certain and permanent in order to plan legitimate export transactions and to comply with the restrictions.

Continued failure to enact a new EAA sends the wrong signal to them, as well as to our former Soviet and Warsaw Pact adversaries and our allies, all of whom we strongly urge to strengthen their export control laws and procedures. So the credibility of our export control policy is diminished both domestically and internationally by our lack of a specific, permanent statute.

In February 1994, the Administration proposed to renew and revise the EAA to refocus on the proliferation of weapons of mass destruction without sacrificing our interest in increasing exports, reducing the trade deficit, and maintaining global competitiveness in critical technologies.

The Administration bill emphasized five principles. First, export controls exercised in conjunction with the multilateral nonproliferation regimes. Second, increased discipline on unilateral controls. Third, a simplified and streamlined export control system. Fourth, strengthened enforcement. Fifth, expanded rights for exporters to petition for relief from ineffective controls.

H.R. 361, which was passed by the House in 1996, made several improvements to the EAA similar to those contained in the Administration proposal. Control authority was updated to address current threats, to increase discipline on unilateral controls, and to enhance enforcement.

H.R. 361 also contained reforms of the licensing and commodity jurisdiction procedures which were largely embodied in Executive Order 12981, which was issued by the President in December 1995. Under that order, the Commerce Department manages the export control system for dual-use goods and technology, as it always has, but State, Defense, and Energy review any and all licenses they wish and can easily escalate their concerns all the way to the President.

It's a tribute, Mr. Chairman, to the effective management of this system and the good faith of all the agencies involved that consensus is reached under these procedures in more than 90 percent

of all cases and agency reviews have been conducted in less than half the allotted time, on the average. So far, all differences have been resolved at my level, the assistant secretary level, or below and no case has gone to the Cabinet or the President, except in situations where there is a statutory requirement to do so.

The Administration, however, has had and continues to have some concerns about H.R. 361 regarding its terrorism provision, its provision regarding unfair impact, the provision for anti-boycott private right-of-action, its judicial review provisions, and some constitutional issues which the Administration feels are raised by the bill.

Finally, S. 1712. Last September, the Senate Banking Committee unanimously reported that bill. While structurally different from H.R. 361, it nevertheless updates controls to address current security threats and contains other useful provisions, including enhanced enforcement authorities and significant higher penalties for violations. It is largely consistent with the Administration's own procedural reforms. S. 1712 continues to be the subject of discussions between the Banking Committee and interested members of other Senate committees. Pending the outcome of those discussions, the Administration has not yet taken a formal position on that bill.

In conclusion, Mr. Chairman, we need an EAA that allows us to address our current security concerns effectively while maintaining a transparent and efficient system for U.S. exporters. The Administration and the House, particularly in H.R. 361, and the Senate Banking Committee, in S. 1712, have agreed on many of the salient issues. Together, we should build on the consensus that has already been achieved to reauthorize an EAA that enhances our security in the ways that I have outlined in this statement.

Thank you for the opportunity to address the Subcommittee and I would be glad to take any questions you might have.

Mr. MANZULLO [presiding]. Thank you, Mr. Secretary. Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman. Mr. Secretary, thank you for your statement. There's a lot that I find that I am in concurrence with you on and I appreciate the straightforwardness of it. Let me ask you a couple of questions, though.

One, we, as the Chairlady said earlier, are having a markup of Congressman Dreier's legislation. I support that bill, however I'm concerned that it only touches the surface or partially addresses the industry's concerns. Do you believe that the legislation is sufficient to address the industry's concerns?

Mr. MAJAK. As I have reviewed in this statement, I think there are a broad range of situations that need to be addressed. Certainly the subject of the Dreier bill is one of them, but only one of quite a number. Those matters that need to be addressed are of concern to both the business community and to the Administration. So we would certainly prefer a more comprehensive piece of legislation to deal with the full range of both industry and administration concerns.

Having said that, the reduction of the time for review of changes in our computer policies is needed and the Administration will try to work with all approaches to this legislation. But I think we

would strongly prefer a more comprehensive approach and one which would contain a permanent authority.

Mr. MENENDEZ. We support Mr. Dreier's effort to reduce the time. The problem is that that is only part of a series of issues that confront the industry. I would hope that my colleagues, when we have the markup, understand that the resolution of that one issue in no way puts us in the position to be totally as competitive as we need to be and address both our security concerns.

Now you said we have agreed, and I believe you're right, on the wide range of the salient issues in both the Senate and the House legislation. So what's stopping us? What's stopping us? Why can't we move forward from here? What is it that is—I have a sense of what's stopping us, but I want to hear the Administration's perspective of what is stopping us from moving forward with the reauthorization?

Mr. MAJAK.I think what's stopping us at this point is the remaining diversity of views, especially by key committees in the Senate, since that's where the most recent activity has been.

Mr. MENENDEZ. Particularly Defense-related views?

Mr. MAJAK. Particularly Defense and, to some extent, Intelligence-related views. But also Foreign Relations-related views. There are at least three committees, in addition to the Banking Committee, who have remaining concerns about S. 1712. I know that Senator Gramm, Senator Enzi, and others in the Senate have worked diligently to try to resolve those differences of view, but they are substantial differences which, so far, have not been resolved.

We in the Administration have taken the posture of encouraging this process to move forward because we believe the underlying bill, S. 1712, as passed by the Banking Committee, is a promising vehicle. We have tried to facilitate some possible compromises and to comment on all of the proposals that have been put forward. But, so far, I think those differences have not been resolved.

Mr. MENENDEZ. Could you outline for the Committee what some of those differences, without mentioning who the differences emanates from, but what some of those differences are?

Mr. MAJAK. Yes. For example, the Senate bill contains provisions for removing items from control on the basis of foreign availability, as well as on the basis of mass market production which, makes these items difficult or impossible to control.

Under the Senate bill, the Commerce Department would make those determinations. But before those items were removed from control, there would have to be some degree of interagency consensus. Members of other Senate committees feel that there should be some category or list of items that would be ineligible for that kind of review or that should require Presidential level decision to implement the removal of items from control. So there is disagreement over that issue, for example.

There are a number of others. I think——

Mr. MENENDEZ. Is the Administration actively engaged in trying to reconcile some of these other issues so that we can have a reauthorization? Or is the Administration's position to sit back and wait to see if the parties themselves?

Mr. MAJAK. No, we've been quite actively involved, including a number of late-night meetings at which I personally, and others, have participated and which the representatives of the various committees have sat around the table and tried to resolve these issues. So we have been quite available and proactive.

Mr. MENENDEZ. Are you're brethren in the Department of Defense actively engaged in trying to seek also a reauthorization? Because sometimes I get the sense that there are those in this process who believe that, by raising every possible obstacle, we'll not see a reauthorization. Their ultimate goal is to virtually, in their views, which I believe are wrongly held although I believe they hold them for the right—for their own—I think they're committed to their views. I think their views are wrong. But I think they're committed to their views for what they believe are the right interests.

But I think, ultimately, what happens here is that there is an effort here that does not move this process forward. Because those who don't want to see the process moved forward because they believe they want to give access to nothing, which I think is a very myopic view of the world today, don't want to see something happen or are they actively engaged in a good faith effort here to make this happen?

Mr. MAJAK. No, I would have to say, although there are a variety of opinions in these departments, I would have to say that the Defense Department and the State Department in particular have taken an active part in these discussions. Each of the agencies has, from time to time, offered compromise language in response to the concerns of one committee or another. But, ultimately, at the end of the day, we can't resolve the disputes. That must be done by the members of the respective committees themselves.

But I can say from personal experience, that all of the agencies have been at the table willing to respond to the various positions, to offer compromises, and suggest different approaches. But so far, that has not succeeded in bridging the differences.

Mr. MENENDEZ. Yes, I hope they recognize that, ultimately, in those products that are available in the marketplace and that others are providing, that I would rather see, for the security interests of the United States, products that are produced in the United States which we will have the total wherewithal and knowledge of and we can deal with versus those products that are produced elsewhere that we do not know.

Mr. Chairman, one last question, since there's only the two of us, it appears, if I may. If current controls are continued and a new Export Administration Act is not enacted, from the view of the Department of Commerce and understanding your charge in that regard, what's the impact on the ability of U.S. industries to export?

Mr. MAJAK. Mr. Chairman, I think it would be our plan and expectation to continue the process and the policy as we have since 1994 under our emergency authorities. In that regard, I would expect us to continue to approve a large proportion of the license applications that we receive, to review all of those license applications on an interagency basis, and to proceed largely as we have.

So I don't think that there would be any disruption of our ability to exercise these controls, except to the extent that we might face legal challenges.

Mr. MENENDEZ. I will tell you, Mr. Secretary, that those who have come forth from these hearings from the private sector will say that, in fact, that it is more than just that reality. It is beyond the legal challenges you are facing, that they face the loss of exports which are growing, if not the substantial part, of their business. I just really do not believe that just the continuation of the existing process, as well-intentioned as it is under the best of the circumstances that exist, inures to our interests either commercially or, for that fact, in terms of national security.

Thank you, Mr. Chairman.

Mr. MANZULLO. Thank you, Mr. Menendez. Mr. Secretary, first of all, I want to thank you for the efficiency with which your agency handles all types of requests, the fairness with which you interpret the law, and the nonpartisanship involved in the agency. It's really a credit to you and the people that work with you. You are trying to do what's best for the United States, taking into mind the overriding concern for national security and I commend you, publicly, for that.

Mr. MAJAK. Thank you, Mr. Chairman. That's a great compliment.

Mr. MANZULLO. I only wish that other Members of Congress, in addition to Mr. Menendez and I, had as much understanding of what's going on or had a fraction of your understanding of this issue, because it's extremely difficult to understand. So often the first thing that Members of Congress want to do is, in reaction to a bad foreign country is to punish American manufacturers for something over which they have no control.

But I have a question about Wassenaar that's come up several times. As you know, COCOM worked on a consensus basis. How do we strengthen Wassenaar so that, if the United States decides against issuance of a license, that one of our allies doesn't undercut us and go ahead and simply sell the same thing? What are your thoughts on that?

Mr. MAJAK. This is a very difficult and knotty problem. Certainly what we need to do first is continue to press our partners at Wassenaar and the other multilateral agencies to adopt what we call "no undercut" provisions, which we have done in Wassenaar. We have repeatedly proposed to strengthen the no undercut provisions that are under the agreement.

At present, those provisions largely require member countries simply to consult before they make a sale that another member turned down. That process is working moderately well, but we would like to expand it to include more items and to include more than just notification, but some greater obligation to, in fact, to respect the denials of other countries.

We have not been able to achieve much progress in that area. This, I think, is in part a spill-over from COCOM and the Cold War days when our allies and partners at times resented and resisted the pressures of what was then actually prior approval of their licenses, as you mentioned. The presence of some additional countries in the Wassenaar group, like Russia and the Ukraine, for example, make selling the idea of a no undercut arrangement even more difficult.

At the end of the day, it seems to me, having observed this now for a couple of years, it really is a question of how much priority we're prepared to put on achieving stronger no undercut provisions. Frankly, we have had on the table other things that we have wanted from Wassenaar, like greater controls on small arms and other items that are not subject to controls. So there are tradeoffs.

We've also wanted to remove some items from Wassenaar control which we felt no longer require controls. That requires us to use some political capital with our partners.

So we have obtained some other concessions from them. It's just a matter of how much we want to extract in order to get that kind of cooperation. I'm not sure, under the present circumstances, even very heavy pressure from us will get us a broader no undercut provision.

Mr. MANZULLO. They have no incentive. They realize, unlike this country, that if something is readily available on the open market and the United States is trying to be righteous and say we don't want to sell it, then why close that market to another country? Good luck on negotiations, but if you don't succeed and strengthen it, I'm not going to hold that against you or anybody else who is working on our behalf.

Mr. MAJAK. I appreciate that. I should note, Mr. Chairman, that we have had some reasonable cooperation from them in the no undercut area with respect to the terrorist states, which is the central and the main focus of Wassenaar. Where you begin to lose discipline is when you talk about destinations outside of the key terrorist countries. There is much less willingness to recognize a no undercut concept.

Mr. MANZULLO. That answers my question.

Congressman Cooksey, would you like to chair this hearing to its conclusion, because I have to go on to another meeting? Thank you. I appreciate it very much, Mr. Secretary.

Mr. MAJAK. Thank you, Mr. Manzullo.

Mr. COOKSEY [presiding]. I'm asking the staff a question that I don't know the answer to myself. Does Israel belong to the CAA?

Mr. MAJAK. Israel——

Mr. COOKSEY. Have they participated in the past?

Mr. MAJAK. Israel is not a member of any of the multilateral export control cooperation arrangements at present.

Mr. COOKSEY. Why not?

Mr. MAJAK. Because they prefer and feel they need to pursue an individual and independent course. I should note, however, that they recognize and cooperate with U.S. controls and the Wassenaar and other multilateral controls, in fact, in some cases. But they feel that they must preserve their national discretion so they have not joined these multilateral organizations.

Mr. COOKSEY. Wassenaar does not really have any teeth in it, though, does it, as it currently exists? Or does it?

Mr. MAJAK. The teeth are, essentially, powers of persuasion and pressure from other members to conform. It has teeth in the sense that it has a common list of items that are controlled and that is a very important area of consensus in itself. If you don't at least have a common list of items that are of concern and should be con-

trolled, to one degree or another, then you have, really, no coordination at all.

Wassenaar does have such a list and much of our time is spent at Wassenaar refining and improving that list. That includes both extensions of the list as well as deletions from the list. So that is a very important core of cooperation.

However, the type of control that countries apply to those items is subject to national discretion and, therefore, some significant variation. We control those items in one way. Other countries, using other kinds of mechanisms and other legal authorities, may control them differently. We try to harmonize the impact as much as possible, but there is the ability to have variation based on national discretion.

Mr. COOKSEY. Let me ask you a followup question on that. Recently Israel has exported some missile technology to China. Am I not correct? It is missile technology?

Mr. MAJAK. I have seen reports to that effect. I can't—or at least, in public session, wouldn't want to confirm or disconfirm it. But, certainly, I've seen those reports.

Mr. COOKSEY. I got it from reading the newspaper. I find when I go to the CIA briefings or I just left another members only meeting, I can read the same thing in the newspaper, the New York Times, the next day. What did the Administration do to prevent this? I understand they expressed some opposition to it and Israel said they would go ahead with this.

Mr. MAJAK. Here the absence of my State Department colleagues at the table handicap me because they would have undertaken those representations. I'm sure there were representations made, but I'm, frankly, not familiar with them in detail. I'd have to defer to the State Department to answer that question.

Mr. COOKSEY. I consider Israel a very important ally and, as a result, we give them a lot of technology and a lot of important military technology. It is a little bit disconcerting when you see that they are, in turn—I'll tell you what it was. It was really the AWACS technology. They are transferring that technology to them.

Mr. MAJAK. Yes.

Mr. COOKSEY. And, of course, the missile technology goes back to 1996 and I understand the two principals—now this was the front page of the Washington Post—the two principals in those companies, Loral and Hughes, are in China today, as we speak.

But my good friend from California, Mr. Rohrabacher is here. Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much. There was a news report about the U.S. Ambassador to China hosting a meeting between the China space agency and Hughes and Loral. Was this approved by the White House?

Mr. MAJAK. I saw that report, Mr. Rohrabacher. I have not been able either to confirm, in the short time since I did see it, whether the meeting took place or whether it was cleared by anybody in the Administration. I can say with certainty it wasn't cleared by me, but whether it was cleared elsewhere in the Administration, we'd have to determine and get back to you.

Mr. ROHRABACHER. Is it the Administration's policy that Hughes and Loral should be meeting with the China space agency?

Mr. MAJAK. I could only speak for the area of authority that I have, which is how we treat those companies with respect to future exports. Under the Export Administration Act, as extended by the President, unlike the munitions control statute, which authorizes the U.S. Government to withhold business from companies when they've been accused of these possible violations, there is not a similar provision in the area of dual-use technology. So I could say that, under our legislation, discussions of exports of dual-use equipment by those companies would not be prohibited.

Mr. ROHRABACHER. All right. Is it still the Administration's policy that China is treated as a strategic partner?

Mr. MAJAK. I think, again, I would have to defer, with your forgiveness, Mr. Rohrabacher, to the State Department for a proper answer to that question.

Mr. ROHRABACHER. All right. It just seems to me that you guys all have the same boss and I give he would give the same guidelines.

Just for the record, Mr. Chairman, just let me say this whole situation when you read in the newspaper, after going through years of seeing that there is a technological transfer to China through Hughes and Loral corporations that has been deemed something that damaged our national security, put millions of lives at risk that wouldn't otherwise be at risk, the fact that there is a meeting arranged by the U.S. Ambassador for these same two companies on the very same subject area with the very same culprits that were the recipients of this technology before, is breathtaking. It's just beyond belief.

I mean, this proves that Mark Twain was wrong. A cat will sleep on a hot stove twice. You're not at fault. You're not here to be raked over the coals. You're here to just try to do your best, I know. But this Administration, through what we're talking about today and through just in this one incident, has demonstrated again its either incompetence or its sheer disregard for the national security interests of the United States of America.

I don't know why, but that's what's happening and this Congress eventually is going to get down to the reason why these decisions continue to be made over and over again with America's worst potential enemy.

Than you very much, Mr. Chairman.

Mr. COOKSEY. Thank you, Mr. Rohrabacher.

Mr. Menendez, would you like to have a closing comment?

Mr. MENENDEZ. Right. Just very briefly. Just a quick question to the Secretary. I appreciate all of your answers and your testimony. How long have we been authorizing satellites as a government?

Mr. MAJAK. As commercial items, since, I'd say, the late 1960's, when what was previously largely a military activity became commercialized and we began using commercial satellites. Certainly, Intelsat, for example, has been around even longer than that. But in those days, the State Department still licensed many of those satellites as munitions. Of course, the jurisdiction was transferred from the Commerce Department for commercial satellites in 1996.

Mr. MENENDEZ. So we have been authorizing and licensing satellites since before this Administration, I take it.

Mr. MAJAK. Much before this Administration.

Mr. MENENDEZ. Thank you very much, Mr. Secretary.

Mr. MAJAK. Thank you.

Mr. COOKSEY. Mr. Majak, Mr. Secretary, we appreciate your coming today. I appreciate your testimony. It's an important issue. Needless to say, there's controversy that surrounds this. I feel that you've given a good presentation and I personally thank you. We've got to go vote.

Mr. MAJAK. Thank you.

Mr. COOKSEY. The meeting will be adjourned.

[Whereupon, at 3:56 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MARCH 22 AND APRIL 4, 2000

MARCH 22, 2000

STATEMENT OF DAN HOYDYSH

CO-CHAIR OF THE COMPUTER COALITION FOR RESPONSIBLE EXPORTS

BEFORE THE HOUSE INTERNATIONAL RELATIONS SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 22, 1999

Mr. Chairman, Members of the Committee.

Good Morning. My name is Dan Hoydysh. I am Director, Trade, Public Policy & Government Affairs of the Unisys Corporation. I also have the privilege of serving as Co-Chair of the Computer Coalition for Responsible Exports (CCRE) and am testifying today on CCRE's behalf (a curriculum vitae and required disclosures are attached). I want to thank you for providing me and the CCRE with the opportunity to share our views on U.S. computer export controls.

The CCRE is an alliance of American computer companies and allied associations established to inform policy makers and the public about the nature of the computer industry -- its products, market trends, and technological advances.

CCRE Members include Apple Computer, Inc., Compaq Computer Corporation, Dell Computer Corporation, Hewlett-Packard Company, IBM Corporation, Intel Corporation, NCR Corporation, Silicon Graphics, Inc., Sun Microsystems, Inc., Unisys Corporation, the American Electronics Association (AEA), the Computer and Communications Industry Association (CCIA), the Computer Systems Policy Project (CSPP), Electronic Industries Alliance (EIA), and the Information Technology Industry Council (ITI).

The CCRE is committed to promoting and protecting U.S. national security interests, and seeks to work in close partnership with the Congress and the Executive Branch to ensure that America's economic, national security, and foreign policy goals are realized. CCRE also believes that a strong, internationally competitive computer industry is critical to ensuring that

U.S. national and economic security objectives are achieved and that U.S. economic and technological leadership is maintained.

The U.S. computer industry has a long history of cooperation with the U.S. government on security-related high technology issues. They take their responsibilities in the area very seriously. CCRE members strongly believe that U.S. national security is tied to U.S. technological leadership. U.S. computer companies also devote hundreds of employees and millions of dollars annually to complying with export control regulations. It is not our role, however, to define U.S. national security needs - - that is for the Congress and the Executive Branch. Rather, we do and will continue to provide the Congress and Executive Branch with information concerning the rapidly changing technology and international market conditions that we believe they will need to take into consideration in shaping up to date and effective U.S. export control policies for computers.

In our testimony today we want to make the following key points given the trends in computer performance over the foreseeable future: (1) a responsive and efficient export control regime needs is essential to maintain U.S. leadership in the information technology industry; (2) a 6-month delay in implementing adjustments to the computer export controls is too long and a considerably shorter period should be adopted by this Congress; (3) products that are in essence mass market products should not be subject to export controls; and (4) technological and market realities support the Administration's February announcement to update the Tier III export control thresholds and confirm the need for a further update to take effect as soon as possible this year.

I. The Export Control System Needs to be Changed

As you know, the U.S. computer industry continues to be a driving force behind our continued economic growth and job creation and is responsible for one-third of real economic growth. U.S. computer companies need to innovate, grow, and compete in new markets. Its

strength and vitality has been an important factor in maintaining our national security. Export controls can have profound effects on the health of such industries and on their contributions to the national security. The Defense Science Board's Task Force on Globalization and Security, an independent Federal Advisory Committee to the Department of Defense, comprising many distinguished experts in national security, specifically points out the role between export controls and the health of the U.S. computer industry.

> Exports are now the key to growth and good health. In the computer and communications satellite industries, for example, between 50% and 60% of all revenues come from foreign sales. Any significant restriction on exports would likely slow corporate growth and limit the extent to which profits can be put back into research and development on next-generation technology. . .. If U.S. high-tech exports are restricted in any significant manner, it could well have a stifling effect on the U.S. military's rate of technological advancement.

DSB Report at 27.

CCRE believes that in the long-term fundamental reform of the computer export controls is necessary. As the computer industry's experience with the present export control regime clearly shows, there is a need for a more efficient and responsive new computer export control system. A performance based computer export control system is proving difficult to administer given the rapid advances in computer performance levels and the global availability of components and know-how. In light of this reality, we urge that the Congress and the Executive Branch, with the support and assistance of the computer and other hi-tech industries, continue their bipartisan consideration of new methods of achieving the national security goals presently associated with computer export controls.

In the short-term, however, the CCRE supports the ongoing effort to modernize and reauthorize the Export Administration Act (EAA), but believes that the EAA should adequately reflect current foreign policy, national security and market realities. The result of past efforts

failing to reauthorize the EAA has been an increasingly outdated U.S. export control regime built on the remains of a Cold War-era statute. S. 1712, the Export Administration Act of 1999, presents a valuable first step to clear away conflicting export control systems and modernize the U.S. export control regime to reflect market realities. CCRE commends the Senate Banking Committee for undertaking this effort and for its constructive bipartisan approach, and look forward to working with the House International Relations Committee in trying to shape a new Export Administration Act.

II. The Process for Updating Export Controls on Computers Should be Streamlined

In 1997, the House Armed Services Committee correctly predicted that export controls on computers will need to be updated periodically. Consequently, the Congress provided a means for adjusting those controls in the FY 1998 NDAA. That process, however, included a waiting period of 6 months before new export control thresholds become effective.

When the Senate Banking Committee reauthorized the Export Administration Act last year, it recognized (i) that a 6-month waiting period is too long for an industry, like the computer industry, that needs to get its latest products to market before foreign competitors capture those markets, and (ii) that a considerably shorter waiting period would still protect the national security.

The Senate Banking Committee is correct. A shorter waiting period will still give the Congress adequate time to review the national security ramifications of any changes in the U.S. computer export control laws and allow the U.S. computer industry a chance to compete in some of the most important emerging markets in the world.

Furthermore, it doesn't make sense for the Congress to impose a 6-month waiting period on products that have a three-month innovation cycle and are widely available from our foreign competitors. Indeed, two members of this House, David Dreier (R-Ca) and Zoe Lofgren (D-Ca), have recently introduced legislation, H.R. 3680, to amend the FY 1998 NDAA to reduce the waiting period to 30 days. H.R. 3680 would make the waiting period more reasonable and bring it into line with other waiting periods for changing national security export controls. For example, 6 months is considerably longer that the 30-day waiting period established by Congress to remove defense articles from the Munitions List (a list of defense articles and services that are subject to export controls, including such items as artillery, launch vehicles, missiles, rockets, torpedoes, warships, aircraft and tanks). Similarly, when the House Armed Services Committee reported out the Security and Freedom Through Encryption (SAFE) Act, it included only a 30-day waiting period to change the level of encryption allowed to be exported.

From a practical perspective, the 6-month waiting period also does not make sense for products that have a 3-month innovation cycle. For example, the new export controls announced by the Administration on February 1 of this year will already be out of date in less than six months. Furthermore, any new announcement to take account of the higher performance levels of the business computers that are expected to be widely available this Summer will not take effect for six months, so it likely will be out of date by the time it comes into effect.

Indeed, recent events have demonstrated clearly that the 6-month waiting period is so long that it is impossible for the computer export controls to keep pace with current technological and market realities. Last Fall Apple Computer began marketing its new single-processor personal computer whose power exceeded the then current computer export control threshold. Apple was unable to sell those new G4 computer systems in over 50 countries because the export control adjustments made in July did not become effective until January. IBM was in a similar predicament with its new Aptiva personal computer line. We believe that

this recent experience in the harm caused by a 6-month delay in adjusting the export control threshold demonstrates clearly the urgent need to reduce the waiting period to 30 days from 6 months.

Furthermore, it is quite clear that foreign computer companies are positioned to take advantage of markets closed to U.S. computer companies while the U.S. companies are waiting for the 6-month waiting period to run its course. If U.S. companies have to wait until the export controls are updated as much as six months later, foreign computer companies selling comparable computers will reap the significant benefit of being "first to market." As you know, for high technology products being "first to market" is a critical commercial fact of life. The U.S. computer industry is facing a crisis in the second half of this year when computer systems with the new Intel Itanium™ come on the market, but are still controlled by outdated export control thresholds. At present, at least five foreign firms (NEC, Siemens, Hitachi, Fujitsu, and Bull) have already indicated that they intend to market computer systems with the Itanium. Those foreign computer companies will reap all the advantages of "first to market" in some of the most important growing markets in the world, while our computer companies face the barriers of the pre-export notification and licensing process. Once lost, foreign markets will be very hard to recover.

According to the DSB, export controls under these circumstances could very well harm the national security:

> DoD should attempt to protect for the purposes of maintaining military advantage only those capabilities and technologies of which the U.S. is the sole possessor and whose protection is deemed necessary to preserve an essential military capability. Protection of capabilities and technologies readily available on the world market is, at best, unhelpful to the maintenance of military dominance, and, at worst, counterproductive (e.g., by undermining the industry upon which U.S. military-technological supremacy depends).

DSB Report at vii.

While supporting the Senate Banking Committee's effort to shorten the waiting period, we believe that a 30-day waiting period would be more appropriate and consistent with other export control congressional waiting periods than the 60-days in S. 1712.

This change is critically important to the U.S. computer industry. We urge you to support the Dreier/Lofgren bill, HR 3680, to reduce the NDAA waiting period to 30 days.

III. Mass Market Products Should not be Subject to Export Controls

The Senate Banking Committee's new mass market provision is a clear recognition by the Congress of the need for U.S. export controls to more effectively balance national security and market realities. By recognizing that it is impossible to control mass market products and technologies, this provision will help make U.S. export controls more effective by freeing-up resources to focus on critical military technologies that can be effectively controlled.

To be effective, however, a mass market provision should be prospective so that it can take into consideration rapidly evolving technology. The present Senate Banking Committee version of the EAA does not provide for prospective consideration of rapidly evolving technologies such as those used by the computer industry. As discussed already, just last year computer technology evolved so rapidly that mass-market personal computers such as Apple's G4 and IBM Aptiva line were subject to export controls. A mass market provision that required prospective determinations would have forestalled the harm to these companies that was caused by an outdated export control system.

IV. The Technological and Market Realities of the Global Computer Industry Support the February Announced Update and Confirm the Need for Another Update this Year

In February, the President announced that the computer export control threshold for Tier III countries would be increased from 6,500 MTOPS to 12,500 MTOPS in light of the widely available computers that would be performing in that range. The update will take effect six months later, following the 6-month waiting period. Unfortunately, because of the 6-month waiting period, this recent update to 12,500 MTOPS is already out of date since it will not take effect until after Intel's new microprocessor, the Itanium, is available - domestically and overseas. The widely available Itanium will be used primarily in two and four-way computer systems. Four-way multiprocessor Itanium systems based on the 800 MHZ Itanium are presently projected to perform above 23,700 MTOPS. Another update of the Tier III computer export controls is therefore necessary as soon as possible to take into account these new mass market products.

The business computers at issue are widely available because (A) of the increasing power of mass market microprocessors, that (B) are employed in increasingly common multiprocessor systems (with correspondingly higher performance levels), and (C) global computer market trends mean that multi-processor computers are so widely available that many are now commodities.

A. Increasing Processing Performance Trends Support the February Proposal to Adjust the Computer Export Controls

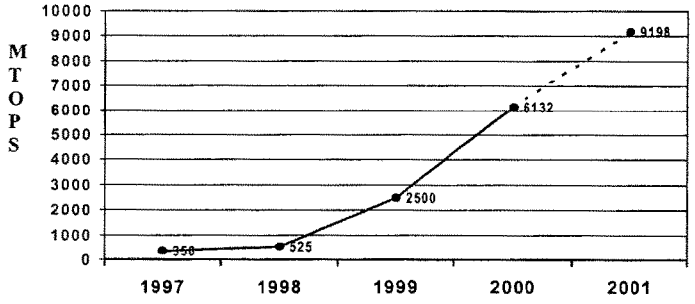
The recent increases in microprocessor performance are one of the main factors supporting the proposed adjustment and the need for another adjustment this Spring. The performance of microprocessors (chips) -- the brains of the computer -- continues to improve

dramatically. Gordon Moore, the former CEO of Intel once observed "that the power of semiconductor technology doubles every 18 months." However, the pace of technological advance is accelerating even faster.

In March of 1999 the Pentium® III Xeon™ microprocessor, then the state-of-the-art mass market processor used in multiprocessor systems, performed at 1167 MTOPS (500 MHZ). Eighteen months later the state-of-the-art mass market microprocessor is forecast to be Intel's Itanium, with performance of 5622 MTOPS. *Thus in 18 months, instead of doubling, the performance of mass market microprocessors will have quintupled - increased by almost 500%.*

The following table demonstrates the performance level of widely available single microprocessors made by Intel and other companies: The impact of the Itanium is readily apparent in the sudden increase this year.

Performance of Widely Available Single Microprocessors



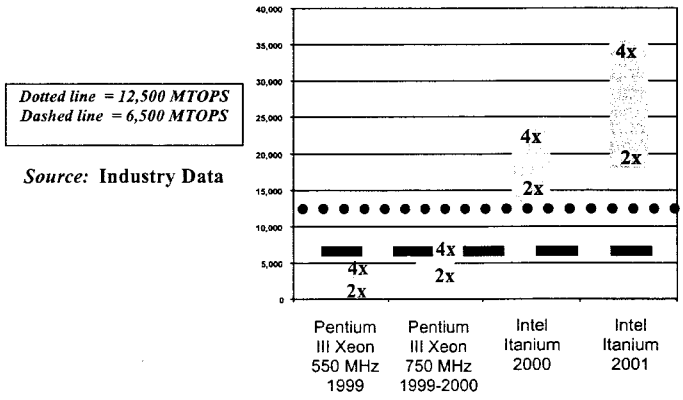
Source: **Industry data based on Intel & other microprocessors**

B. The Trend of Increasing Performance Through the Use of Multiprocessor Systems Supports the February Announcement and the Need for Further Adjustments this Year.

Another major factor supporting the February announcement and confirming the need for another update this year is the increasing usage of multiprocessor computer systems. Multiprocessor systems using the latest microprocessors are now widely available on the world market. According to projections in the Gartner Group Report, this year over 4.3 million computers that can accommodate two processors, over 500,000 computers that can accommodate 4 processors, and over 125,000 computers that can accommodate 8 processors will be sold world-wide. The Gartner Group Report projects that by the end of this year, the installed worldwide base of computer systems that can accommodate 2, 4, 6, and 8 processors should be approximately 14 million, while by the end of 2001 there will be over 20 million such computers installed worldwide.

The following chart and examples using Intel technology illustrate the dramatic increases in mass market multi-processor power that is resulting in an ever increasing number of computers performing in the range covered by the President's proposal and forecast to perform above the recent update .

Power of Widely Available US and foreign computer systems



A review of the present mass market microprocessors available domestically and overseas clearly shows that the February announced update was necessary. Today the 550 MHZ Intel Pentium III Xeon, which performs at about 1300 MTOPS, is the basic building bloc of multiprocessor servers using Intel architecture. A computer system using two 550 MHZ Intel Pentium III Xeon microprocessors performs at about 2400 MTOPS, while one using four microprocessors performs at about 4600 MTOPS, and one using eight microprocessors performs at about 9000 MTOPS. This year it is projected that the 550 MHZ Intel Pentium III Xeon will be replaced by the 750 MHZ Intel Pentium III Xeon (1750 MTOPS), with computer systems using two of those microprocessors performing at 3250 MTOPS, while one using four microprocessors will perform at 6250 MTOPS, and one using eight microprocessors will perform at 12,250 MTOPS.

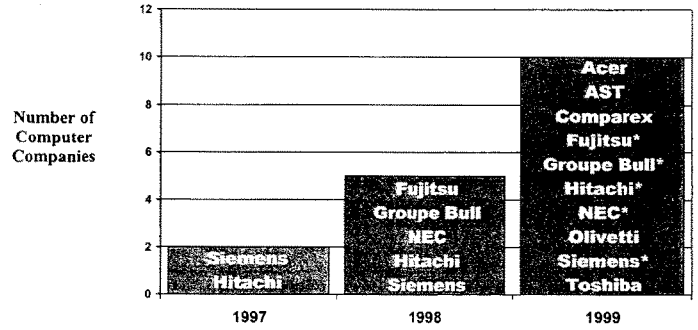
However, this year it is also expected that the Intel Itanium microprocessor will be available for use in multiprocessor servers using Intel architecture. A system with two Itanium microprocessors is projected to perform at 11998 MTOPS, while one with four microprocessors is projected to perform at 23731 MTOPS. The February announced update to 12500 MTOPS will clearly fail to cover these widely available systems. Unless we are prepared to concede some of the most important growing markets in the world to foreign manufacturers providing these systems, the computer export controls will need another update as soon as possible to cover the expected sales of these systems this year.

C. Global Computer Market Trends of Increasing Use of Multiprocessor Systems Support the February Announcement and the Need for Another Adjustment

Any review of proposals to adjust computer export controls should take into account global computer market trends - both the foreign availability of multiprocessor computers, as well as the foreign capability to manufacture computers that would be subject to export controls. In addition, the overseas installed base of computers that would be subject to export controls is also relevant to the effectiveness of any export control regime.

(1) Foreign Availability and Capability

The number of foreign computer companies and the number of products they offer that compete at higher performance levels is increasing all the time as computer technology continues to advance and is available overseas and at relatively low cost. The chart on the next page shows the increasing number of foreign computer companies that are marketing servers and workstations that can perform in the range covered by the proposed adjustment to the computer export control laws.



***Source*: GartnerGroup for 1997-1999.**
***Companies that have announced they will market Intel Itanium computers in multiprocessor configurations pending Itanium release in July 2000.**

Computer companies in France (Bull), Japan (Hitachi, NEC, Fujitsu, Mitsubishi and Toshiba), Taiwan (Acer and AST), Germany (Siemens and Comparex), and Italy (Olivetti) are all making 2 and 4-way multiprocessor computers. Many of these companies are already marketing or have announced that they will be selling 8-way computers (e.g. Bull, Comparex, NEC, Hitachi, Fujitsu, and Siemens). (See Attachment 1 for specific details on these foreign computers.)

Most significantly, it should also be noted that NEC, Siemens, Hitachi, Fujitsu, and Bull have already indicated that they will be employing the Intel Itanium in multi-chip computers. Thus, even before its release, it is clear that this new powerful mass market microprocessor will be available in multiprocessor systems worldwide.

Indeed, the Gartner Group Report forecasts that this year foreign computer manufacturers will sell over 20,000 eight-way configurable computers, almost 140,000 four-way configurable

computers, and almost 950,000 two-way configurable computers. In 2001, the Gartner report projects that over 1,300,000 two-way computers and over 150,000 four-way computers will be manufactured by foreign computer companies. Many of these foreign computer systems will be using mass market microprocessors that will have performances for 4-way configurations above 20,000 MTOPS.

The DSB Report explicitly discusses foreign capability based on uncontrollable commodity microprocessors:

> Microprocessors, which are the essential ingredient for high-performance computers (HPCs), have long been a commodity product widely available on the world market from a vast range of sources. Chip-maker Intel alone has over 50,000 authorized dealers worldwide.

DSB Report at 26-27.

In addition, foreign end-users can also achieve high performance levels, in excess of the thresholds in the February announcement, through networking commercial off-the-shelf inexpensive computers. Indeed, this view is supported by a statement from the Cox Committee Report:

> According to officials at the Lawrence Livermore National Laboratory, networking represents only a ten percent additional cost over the cost of computing hardware for large systems. Thus, up to approximately 50,000 MTOPS, the computing capability available to any country today is limited only by the amount of money that is available to be spent on commercial-off-the-shelf networking.

(Cox Committee Report, Volume 1, Chapter 3/Technical Afterword, at 158). Furthermore, the Cox Committee Report notes that there are networking technology installations in 17 foreign countries, including India, Israel, and the PRC. (Id.) The DSB Report also considered the impact of clustering:

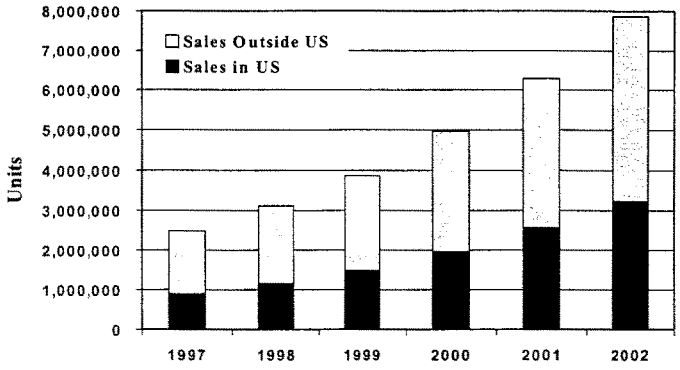
> The technology to "cluster" these computers (i.e. link then together to multiply their computing power) is also available online. Through clustering, it is possible to create computer systems ranging in computing power from 4,000-100,000 MTOPS (millions of theoretical operations per second)-equivalent to the supercomputers currently under strict export controls.

DSB Report at 26-27.

(2) Foreign Installed Base

As computer technology advances and is spread around the world, the installed base of computers that can perform above current export control thresholds will continue to grow. In addition to providing data on technology advances, the Gartner Group Report also provided data on international market trends. The Report shows that there is presently a large overseas installed base of servers and workstations, many of which perform in the range covered by the proposal. The following chart shows the increasing foreign installed base.

Worldwide Unit Sales of Multiprocessor Systems (2x-8x)



Source: GartnerGroup

Figures for 1998 - 2002 are projected

The Gartner Group Report forecasts that by the end of this year, over eight million multiprocessor servers and workstations will have been sold overseas by U.S. and foreign computer manufacturers. The Report also forecasts that by the end of this year over one million computers that can be configured with up to four microprocessors will have been sold overseas.

Accordingly, the large installed base of computers outside the United States cannot be ignored when considering changes to the computer export controls. The larger the installed base -- the more difficult it is to implement an effective export control system.

V. Conclusion

The discussion above concerning the changing performance levels of business computers and the intense global competition confronting the U.S. computer industry clearly shows that there is a present and clear need for long-term changes as well as immediate updates in the export control regime for computers. CCRE is committed to working with the Congress and the Executive Branch in determining the adjustment that will be necessary in light of the technological and market realities.

STATEMENT OF DAN HOYDYSH

CO-CHAIR OF THE COMPUTER COALITION FOR RESPONSIBLE EXPORTS

BEFORE THE HOUSE INTERNATIONAL RELATIONS SUBCOMMITTEE ON
INTERNATIONAL ECONOMIC POLICY AND TRADE SUBCOMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 22, 1999

Attachment 1

FOREIGN COMPETITION

There is substantial foreign commercial availability of multiprocessor systems comparable to U.S. multiprocessor systems. For example, the following systems are on the market this year:

Acer (Taiwan) Altos 21000 with up to four Intel Pentium III Xeon processors at 550 MHz. Forthcoming Altos servers will run at over 600 MHz.

AST (Taiwan) Premium 2000H with up to two Pentium III processors at up to 700 MHz.

ATEC (Thailand) NexusTM 700 with dual Pentium III 450 MHz processors.

Comparex (Germany) S1000-890 with up to 8 Pentium III Xeon processors.

Fujitsu (Japan) Teamserver T890ie with up to 8 Pentium III Xeon 550 MHz processors.

Fujitsu Siemens (Germany) GP7000f Model 2000 with up to 64 SPARC64 processors. Primergy N800 & K800 with up to 8 Pentium III Xeon 550 MHz processors. Celsius 630 workstation with up to 2 Pentium III Xeon 550 MHz processors.

Groupe Bull (France) EPC2400 with up to 32 nodes and 24 Power PC RS64 III processors per node. HV8600 with up to 8 Pentium III Xeon processors.

Hitachi (Japan) MP6000 with up to 8 ACE2 processors.

Legend (China) WanQuan 4000 server with 4 processors.

NEC (Japan) Supercomputer SX4 with up to 512 processors.

Tatung (Taiwan) TNS-3000PS & 3000 PW with up to 2 Pentium III 800 MHz processors. TNS 3000XW & XS workstations with up to 2 Pentium III Xeon 800 MHz processors.

STATEMENT OF DAN HOYDYSH

CO-CHAIR OF THE COMPUTER COALITION FOR RESPONSIBLE EXPORTS

BEFORE THE HOUSE INTERNATIONAL RELATIONS SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE SUBCOMMITTEE UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 22, 1999

Attachment 2

House Rule XI, Clause 2(g)(4) Curriculum Vitae and Disclosures

1. Disclosure

The Computer Coalition for Responsible Exports has never received any federal grants or subgrants or federal contracts or subcontracts.

2. Curriculum Vitae of Dan Hoydysh

Dan Hoydysh is Director of Trade Policy and Government Affairs for the Unisys Corporation. He is responsible for maintaining liaison with the Congress and the Executive Branch on trade issues that affect Unisys business objectives.

Dan also serves as Co-Chair of the Computer Coalition for Responsible Exports - an alliance of American computer companies and high tech trade associations established to inform policy makers and the public about the nature of the global computer industry - its products, market trends, and technology advances.

Before coming to Unisys, Dan worked for the Bureau of Export Administration (U.S. Department of Commerce), where he was responsible for developing export control policy for computers and negotiating multilateral export control agreements.

Dan has a Master Degree of Science in Atmospheric Physics from New York University and a J.D. degree from the Columbus School of Law (The Catholic University of America).

Summarized Testimony of David Rose, Intel Corporation
before the House International Relations
Subcommittee on International Economic Policy and Trade

The Export Administration Act
March 22, 2000

My testimony will focus on three main areas:

- The tension between global information technology trends and export controls
- The need for fundamental export control reform
- An assessment of the Export Administration Act of 1999 (S. 1712)

Today's information technology industry presents new and fundamentally distinct challenges for the U.S. export control system. The overwhelming penetration of computers, microprocessors, networking equipment and other information technology products into what has become a global information infrastructure makes these products both uncontrollable and unworthy of control. The conflict between the pervasiveness of information technology and export controls has occurred for several reasons:

- Mass production and distribution has resulted in the wide availability of information technology products throughout the world.
- Open architecture and worldwide standardization have created a horizontal manufacturing model that enables cost-effective mass production of information technology products on a global basis.
- Global production and technology licensing have resulted in exceptionally wide diffusion of information technology manufacturing capability and resultant foreign availability of products.
- Global networks have made information-based activities and raw computing power ubiquitous.

The decentralization and global nature of information technology stands in stark contrast to the centralized nature of the export control system. This conflict is especially relevant in the area of performance-based export controls technology (e.g., MTOPS limits for high-performance computers and microprocessors). These controls are perpetually on a collision course with the pace of commodity-level products.

Major export control reforms should therefore address the following principles:

- Many information technology products are not susceptible to performance-based controls. There is a growing risk that deployment of information technology will be significantly retarded by export controls.
- The export licensing system is not able to contend with information technology products when they trigger export-related requirements on a large scale.
- The ubiquity and ease of access to information technology on a global scale undercuts the purpose and effectiveness of trying to control products at national borders.

A reformulated export control system should seek to control only those items that present a clear and distinct national security risk. With few exceptions, information technology does not fit this category and should no longer be controlled. The United States should instead adopt a policy of staying ahead technologically. This policy should embrace the positive correlation between technological leadership and the broad dissemination and absorption of information technology around the world. Indeed, the United States stands to benefit politically, economically and security-wise from the global spread of information technology.

New enabling legislation for export controls should reflect changing U.S. security interests and the dynamic growth of technology. It should provide a variety of ways to adjust controls; operate with the speed of modern information technology; balance national security and foreign policy interests against economic and technological realities; be clear and understandable to businesses large and small; and avoid unilateral controls.

The current Senate bill to reauthorize the EAA generally stands up well when measured against these essential features of effective enabling legislation. AEA believes S. 1712 would represent a good starting point for the House International Relations Committee to begin consideration of new enabling legislation.

Important points regarding S. 1712 include:

- Mass market determinations: a centerpiece of the bill and necessary for an effective and sustainable export control system. Should not be subject to front-end carve-outs; should be applied on a prospective basis; and should apply to items built into mass market end-items.

- Foreign availability determinations: more important than ever before given today's wide dissemination of technological know-how, open architectures and global standardization. Explicit time limits for final determinations should be included.

- Incorporated Parts and Components: U.S.-origin parts and components that are incorporated abroad into foreign-made end items should not be subject to U.S. export controls if their value is less than a certain de minimis percentage of the overall value of the end item.

- Deemed Exports: EAA should continue to exclude a statutory basis for the deemed export rule.

- Penalties: Should account for inadvertent or "innocent" violations as well as self-disclosures and full cooperation.

- Interagency reviews: Current process for licensing and classifications should be retained; there is no need for expanded roles for outside agencies.

- NDAA: Congressional review should be no longer than 30 days.

Electronic Industries Alliance

2500 Wilson Boulevard, Arlington, Virginia 22201-3834
703-907-7500 fax 703-907-7501 www.eia.org

Testimony of
Dave McCurdy
President
Electronic Industries Alliance

before the
House International Relations Committee
Subcommittee on International Economic Policy
U.S. House of Representatives

regarding
the Export Administration Act

March 22, 2000

Thank you for the opportunity to testify today on the Export Administration Act (EAA). I represent the Electronic Industries Alliance (EIA), a partnership of electronic and high-tech associations and companies committed to shared knowledge and shared influence. EIA includes the Consumer Electronics Association (CEA); Electronic Components, Assemblies, and Materials Association (ECA); Electronic Industries Foundation (EIF); Government Information Technology Association (GEIA); JEDEC -- Solid State Technology Association; and Telecommunications Industry Association (TIA). Simply put, we connect the industries that define the Digital Age.

I am also a former member of Congress from Oklahoma. During my 14 year tenure in this body, I served as Chairman of the House Intelligence Committee, as well as subcommittee chairman on the Armed Services Committee and the Science Committee. In addition, I have served as a member of the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction (WMD Commission). So I am well aware of how dual-use civilian technologies can be used for military purposes, and the important role of export controls to our national security. But I also recognize the limited effectiveness of export controls, as well as the vital importance of a strong and innovative high technology sector to keep our armed forces a step ahead of any adversary.

Realities of the High-Tech Industry

With over 2000 member companies, accounting for 80 percent of the $550 billion electronics industry, EIA is proud to represent the most dynamic and competitive industry in the world economy today. The companies we represent operate globally, they think and plan in global terms, and they face intense international competition. The fact is, the days when U.S. companies dominated the global high-technology industry are over. Similarly, the days when the

domestic U.S. market could sustain the industry are also over. It has become almost cliche, but the global economy is a fact of doing business for us, and is a critically important concept to keep in mind as we formulate public policy in this area.

As any successful CEO will tell you, competing -- indeed, surviving -- in the global economy means exporting. The phenomenal success of the U.S. technology industry comes from its entrepreneurialism, its aggressiveness, its willingness to compete -- all those free market forces that drive innovation. In this kind of business environment, tapping new markets before the competition does is the key to success. In 1999, more than one-third of what the U.S. electronics industry produced was exported overseas, over $180 billion in goods. That means more than one third of the 1.8 million employees who work for U.S. electronics companies depend on exports for their jobs, and the percentage goes up every year.

We must also recognize that our high-tech companies are the engine of technological innovation and economic growth in the world today. The U.S. economy is the most competitive in the world due in no small part to the amazing advancements our companies have achieved. Technologies which, not long ago, had only military or limited civilian applications are now pervasive in our society, and the greater economic efficiency stemming from this diffusion of technology has been the driving force for the remarkable prosperity so many Americans are experiencing. Not incidentally, salaries for high-tech jobs average around $58,000 per year, whereas the U.S. average salary is $28,000 per year.

The impact of export controls on how this industry competes in the global economy is substantial. They hold us back from competing. Unilateral export controls essentially force us to cede the playing field to our overseas competitors, or burden us to the point that we cannot compete effectively. When export controls are used properly, they can be a useful tool in combating the development and proliferation of weapons of mass destruction. However, they are a tool to be used carefully and sparingly because of their negative impact on our industry and their limited impact on the target country. Clearly, we should not use Cold War-era solutions to solve Information Age problems. Unilateral export controls are Cold War solutions.

Congress has a critical role to play in overseeing this country's export control regime, and we appreciate efforts to take a fresh look at the system, with an eye towards updating it to reflect the technological and political realities of the post-Cold War world. It is a daunting challenge. This is a subject which has confounded policymakers, as evidenced by the fact that the EAA lapsed nearly six years ago. It is an important issue with high stakes for our national security and economic vitality alike. With that in mind, I would like to lay out a few very broad principles which I urge you to consider in your deliberations.

Thoughts on an Effective Export Controls Regime

Much of the rhetoric over export controls always boils down to national security versus economics and exports. But more than ever before, protecting U.S. national security depends on a dynamic and innovative high-technology sector. Whether we are talking about weapon systems, intelligence gathering capabilities, or command and control networks, our industry is constantly improving the technologies that keep us a step ahead of our adversaries. An effective

export control policy would recognize the reality that our national security is improved by enabling our high-tech industries to thrive. U.S. national security should be based on maintaining our technological edge through innovation, not on a doomed effort to hoard as much technology as possible.

Another key point to keep in mind is that export controls can severely disrupt the business models which sustain our competitive advantage. The U.S. technological advantage is based, to a large extent, on speed-to-market and mass-marketing through electronic commerce and the World Wide Web. But the administrative costs of trying to determine what products may go to what end user for what purpose can easily wreak havoc with these models. Our industry operates in terms of global R&D collaboration, Web-based, instantaneous order processing, and just-in-time manufacturing. In contrast, our export control system operates in terms of General Prohibitions, six-month notification periods, and interagency dispute escalation procedures.

The system in place encourages regulatory complexity. It emphasizes bureaucratic processes and paperwork over coordination with our allies to prevent the bad end-users from acquiring truly sensitive technologies. Effective export control policy would be based on multilateral cooperation and facilitating effective corporate compliance. But the hundreds of pages of regulations we now operate under have the effect of penalizing those U.S. companies that try to obey the law. Our small companies, which are often the most innovative but which also need the most assistance, are the hardest hit by these policies. A small company can be overwhelmed by the costs, delays and confusion which plague our export licensing system. Faced with the prospect of hiring a team of attorneys to ensure compliance, a small company may simply export only to "safe" destinations like Canada, Western Europe, or Japan, thereby excluding the emerging markets we need to develop most. Sometimes, the potential liabilities loom so large that a company may shun the export market altogether as not worth the risk.

WMD Commission Recommendations

Last July, the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction (the Commission) published its findings and recommendations, several of which bear directly on this debate. In addition to calling for reauthorization of the Export Administration Act, the Commission issued several general recommendations regarding the proper role of export controls in combating proliferation.

Our first recommendation in this regard was to target export controls and enforcement efforts on end-users of concern. The final report noted that "unless the control system is sufficiently focused on end-users of real proliferation concern, U.S. controls could needlessly constrain many innocent exports while failing to deny proliferators the capacity to develop or produce weapons of mass destruction."

The second recommendation was to strengthen multilateral coordination and enforcement. Considering that, "our allies have made it abundantly clear that they will not resubmit their exports to a potential U.S. veto," as in the days of CoCom, we must achieve greater international cooperation for our controls to be effective.

Third, the report urged enhanced discipline in the U.S. export controls system. The Commission found that the complexity of the U.S. system has blurred our focus on the principles of good government. Transparency, deadlines, and a default-to-decision process are essential principles to, "provide a useful discipline to a system that too often degenerates into delay and inaction."

And fourth, the Commission recommended rationalizing common export control functions where it advances American interests. There may be room for consolidating enforcement, end-user checks, and other functions, while preserving our ability to apply different standards of approval for dual-use and munitions items.

EIA Comments on S. 1712

EIA appreciates the efforts of the Senate Committee on Banking, Housing and Urban Affairs in undertaking the challenge of reauthorizing the Export Administration Act. In particular, Senators Phil Gramm, Mike Enzi, Paul Sarbanes, and Tim Johnson deserve enormous credit for their dedication and even-handed approach. We have been consistently impressed by their remarkable openness to all interested parties throughout this process.

As you know, the Senate Banking Committee unanimously endorsed S. 1712 last September. EIA has neither endorsed nor opposed the substance of the Committee-approved bill, and I would like to emphasize that we continue to have serious reservations with several aspects of the bill as reported. We are especially concerned by a number of proposals being advanced by other Senators and by some in the national security community, aspects of which would be even more restrictive than we experienced during the height of the Cold War. Nevertheless, there are some beneficial aspects of the bill and we have been supportive of the overall effort in the Senate. This process has served as a valuable educational purpose for everyone involved.

Foremost among the positive aspects of the bill is the recognition that when an item achieves mass market status, or becomes readily available from our overseas competitors, that item will automatically be released from controls. For these types of items, we must resist the inevitable bureaucratic tendency to want to hold on. We must accept that when an item becomes uncontrollable, even when it used to be controllable, it is not just pointless, but harmful to maintain controls. Clearly, computers and encryption fall into this category, but many types of telecommunications equipment, components, and other items do as well.

For all the reasons outlined above, this provision of the bill is absolutely essential. However, we believe that the precise language of this section is drafted too narrowly in that it restricts the Commerce Department to considering only past or present market conditions. EIA has proposed slightly modified language which would allow the Department, when appropriate, to consider future market developments in determining mass market or foreign availability status. This formulation would enable U.S. exporters to maintain their competitive advantage, rather than providing our competitors the opportunity to "catch up" before controls are lifted.

On this point, we are deeply skeptical of any so-called "carve-out," which would allow controls to be perpetuated on items in spite of those items being found to have mass market or foreign availability status. Some proposals we have heard would go so far as to prevent legitimate mass market or foreign availability studies from being conducted in the first place. It is disturbing that some in the national security community continue to try to control the uncontrollable, and are unwilling even to provide justification for the controls.

Another positive aspect of S. 1712 are the disciplines on imposing and maintaining Foreign Policy Controls. The bill correctly recognizes the ineffectiveness of unilateral export controls for foreign policy purposes, since the target countries are able to acquire the items from other sources in the absence of effective multilateral cooperation.

However, we are concerned that the bill leaves a large loophole whereby the Administration may classify most *unilateral* export controls as "National Security Controls," which are subject to much less discipline. We believe that if unilateral controls are to be applied on goods or technology that are available abroad, the appropriate authority should be under Title III. Foreign Policy Controls. Furthermore, if it is decided that Title II is to be used for some products under unilateral control, we believe that the law should impose the disciplines as those enumerated under Title III. For instance, we recommend that any National Security Control which is maintained unilaterally should expire after six months unless it is found that foreign availability and mass market status does not exist.

As I have mentioned, we have a number of serious concerns with other aspects of the bill, which we have raised with the Senate Banking Committee. Along with this testimony, I have attached EIA's official comments on the bill, including specific language we have requested to be added or dropped from the Committee-approved bill. In brief, our other major points include:

- Narrowing the unnecessarily broad definition of "service" so that U.S. persons are not held liable for trivial acts of service.
- Preventing the new "notification in lieu of license" procedure from being used to impose new controls.
- Creating a stricter standard for making items subject to export controls by suggesting that the item make a "material contribution" to military capabilities.
- Establishing a four month deadline for the Commerce Department to conduct mass-market and foreign availability determinations.
- Stating that electronic commerce as a means of export should not be disadvantaged over conventional means of shipment.
- Ensuring that pre-license checks on the trustworthiness of end-users are not used indiscriminately to delay export license applications.
- Lowering penalties for clerical or minor violations.
- Ensuring that penalties are imposed per transaction, rather than per shipment.
- Limiting the Patriot Award to criminal violations.

A more general concern, but one which we did not specifically address in our comments, is that S. 1712 would maintain the overly complicated and burdensome export control regime. The bill places little restraint on the range of items subject to controls, and mandates a licensing

system nearly as obtuse as what is in place today. In this regard, we believe the Commerce Department should have greater discretion in structuring the implementing regulations so that they may be more easily altered, and hopefully simplified. To take one example, we believe it is unnecessary to specify country tiering formulations in statute. We would urge, at a minimum, that the Act be sunsetted after several years so that these issues not become permanent.

Another, more specific comment is that U.S. export controls must reflect the fact that transfers to foreign affiliates from their U.S. parents are fundamentally different from exports to unrelated end-users. The Administration's encryption regulations address this reality by allowing unlimited transfers of cryptographic capabilities to corporate subsidiaries. We believe the same rule should apply to transfers of manufacturing technology.

The Office of Foreign Assets Control (OFAC) also plays an important part in the overall export controls process. This office regulates trade in financial instruments as well as the implementation of U.S. export control sanctions against selected countries. EIA member companies appreciate the importance of this office, but believe that it is necessary for this office to be more responsive to the needs of the industry. As a result, we advocate the creation of an industry advisory committee to provide guidance on issues related to the regulations that they implement. Such an advisory committee would be similar to those currently in place advising the Bureau of Export Administration and the Department of State on critical export control regulatory matters

Finally, I would like to comment on several proposals which have arisen in the Senate, and which could be offered as amendments to this or other legislation. The first is a proposal to require that the Defense Department share responsibility for commodity classification requests. This would almost certainly create extended delays in what should be a very simple process, leading to misclassifications on the part of industry and further burdening what is already an overly-bureaucratic process. Similarly, proposals to create loopholes to the time limits on license referrals are also unacceptable. Agencies are already given more than sufficient time for license reviews. Additional delays of weeks or months, and the uncertainty that goes with it, would seriously handicap our ability to market our products. Another very troublesome proposal is the elimination of the licensing exemption for parts and components. Subjecting minor components to the license reviews would overwhelm the process and lead overseas buyers to phase-out U.S. components. Particularly when those components are embedded in the larger product, it makes little sense to devote resources to such futile export controls.

Conclusion

The Cold War ended over ten years ago, yet many aspects of U.S. export controls policy does not reflect this reality. Many of our exporters continue to be haunted by bureaucratic delays in the licensing process and unnecessary restrictions on legitimate sales of products. As we enter a new age dominated by technology that is produced and used world wide, it is essential that our policy-makers understand that U.S. manufacturers no longer have a monopoly. Unfortunately, our companies face competitors who are free from the types of restrictions that bedevil U.S. firms. While we believe that it is essential to monitor the export of those technologies that are specifically designed for or used in weapons of mass destruction, it is important also to

understand that blanket prohibitions of exports of all high technology will not further the legitimate goals of non-proliferation. Many have termed the 1900's as the American Century, what we call the next century will be in large part due to how we address the challenges of the use and development of technology.

EIA Comments Regarding S. 1712,
The Export Administration Act of 1999

Sec. 2

- We believe the definition of "service" as "any act of assistance, help or aid" is unnecessarily broad and creates liability for even the most trivial acts of service. We believe that the inclusion of "technical assistance" in the definition of "technology" is adequate to address the Committee's concerns and that Sec. 2(13)(B)(iii) should be deleted.

  This definition is an expansion over the 1979 EAA and the current EAR. The EAA did not define an "item," but did define a "good" and "technology." The EAR defines an item to mean commodities, software, and technology; technology includes technical data or "technical assistance," which includes instruction and consulting services. Even where munitions items are concerned, technology is controlled only if it relates to the design, manufacture, production, maintenance, repair, or use of a specific controlled item.

  The new expanded definition can place any U.S. person, not just exporters, at risk for providing service as defined. For example, repair or maintenance of a commodity is often accomplished with a replacement part, where necessary, and technology (the know-how for fixing). Under the current EAR, provision of services is adequately covered by controls on commodities, software, and technology (know-how). As another example, if any U.S. person were to provide medical aid to a proliferator, or assist them (say, crossing the street), even if this were found to be done without knowledge that the person was a proliferator, they would be at risk for costly legal defense and damage to their reputation, at a minimum.

Sec. 101

- We are concerned by the broad language of Sec. 101(a), which may grant the Administration authority to impose controls outside the authority of Titles II and III. Sec. 101(a)(1) establishes, "a Commerce Control List... consisting of items the export of which are subject to licensing or other authorization or requirement." Sec. 202(a)(1) goes on to establish a National Security Control List "as part of the Control List." Since there is not a comparable Foreign Policy List in Title III, this raises the question of what the other part of the Control List is, and whether the Administration could impose controls using this "other part" under Title I, thereby circumventing the disciplines of Titles II and III. We urge that this potential loophole be closed by creating a Sec. 101(f) stating:

  Notwithstanding the preceding paragraphs, no controls may be imposed pursuant to this Title.

- Notification in lieu of license is being introduced as a means of providing the Commerce Department with flexibility to liberalize and streamline controls on items that present limited export control risk. It should alleviate some strain on the Department's licensing resources and reduce licensing burdens on exporters with no appreciable added risk to national security. Thus, the intention is judiciously to replace export license requirements with notification in lieu of license. It is important to prevent misuse of this innovation through

imposition of notification controls on items that are currently free of controls. We propose adding the following language to the end of Section 101(b)(3):

> *Notification in lieu of license shall be used only to replace existing export license requirements and shall be used as export authorization for items that present a relatively low risk for export diversion or misuse.*

The second portion of the text set forth above would implement the purpose of -- and employs the text of -- section 301(c)(2) of the June 17, 1999 draft EAA. That provision of the June 17 EAA draft would have established that the "expedited list" -- a list of items subject to notification-in-lieu-of-license treatment -- is to be comprised of items that present "a relatively low risk of export diversion or misuse." This is the proper standard for notification-in-lieu-of-license eligibility. The more intensive scrutiny entailed by license review should be reserved for items that are amenable to export diversion.

Sec. 202

- We encourage creation of a "material contribution" standard to the Risk Factors to be considered when placing items on the National Security List. We propose that Sec. 101(b)(2)(A) be changed to read:

> *The characteristics of the item, including whether the item makes a material contribution to military capabilities.*

Proposed Sec. 206

- Title II lacks explicit discipline on the imposition and maintenance of unilateral controls. One of our major points has been that most unilateral controls are ineffective as national security controls since the target countries will be able to get the items from other sources in the absence of effective multilateral disciplines. If unilateral controls are to be applied on goods or technology that is available abroad, the appropriate authority should be Title III Foreign Policy Controls, which also imposes disciplines on the maintenance of such controls. The Act should impose similar discipline on unilateral controls imposed for national security reasons under Title II. We recommend the following be added as Section 206:

> *(a) Notwithstanding Section 201, any export control imposed under this Title which is maintained unilaterally by the United States shall expire 6 months after the date of the enactment of this Act or 6 months after the export control is imposed, whichever date is later, except that*
>
> *(1) any such export controls on those goods and technology for which a determination of the Secretary that there is no foreign availability and that mass market status does not exist and such determination has been made before the end of the applicable 6-month period may be renewed for periods of not more than 6 months each, and*
>
> *(2) any such export controls on those goods or technology with respect to which the President, by the end of the applicable 6-month period, is actively pursuing negotiations with other countries to achieve multilateral export controls on those goods or technology may be renewed for 2 periods of not more than 6 months each.*

(b) Export controls on goods and technology described in clause (1) or (2) of subparagraph (a) may be renewed only if, before each renewal, the President submits to the Congress a report setting forth all the controls being renewed and stating the specific reasons for such renewal.

Sec. 211

- We propose establishing a four-month deadline on the Commerce Department's disposition of petitions for determinations of foreign availability and mass-market status. Having a reasonable statutory deadline for foreign availability and mass-market determinations is crucial. Otherwise, the Commerce Department could -- intentionally or through neglect -- neutralize the foreign availability and mass-market policies by delaying determinations. Given short product life cycles in high technology sectors that are subject to controls, extending the deadline beyond four months would sharply curtail the utility of the policies.

  The EAA of 1979 specified a time limit for foreign availability decision-making. It would appear that the current bill's failure to retain that discipline is an oversight. The proposed four-month deadline is generally consistent with that set forth in the EAA of 1979 (section 5(f)(3)(B) -- no need is seen to keep the 1979 EAA's additional one month period between notification to the petitioner and publication in the Federal Register).

  Therefore, we propose adding the following language to the end of Sec. 211(b):

  The Secretary shall make a determination with respect to a petition filed under this section and notify the petitioning party of that determination within four months after submission of the petition. If the determination is affirmative, the Secretary shall also within such four-month period publish the notice of the determination in the Federal Register in accordance with subsection (c).

- In Sec. 211(c)(1), we propose inserting *"not later than"* into line 12 of page 26 so that the Secretary's determination of foreign availability and mass-market status "shall become final not later than 30 days" after notice is published in the Federal Register.

- We remain concerned that the criteria for determining mass-market and foreign availability status precludes the Administration from considering prospective status. We urge that Sec. 211(d)(2) be replaced with:

  (1) Foreign Availability Status -- In determining whether an item has foreign availability status under this subtitle, the Secretary shall consider the following criteria with respect to the item (and any substantially identical or directly competitive items):

  (A) availability to controlled countries from sources outside the United States, including countries that participate with the United States in multilateral export controls;

(B) acquisition at a price that is not excessive when compared to the price at which a controlled country could acquire such item from sources within the United States in the absence of export controls; and

(C) availability in sufficient quantity so that the requirement of a license or other authorization with respect to the export of such item is or would be ineffective.

If the Secretary finds that the item meets these criteria, he shall determine that it has foreign availability status.

(2) Mass-Market Status.-- In determining whether an item has mass-market status under this subtitle, the Secretary shall consider the following criteria with respect to the item (and any substantially identical or directly competitive items):

(A) production and availability for sale in a large volume to multiple potential purchasers;

(B) widespread distribution through normal commercial channels, such as retail stores, direct marketing, electronic commerce, and other channels;

(C) conduciveness to shipment and delivery by generally accepted commercial means of transport; and

(D) use for its normal intended purpose without substantial and specialized service provided by the manufacturer, distributor, or other third party.

If the Secretary finds that the item meets these criteria, he shall determine that it has mass-market status.

Sec. **501**

- As part of the criteria for evaluating the risk of diversion or misuse, the Secretary is authorized to consider the method of export (Sec. 501(a)(4)(C)(ii)). We recommend report language, along the lines of the following, to clarify that:

> *While specifying 'means of export' as a criteria for evaluating license applications Congress intends that electronic commerce as a means of export should not be disadvantaged over conventional means of shipment.*

- We are concerned by the possibility of extended delays in the consideration of license applications stemming from Sec. 501(c)(3), which grants referral agencies unlimited authority to require additional information from applicants. We recommend adding the following sentence to the end of Sec. 501(c)(3):

> *Upon receipt of the information, the license consideration process shall again be subject to the prescribed time periods, resuming at the point where it was suspended.*

- Under Sec. 501(e)(2), it is unclear what happens after an applicant has corrected the reasons for an "intent to deny" notice. We recommend replacing the last sentence of Sec. 501(e)(2) with the following:

> *If the applicant does respond, the Secretary shall have ten days to determine whether the information does address or correct the reasons for denial, after which a determination of approval or denial shall be made.*

- We believe that the 60 days provided for pre-license checks is excessively long and will create unnecessary delays in the license review process. Commerce Department officials have previously stated that one month would be reasonable. If a compromise must be struck, we propose that the 60 days provided in Sec. 501(g)(2) be replaced with *"45 days."*

- We are concerned that the unlimited authority of any agency to mandate pre-license checks may lead to unnecessary, extended delays in the license review process. We recommend that the Commerce Department have ultimate authority to determine when pre-license checks are necessary, and how they are to be conducted. Therefore, Sec. 501(g)(2)(A) should be amended to read as follows:

  if -- the Secretary, considering the recommendation of another department or agency, determines that such a pre-license check is necessary.

- We believe that stopping the clock to conduct pre-license checks should be a rarity. In most cases, these checks can be conducted at the same time, or as part of, the normal license review and referral process. Therefore, we propose inserting a new paragraph (5) into Sec. 501(g) stating the following:

  Whenever possible, the pre-license checks described in paragraph (2) shall be conducted contemporaneously with the procedures, and within the time periods, set forth in subsections (c) and (d).

- Sec. 501(g)(6) provides for stopping the clock for "such time as is required for mandatory congressional notifications under this Act." The only provisions of this Act we have identified relating to congressional notifications involve regulatory changes related to high-performance computers (Sec. 211(c)(2)), sanctions violations in Sections 604 and 605, as well as requirements for various annual reports, none of which are relevant to the license review process set forth in Sec. 501. As we are unable to identify any relevant requirements for congressional notifications, we recommend deleting Sec. 501(g)(6). We are concerned that the Administration could "invent" a notification requirement, thereby buying itself an unlimited reprieve from the time periods.

Sec. 603

- Considering the bill's significantly enhanced penalties, we believe the bill should impose civil penalties only for conduct that is negligent or grossly negligent, and that penalties should be reduced for clerical or minor violations. We recommend that Sec. 603(c)(1) be changed to read:

  The Secretary may impose a civil penalty for each violation of this Act of any regulation, license, or order issued under this Act, of (A) $500,000 if the violation is deliberate or grossly negligent and (B) $50,000 if the violation is negligent.

- We propose that penalties should be levied per the number of shipments, rather than the number of items involved. Particularly when selling items in large volumes, companies face potentially overwhelming liability for a minor violation multiplied many times. As the

regulations have become increasingly convoluted, the danger increases even more. Therefore, we recommend a new subsection (d) be inserted, stating the following:

> *Violations shall be determined, and criminal and civil penalties shall be assessed, pursuant to this Act, per the number of export or reexport transactions.*

Sec. 607

- We are concerned that the Patriot Award (Sec. 607(h)) creates incentives for disgruntled employees to foster corporate violations. Furthermore, by granting employees financial incentives to turn in their employers, the award severely threatens the ability of companies to conduct internal investigations to determine whether a self-disclosure is necessary. We propose that the award be limited to information associated with criminal penalties, thereby maintaining the ability of companies to self-disclose civil violations. Therefore, we recommend deleting *"civil penalty"* from Sec. 607(h)(1)(B).

RETHINKING EXPORT CONTROLS

Testimony by John W. Douglass, President and CEO
Aerospace Industries Association
Before the Subcommittee on International Economic Policy and Trade
Committee on International Relations
House of Representatives
March 23, 2000

Madam Chairman:

I am John Douglass, President and CEO of the Aerospace Industries Association. We are pleased to have this opportunity to explain the impact of export controls on our industry (and our nation), with particular reference to S.1712, the Export Administration Act (EAA) of 1999. AIA is the trade association that represents the major manufacturers of commercial and military aircraft, helicopters, missiles, satellites, engines, and related aerospace subsystems. Our industry produced $155 billion of aerospace products last year, and currently employs over 800,000 Americans (in high-tech, well-paying positions).

We welcome your hearings this afternoon. The laws providing the statutory underpinning for our export control systems were drafted in the mid-seventies, a long time ago relative to today's political, economic, and technological world. This afternoon I would like to briefly comment on how times have changed, address how S.1712 addresses those changes, and reflect on what the next Congress and administration might do regarding the overall export control system.

Background

During the Cold War, the U.S. was willing to sacrifice economic interests for the sake of limiting the ability of the Soviet Union and its allies to improve their military capabilities and to discourage other countries from joining the Soviet Bloc (or punishing those that did). This was also true of other industrial democracies who recognized the Soviet threat and the importance of the U.S. nuclear umbrella. We were able to obtain relative consensus on the importance of keeping a variety of technologies from the Soviet Bloc that would directly help those countries build their weapons systems, or improve their economies to support larger military establishments.

It was also true that new advanced technologies generally originated from government supported military research first applied to military projects. These included such technologies as radar, nuclear energy, computers, lasers, sensors, satellites, and advanced materials. These technologies gradually migrated to the civilian sector. Technology and plans for hardware were generally recorded and transferred on paper.

The Soviet Union has now collapsed. There is greater awareness that both the economic welfare and security of countries in the future will increasingly depend on their ability to compete in the global marketplace. There is far less consensus among our fellow industrial democracies as to how to deal with countries such as Russia and China; those countries themselves have become both purchasers and suppliers of advanced technology. In particular, China has become an important market for many countries, and is regarded as one that will steadily expand. The tradeoff between security and economic benefits has become more complex.

At the same time, the distinction between military and commercial products has become less clear. The military is expanding the share of its budget that goes into such activities as communications, data processing, imaging, and simulation -- all areas of accelerated commercial activity. Furthermore, in order to hold costs down, the military must turn to standard, or near standard commercial products to meet many of these needs. But lower costs and rapid technological innovation in the commercial sector are only possible for companies producing for a global marketplace, with the flexibility to rapidly penetrate new markets and to take on foreign partners.

These changes are reflected in the aerospace industry. Ten years ago, more than 50 percent of our business was with the Department of Defense. The U.S. government, as a whole, accounted for three-fifths of our sales. Today the government accounts for about 35 percent of our sales, and of the remainder, foreign sales account for two thirds. Commercial space activity is our fastest growing sector, with sales having jumped form 1 to 5 percent of sales in the past decade.

Increasingly, the Department of Defense looks to our commercial research, development, and products to meet its needs, and to our foreign sales of military equipment to keep crucial defense lines open and to reduce unit costs to the U.S. military. Ten years ago we exported only 7 percent of our military aerospace output; last year we exported nearly one-third. More importantly, many of the concepts for future warfare, often called the revolution in military affairs, will depend on technologies originating in the commercial sector, and on coalitions with other countries. The recent rather well publicized disputes between the Departments of State and DoD over export controls stem in large part from DoD recognizing that the old paradigm of security and foreign policy interests as having to be weighed against economic interests is increasingly obsolete. Instead security from DoD's perspective relates to the ability of the U.S. and its allies to maintain a lead in advanced technology. That in turn depends on the economic vitality of the industries that produce that technology. The vitality depends on exports.

This view is not only shared within our industry. In December, the Defense Science Board Task Force on Globalization and Security issued its final report. This report, written by an independent, bipartisan panel of national security authorities at the behest of the Department of Defense, makes many of the points I would like to bring to the Committee's attention. While I would like to submit the report in its entirety for the record, I would like to quote two paragraphs:

> The reality is that the United States' capability to effectively deny its competitors access to militarily useful technology will likely decrease substantially over the long term. Export controls on U.S. technologies, products and services with defense/dual-use applications will continue to play a role in the pursuit of U.S. foreign policy objectives. However, the utility of export controls as a tool for maintaining the United States' global military advantage is diminishing as the number of U.S.-controllable militarily useful technologies shrinks. A failure by U.S. leadership to recognize this fundamental shift – particularly if masked by unwarranted confidence in broad or even country-specific export controls – could foster a false sense of security as potential adversaries arm themselves with available technology functionally equivalent to or better than our own.
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> Clinging to a failing policy of export controls has undesirable consequences beyond self-delusion. It can limit the special influence the U.S. might otherwise

accrue as a global provider and supporter of military equipment and services. This obviously includes useful knowledge of, and access to, competitor military systems that only the supplier would have, and the ability to withhold training, spares and support. Equally obvious, shutting U.S. companies out of markets served instead by foreign firms will weaken the U.S. commercial advanced technology and defense sectors upon which U.S. economic security and military-technical advantage depend.

Finally, the pace of high technology business has increased enormously. Designers work on common electronic bases in real time, often in several companies and several countries. Improved production techniques have reduced the time needed from order to delivery -- in the case of commercial aircraft from three years to eighteen months -- with a current target of nine months. Commercial companies, and increasingly the military, expect contractors to hold inventories and deliver parts anywhere in the world within 48 hours. Information is no longer transmitted on paper but through nearly instantaneous electric communications.

The philosophical underpinnings, legal structure, and administrative framework for U.S. export controls, which are intended to deal with such technology, have not changed at a comparable pace. As a result, there are too many export licenses required and too many agencies involved in the review and administration of such licenses, and the process takes far too long.

S.1712

I believe there are short-term and long-term fixes we can make. One short-term fix is to move forward on S.1712, The Export Administration Act of 1999. We believe the Senate bill is helpful in several ways. I should note at the outset that it is bad government to have a law in suspension for half a decade, as is the case with the old EAA. It also makes it difficult to lecture other countries on the need for improved export controls, when one of our own legal frameworks is not in effect and still refers to such Cold War fixtures as the Soviet Bloc and the Coordinating Committee on Multilateral Export Controls, or COCOM.

The new bill provides several features of importance to industry. I will highlight the most significant, and also explain why I would not want to see certain alterations that have been suggested by some in the Senate.

Title II has several provisions of importance to industry. Section 204 assures that controls will not be imposed on an end item because it contains components that are controlled, nor that the U.S. will attempt to impose third country controls on end items produced in other countries just because they contain some U.S. content. That was the case some years ago for civil aircraft, which were controlled if they contained certain avionics. The notion that a country would spend several tens of millions of dollars to obtain a part that cost a few tens of thousands never made much sense, but it certainly didn't help the image of the U:S. as a dependable or rational supplier.

Title II also limits the President's ability to impose national security controls on products that are available from foreign sources or are mass marketed. This makes eminent sense. After all, the idea of national security export controls is to deny a purchaser a capability, not to deny U.S. exporters a market. If the target country is able to obtain a technology from other sources, then it

makes no sense to strengthen U.S. competitors that do not cooperate with the U.S. in imposing export controls, while we weaken U.S. industry.

If anything, this section should be strengthened to allow for some proactive rather than reactive findings of foreign availability. In our industry an opportunity to sell a specific product to a given country may only arise once every decade or two, given our long product cycles. It makes no sense to lose such opportunities in order to establish foreign availability beyond a shadow of a doubt. For most industries, including our own, capabilities that are about to come on stream are well known to anyone who reads the right trade press. The Export Advisory Committees could certainly help the Office of Technology Evaluation with information on what products will be entering the marketplace.

Title III involves foreign policy controls, which most of us in industry believe are almost invariably ineffective at accomplishing their objectives of punishing foreign countries or convincing them to change their behavior. We certainly support the inclusion of a contract sanctity provision, as any time a U.S. company is forced to default on a contract it casts doubt on U.S. companies as reliable suppliers. The provision in section 304(b)(7) that requires the President to estimate the economic impact of a foreign policy export control on the U.S. economy is also important. One of the attractions of foreign policy export controls is they seem to be cost free - unlike the use of inducements such as foreign aid or threats of military action. But export controls are not cost free. The burdens fall on specific American works and companies. A report at least forces the government to recognize and evaluate those costs, to be certain that we are not punishing Americans more than the intended target.

We also support Section 307, which is admittedly a weak sunset provision. It automatically terminates foreign policy controls after a two-year period unless the President can provide a persuasive argument to continue them. Hopefully the report required of the President if he is to renew a control will force a more honest appraisal than the current annual renewal exercise.

Title IV of the bill provides that foreign policy export controls shall not apply to agricultural commodities, medicine, and medical supplies. We would strongly urge that a similar exclusion be included for components and technical data required to maintain the safety of commercial passenger aircraft. Humanitarian, political, and commercial considerations militate against the U.S. putting civilian lives in the air and on the ground at risk as part of a sanctions exercise.

Title V deals with the administration of export controls. We support the notion of providing time deadlines for decisions. In today's fast paced commercial world a delayed decision may well mean denial, as customers simply go elsewhere. It does a company no good to improve its cycle time from order to production to delivery if it cannot predict with source certainty how long a license will take.

The title also provides an appropriate appeals process that allows an agency, if it desires, to force a decision to a higher level. That is appropriate. What is not appropriate is requiring consensus at each level. An agency should have the ability go on record as disagreeing with a decision, without having to force an appeals process unless it feels the issues is important enough to do so.

While on the subject of the administration of export controls, I would urge the committee, whether in this title or elsewhere, to consider language that would require the executive branch to move forward with an electronic data system that would link the Department of Commerce,

State, Defense, Customs and industry. While this lack is a particular problem with the Department of State's management of the export control system as mandated by the Arms Export Controls Act, it is absurd that at the beginning of the twenty-first century the agencies that are responsible for controlling the export of advanced technology have not themselves been able to establish a functioning communications system among themselves.

Finally, Title VI deals with multilateral arrangements. Certainly industry agrees that unilateral export controls rarely do anything other than punish U.S. workers and businesses rather than the intended target country. The emphasis in this title on multilateral agreements is appropriate.

Section 605 (h) of the bill, the so-called Patriot Provision, is intended to give monetary incentives for an employee of a company to report violations of the Export Administration Act as a further enforcement mechanism. Unfortunately, while well intentioned, the provision undercuts the goal of stopping of prohibited transfers of technology. The subsection as written gives employees every incentive to sit on information of potential Export Administration Act violations until after they have occurred, thereby increasing the employee's chance of monetary recovery. This section should be amended to require that an employee report any potential violations immediately through the internal corporate control process before being are eligible for an award of compensation

As I mentioned at the beginning of my statement, AIA strongly supports the approach and recommendations of the recent Defense Science Board Task Force report on Globalization and Security. The report makes several key recommendations that this committee should consider in formulating any future legislation concerning controls. The more pertinent recommendations include:

- DoD needs to change substantially its approach to technology security

DoD should focus attention on those technologies that have availability exclusive to the United States. Security should be enhanced for those items that are not available outside the United States. In other words, there should be higher walls around fewer items.

- DoD must realize fully the potential of commercial sector to meet its needs

DoD cannot just purchase available commercial products and adopt commercial business practices. DoD must pro-actively engage with commercial industry in developing new products and services to better meet its needs.

- DoD should take the lead in establishing and maintaining a real-time, interagency database of globally available, militarily relevant technologies and capabilities

Such a database would prove to be invaluable to export controllers in their decision making process. Furthermore, such a database would provide guidance to both government and industry in identifying potential foreign sources and collaborators.

- DoD should facilitate transnational defense industrial collaboration and integration

While it is agreed that there are many potential benefits to greater transnational (particularly transatlantic) defense industrial integration, there are currently obstacles in place which prevent

this. DoD should clarify its policy on cross- border defense industrial mergers and acquisitions. Additionally, they should also address the overly burdensome regulatory environment affecting both foreign direct investment in the U.S. defense sector and the transfer of U.S. defense technology, products and services.

On balance, the Aerospace Industries Association believes that S. 1712 is a step forward in bringing the EAA up to date, and we would support it as voted out of the Senate Banking Committee.

However, this support does not mean AIA would be content with the passage of EAA if this would undermine the fundamental examination and reform of our current export control process. We feel that it is imperative that the next President and the next Congress conduct a thorough review of the entire legislative and administrative approach to export controls as a prelude to a total overhaul. As a representative of industry, I would like to emphasize my desire to work with both Congress and the Administration to help do just that.

Testimony of Dr. Paul Freedenberg
Before the
Subcommittee on International Economic Policy and Trade
House Committee on International Relations
March 22, 2000

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to testify before you today on the reauthorization of the Export Administration Act ("EAA"). As a former Assistant Secretary for Trade Administration and Under Secretary for Export Administration in the Administration of President Ronald Reagan, and as a former Staff Director of the Senate subcommittee with export control oversight responsibility, I believe that I can offer some perspective and some background on this issue. In fact, 12 years ago, I testified in front of this Subcommittee on behalf of the Reagan Administration, during the hearings that led up to passage of the Omnibus Trade Act of 1988, the last time that the Congress passed legislation to re-authorize the Export Administration Act. From the time that I left office in 1989 until fall of 1998, I was an international trade consultant, specializing in technology transfer issues; so in addition to my administrative experience, I believe that I can also bring the perspective of someone whose clients have been regulated by export control policy to my discussion of the issue.

Today, I will be speaking on behalf of AMT – The Association For Manufacturing Technology, where I am the Director of Government Relations. AMT represents 370 member companies, with sales ranging from $10 million to more than $1 billion, who make machine tools, manufacturing software, and measurement devices. Industry sales total nearly $7 billion and exports account for more than one-third of those sales.

In your letter of invitation you asked that I address S. 1712, Senators Phil Gramm and Mike Enzi's Export Administration Act reauthorization bill that is currently pending before the Senate. I will focus my testimony on that bill and how I believe that it will affect the United States business community, in general, and the U.S. machine tool industry, in particular. By way of introduction, however, and to put my comments into perspective, I would also like to address the multilateral export control regime and how that regime has affected U.S. policy, particularly in China.

The most important point to be understood with regard to United States export control policy is that while it is ostensibly aimed at keeping dangerous technology out of the hands of the so-called pariahs, or rogue states, the really important issues revolve around the question of what to do about China. Unfortunately, the China issue is being addressed unilaterally by our Government, because there is absolutely no consensus within the Western alliance about how to treat technology transfer to China.

The end of the Cold War led to the end of CoCom -- the international coordinating committee that regulated technology transfer since 1949. When CoCom officially went out of business on March 31, 1994, our leverage for limiting technology transfer to China on a multilateral basis disappeared as well. CoCom was created in the same year as NATO, and it stood with NATO as one of the pre-eminent tools of the containment strategy that guided our policy for more than forty years. The guiding premise was that the West could not match the East man for man, tank for tank, or even missile for missile. But if the West maintained tight multilateral controls over the transfer of technology to the East, we could use our superior technology as a force multiplier that would tip the scales to our benefit. The Soviets and their allies could produce great numbers of weapons and keep large numbers of men under arms, but our technological superiority would more than compensate for that numbers deficiency. One example of the validity of this assumption was demonstrated in the 83 to 1 victory of U.S.-built F-15s and F-16s over Soviet-built MIG 21s and MIG 23s over Lebanon's Bekkha Valley in 1982. While pilot skill played an important role in that victory, technology was the critical factor.

The successor regime to CoCom, which is named the Wassenaar Arrangement, after the city in which it was formed, came into existence in 1996. Unfortunately, Wassenaar has none of the elaborate rules or discipline that characterized CoCom. Most importantly, the United States Government no longer has a veto over the goods and technologies exported to the target countries of Wassenaar. The current multilateral export control regime is based on what is known as "national discretion." Each Wassenaar member makes its own judgments about what it will and will not license for export and, as a matter of fact, whether to require an individual validated license ("IVL") at all. Other multilateral export control regimes, whose focus is non-proliferation (such as the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Group), do obligate

signatories to require an IVL for the export of proscribed items to non-members, but Wassenaar does not.

Moreover, as I have pointed out in earlier testimony, China is not identified as a target of Wassenaar. In fact, during the negotiations which led up to the formation of Wassenaar, the U.S. representatives explicitly assured other potential members that Wassenaar was created to keep dangerous weapons and technologies out of the hands of the so-called rogue and pariah states: Iran, Iraq, Libya, and North Korea. But China was explicitly excluded from this group.

This brings me to an important point about the lack of both national and international consensus regarding China. Judging from official statements over the past decade, it is unclear what U.S. technology transfer policy toward China is. China is obviously seen as a major trading partner, and great effort is put forth to ensure that U.S. companies obtain a major share of the China market, which is predicted to be the largest in the world in most capital goods categories over the next decade. Clearly, however, China is also viewed by U.S. licensing authorities as a potential technology transfer risk. This is reflected in the fact that the U.S. Government is far more rigorous (and more time-consuming) than any other industrialized state in reviewing and disapproving licenses for exports to China.

There is a myth that has grown in the popular media that U.S. technology transfer policy toward China is lax. This myth is fed by disgruntled Defense Department employees who are against any trade sort of trade in manufactured goods whatsoever. The facts, particularly with regard to machine tools, indicate quite the opposite. Nothing could be further from the truth. The U.S. Government has consistently been the most rigorous with regard to reviewing license applications for exports to China. Other countries within the Wassenaar Arrangement simply do **not** share our assessment of the risk factors involved in technology transfer to China and have generally maintained a far less stringent licensing policy. Indeed, one could say, without any equivocation, that our European allies maintain what could only be described as a favorable export licensing policy toward China. This can be illustrated by the following data.

Based on evidence gathered informally at Wassenaar meetings by the AMT technical advisor to the U.S. delegation, the following machine tool

license processing times could be expected if a license were to be applied for in major industrialized countries:

The United States – Several months – up to a year – is the norm for difficult cases.

Germany – The longest it could possibly take is 30 days, although many take less time for processing. For a while there was a 24-hour turn-around promised by the licensing office, but because the big companies tended to camp out in the office and monopolize this service, the licensing agency has discontinued it. Nonetheless, it is only in cases of pre-license check that it takes as long as 30 days.

Italy – They expected 30-day turn-around, with extraordinary cases involving pre-license checks to take as long as 60 days.

Japan – For their part, the Japanese said that the norm was two to three weeks, with up to a month in the cases where there was some sort of pre-license check.

Switzerland – The Swiss said two days was the norm, with the possibility that a license could take as long as 7 to 10 days to process if it were difficult.

Subsequent reports by commercial and economic officers posted at embassies in those countries have confirmed these informal license processing time estimates. When these comparative timeframes were raised with U.S. Government officials, the response that AMT received from them was that the various agencies involved almost always processed licenses within the 30-day time limit that the statute prescribes. But this time estimate fails to take into account times when the clock is stopped in order to obtain more information from the exporter, which is a quite frequent occurrence. And, even more significantly, the 30 days does not include the time that it takes to complete the Government's end-user check, which is almost always a very time consuming activity. U.S. companies are judged by their customers not merely by the time that any particular agency of the U.S. Government completes its license processing but rather by the <u>total</u> elapsed time that it takes for delivery from the moment that the order is placed. Any legislative provisions aimed at improvements in the licensing

process must include improvements in the total licensing time, not just the time that licensing officials actually have physical possession of the license.

As I have argued, the total elapsed time that it takes to process a license is only part of the problem. Official licensing statistics demonstrate that the United States Government is far more likely to disapprove machine tool licenses for China than any of our European competitors. (This is true in many other sectors such as semiconductor manufacturing equipment as well, but I will concentrate on machine tool exports, where I have the most complete data.) While a mere handful of U.S. machine tool licenses have been approved over the past five years (a total of 25 licenses, or five licenses per year), trade statistics indicate that our European allies have shipped a huge volume of far more sophisticated machine tools to Chinese end-users.

China is the largest overseas market (in dollars) for U.S. machine tools, and it has the potential to grow significantly from its current total of machine tool imports from all sources of $2 billion. However, unlike other East Asian markets where U.S. market share has been substantial, U.S. machine tool sales represent a relatively small percentage of the Chinese market.

For example, South Korea is at a similar point in its economic plan as China. Both South Korea and China are developing their auto industries, high-volume consumer durables, small and medium combustion engines, and second-tier aerospace industries. Both China and South Korea have indigenous machine tool industries, but the development of their respective metalworking industries requires imported machine tools.

There is a major difference, however, in the way U.S. export control policy views the two countries. Korea is an ally of the United States and U.S. export control policy reflects that. By contrast, the U. S. government's implementation of the Wassenaar export control list toward China is highly restrictive. One result is that in 1998, the last year in which we have complete data, China imported only 9.9 percent of its machine tools from the U.S. By contrast, Korea, which is not subject to restrictive U.S. export controls, imported 22.3 percent of its machine tools from U.S. providers. If one attributes the difference in import totals to the difference in U.S. export control policy toward the two countries, it can be argued that the cost to U.S. machine tool builders of the restrictive export control policy is

approximately a quarter of a billion dollars per year in lost export sales to China.

A major reason for this differential is that Western European countries are exporting to China modern machine tools that would be unlikely to be licensed by the U.S. government. As evidence of this, the average unit prices of European machine tools in categories likely to be subject to controls are up to 250% higher than the average unit prices for machine tools in the same categories exported from the U.S. to China. In 1996, while the average unit price of machine tools sold to China by U.S. manufacturers was $155,000. The average unit price of those sold by Italy was $208,000, by Switzerland $348,000, and by Germany $407,000. Average unit prices are a key indicator of the sophistication, accuracy, and productivity enhancement of machine tools. Those factors are accounted for by higher precision, five-axis (and above) machine tools that perform more productively and thereby command a higher price. But it is precisely those characteristics that cause a machine tool to be listed on the Wassenaar list of restricted technologies. If this is true, the statistics indicate that Europeans are shipping to China machines that, had they been produced in the United States, would be very rigorously reviewed by the U.S. Government, with a low probability of their being granted an export license.

The U.S. Government's rigorously enforced limits on machine tools significantly disadvantage U.S. machine tool builders in the global marketplace, since China has proved able to buy from a variety of foreign makers. The most rigorously controlled machine tools are those that possess five axes. A recent survey by AMT indicated that there are 718 different models of five-axis machine tools manufactured around the world, with 584 different models made outside the United States in countries such as Japan, Germany, France, Italy, Sweden, Spain, and Taiwan. There are even six models manufactured in China (as the Chinese themselves displayed at the Beijing Machine Tool Show last year).

One U.S. company reported, based on its agents' personal observations, that between 1993 and 1996, fifteen large, five-axis machines tools were purchased by Chinese aerospace end users. All fifteen were made by Western European manufacturers. In addition, Shenyang Aircraft purchased twelve five-axis machine tools **in one year alone.** These machine tools came from Italian, German, and French factories and not a single one from American machine tool producers.

Chinese importers often wish to buy several machines at one time to upgrade a factory or to complete or augment a production line. The inability of U.S. manufacturers to guarantee delivery of a particular machine tool requiring a license has an amplified effect on sales of machines that do not require a license. For example, Germany's market share of machine tools imported by China is more than double the U.S. market share. The trade figures indicate that by freely selling the same sophisticated machine tools to the Chinese which would be most likely unavailable from United States manufacturers, German and other European providers are also garnering sales in the non-controlled machine tool categories as well, further disadvantaging U.S. manufacturers.

This is made even more frustrating to U.S. machine tool builders and their workers by the fact that many of the commercial aircraft factories in China contain joint ventures and co-production arrangements with American airframe and aircraft engine companies. In other words, despite the fact that these Chinese factories are supervised, or monitored, by American executives (or at least have a strong American presence to assure the production of quality components), U.S. Government export control policy creates a situation in which machine tools in those factories are almost certain to be supplied by **European** machine tool builders. How does that assure our national security?

As I have noted, while machine tool license applications to China are likely to be approved in a matter of days, or weeks, by our European allies, U.S. applications languish for months, or longer. Executives of U.S. machine tool companies have told me that they have decided to forego business in China if it involves an export license application. That is how discouraged they have become by the current licensing process. For their part, the Chinese have written to U.S. companies telling them that they will not even ask them to bid for business, since the Chinese experience with the U.S. licensing process has been so negative and so time-consuming. For those U.S. companies who are still asked to bid, the Chinese have begun to demand a guarantee from those manufacturers that they will be able to obtain an export license from the U.S. Government for the product in question, with a penalty built into the contract if that guarantee is not met. Obviously, this is a further deterrent to doing business in China. It is expensive enough to bid on business in China, without having to undertake

the added risk of a monetary penalty for failure to obtain an export license on a timely basis.

A very recent example will illustrate many of the problems inherent in attempts by U.S. companies to obtain an export license for machine tool sales to China. Three months ago, an AMT member asked for my assistance in obtaining final approval for an export license that had been already been pending for many months. The Chinese, who were making purchases for an aircraft engine plant, informed the AMT member company that they were at the end of their patience in waiting for U.S. export license approval. This particular company had been delaying the Chinese buyer repeatedly, while it attempted to obtain an individual validated license for two five-axis machine tools. After waiting many months the Chinese cancelled one of the two machines on order, but gave the company one last chance to obtain the export license from U.S. authorities for the remaining machine. The company was particularly eager to gain approval for this license, because its owners believed that there would be follow-up orders for as many as a dozen additional machines is they could prove that they could obtain a license for this one. The U.S. Government was aware that a Swiss company had offered to fill the order for these machine tools, and, in contrast to the American company, the Swiss made it clear to the Chinese that there would be no security conditions, or compulsory visitations by the Swiss company if they were given the business by the Chinese.

In order to create an incentive to approve the license, the AMT member company offered to provide special software that would limit the use of the machine tool to only a small group of activities approved by the U.S. Government and to provide regular visitations to ensure that the machine tool was only be used for the jobs described in the license. While all this was being negotiated, the State Department refused to demarche the Swiss Government to warn them of the U.S. Government's concerns with the sales of machine tools to the Chinese plant. Negotiations between the AMT member and the Defense Department dragged for another two and one-half months, with none of the AMT member's security or post-shipment visitation proposals deemed adequate by DoD. Finally, just as the license, which had by then been pending for six months, was about to be escalated to the Cabinet level for resolution, the Chinese buyer informed the AMT member company that they had lost patience with U.S. licensing process and cancelled the order. As it turned out, the Chinese plant manager had decided instead to go with either the Swiss or the French machine tool alternatives,

neither of which required any post-shipment conditions and both of which had already obtained licenses from their governments months earlier.

Reportedly, when informed of the Chinese cancellation and the need to return the license without action, the comment of the Defense representative inter-agency review panel (known as the Operating Committee) was that he was happy because DoD had achieved its objective, since no U.S. machine tool would be going to that Chinese factory.

Of course, the U.S. machine tool would have gone to that factory under strict conditions with numerous follow-up visits to ensure that it was being used for the purposes stated in the license, while there will be no guarantee that Western authorities will be able to check on the projects on which the Swiss or the French machine tools will be used. Nonetheless, DoD is apparently happy, having accomplished its objective of blocking the U.S. sale, and, I presume that the State Department is happy as well, since it does not have to offend any of our friends or allies by taking a strong position or asking uncomfortable questions of them. The only ones who are unhappy are the owners of the U.S.-based machine tool company, who may very well move production offshore to avoid a repeat of this ridiculous process, and, of course, the employees who may lose their jobs are not very happy either.

I would ask the Subcommittee to consider what this case illustrates about the national security benefits of our current export control policy, other than the fact that such a policy is likely to maintain machine tool employment in Switzerland and France. It certainly did not have any appreciable effect on Chinese ability to obtain machine tools for whatever aerospace projects they deem appropriate.

This inability to sell into the market while foreign machine tools are freely exported to China is particularly burdensome for the U.S. machine tool industry, because recent market projections have indicated that China will represent the largest and fastest growing market for commercial jet aircraft in the first two decades of the 21st Century. As recently as 1995 China represented less than two percent of Boeing sales, today China represents more than nine percent, and Boeing estimates that China will be the largest market outside the U.S. over the next 20 years. Within the next seven years, China could account for nearly 25 percent of Boeing's total business.

In 1992, ninety percent of Boeing's aircraft components were built in the United States. Today, more than half the components are imported. China's exports to the U.S. of civilian aerospace components have grown 63 percent in the past five years. Moreover, Boeing's acquisition of McDonnell Douglas has given them an operation in which half of the MD-90 (and its successor, the 717) built each year are wholly constructed in China. Given the tremendous market power that China will possess, it is certain that the Chinese Government will demand and receive what are known as "offset" contracts to build ever greater shares of Boeing's aircraft in their own aircraft factories on their own machine tools. If the trend I have described continues, and licensing policy does not change, U.S. machine tool builders are highly likely to be displaced and replaced by their foreign competitors who will be able to take advantage of a far more lenient export licensing policy to make the sales to stock the new productions lines that the Chinese will demand.

Machine tool licenses to China are but one example of a larger problem -- the lack of international consensus about how to regulate technology transfer to China. Whatever technology transfer concerns the U.S. Government may have about China are not reflected in the largest and most active multilateral export control regimes to which we belong. The absence of a China reference in Wassenaar means that there are no internationally agreed upon rules or standards that the U.S. Government can cite to induce our allies to follow our lead with regard to China technology transfer policy

Indeed, our former adversary Russia is a charter member of the Wasssenaar Arrangement, and China would see any attempt to make them a target of this export control regime as a hostile act. In fact, discussions have been held recently with the goal of making China a Wassenaar member. I note all of this in order to provide some perspective regarding the degree to which the United States Government lacks leverage in denying any sort of technology to China. The United States may decide not to sell machine tools, or satellites, or semiconductor manufacturing equipment to China, but that does not obligate the Japanese, the Germans, or the French to follow our lead.

That is a fundamental problem with the current export regime. Not only does it indicate a lack of discipline regarding a country with which the

United States Government has indicated technology transfer concerns; it also puts U.S. companies on an uneven playing field with regard to sales to what is likely to be the fastest growing and largest market for capital goods over the coming decade. Repeatedly over the past few years, whether it is in the category of machine tools or semiconductor production equipment, the United States Government has taken a negative approach to technology transfer to China while our allies have not. The result has been that the Chinese are denied nothing in terms of high technology, but U.S. firms have lost out in a crucial market. This serves neither our commercial nor our strategic interests.

RECOMMENDATIONS

The Subcommittee is well aware of the fact that the authority of the Export Administration Act lapsed almost six years ago and that the Clinton Administration has been extending that authority under the pretense of an emergency that does not exist by virtue of invoking the International Emergency Economic Powers Act ("IEEPA"). You also may be aware of the fact that the EAA, which has been extended repeatedly under the authority of IEEPA, was last amended while I was serving the Reagan Administration as Under Secretary for Export Administration, in 1988, a year before the fall of the Berlin Wall and the collapse of the Soviet Union. These facts would seem to be reason enough to justify the passage of a new, revised EAA to guide export controls in the 21st Century

The Senate Banking Committee has completed its work on this project, and I will now comment on what I see to be the key elements of S. 1712, the Gramm-Enzi EAA, which is pending in the Senate.

The most beneficial provision of that bill is that it has a very strong provision defining "foreign availability" in terms of the reality in which U.S. companies compete today. Current law defines "foreign availability" as any item that can be supplied from *outside* the multilateral export control system in sufficient quantity and comparable quality so as to make the existing export controls on any particular item ineffective in achieving the objective of the controls. S. 1712 seeks to adapt that element of current law to the era in which we live today, which is an age of weak to non-existent multilateral controls and a multilateral system with rules of the game that allow any member country to decide whether to license a product on the basis of "national discretion." The Gramm-Enzi bill acknowledges that "foreign

availability" can exist *within* a multilateral control system, not just outside that system.

The key provision in S. 1712 is found in Section 211(d)(1), which states: "The Secretary shall determine that an item has foreign availability status under this subtitle, if the item (or a substantially identical or directly competitive item) (A) is available to controlled countries from sources outside the United States, *including countries that participate with the United States in multilateral export controls* [emphasis added]; . . ."

I would consider the inclusion of such language in any EAA reauthorization reported by this Committee to be of critical importance to the creation of a fair and equitable "foreign availability" definition, one that reflects the new reality in which U.S. companies find themselves. Any new EAA should not be allowed to perpetuate the fiction that the current multilateral export control system functions effectively to deny technology to targets of that regime, particularly China, which I have argued has, at best, an ambiguous status in relation to the Wassenaar Arrangement's list of restricted technologies. Not to give U.S. companies the right to petition for relief from a system which allows trade competitors to use the multilateral system to garner new business by taking advantage of lax, or non-existent, national export control systems, would be to perpetuate an anachronism in the law, one which would be grounded in an era that no longer exists.

Any legislation that your Committee reports also ought to also include a very clear mandate to the Administration to go back to the negotiating table and make a serious effort to strengthen the Wassenaar Arrangement. As I have noted, Wassenaar provides weak guidance and almost no discipline upon its members. It is almost worse than having no multilateral regime at all, because it gives the appearance of restricting technology transfer, while leaving all the key judgments up to its constituent members. To get an idea of how weak an export control regime it really is, one only has to ask what useful information the United States Government can obtain about the technology transfer decisions of other regime members. Under the rules of the Wassenaar Arrangement, the United States Government is not entitled to information about the licensing decisions of any other regime member unless that member is licensing an export to an end-user to which the U.S. Government has previously denied a license. And then, the Government in question is only obligated to inform the U.S. Government within sixty days of the decision to license, most likely after the technology

or product in question has already been shipped. Such an obligation on Wassenaar members can hardly be called discipline.

Revisions of the Wassenaar charter ought to include far better regime member discipline, including improved rules for information exchange. One idea would be to institute the "no undercut" rule within Wassenaar. The "no undercut" rule obligates all members of the regime to deny a license to any end-user who has been denied a license by any other member of the regime. That rule alone would ensure that U.S. companies, such as those I have described in the machine tool industry, are not alone in denying their products to end-users in China when their licenses are denied by the U.S. Government. This particularly frustrating, because the current Wassenaar Arrangement export control regime allows the Chinese to simply turn to another Wassenaar member and obtain the very same product with no delay or conditions. In the process, the Chinese are denied nothing, while the U.S. companies develop a reputation as unreliable suppliers.

It is imperative as well that the status of China be clarified for regime members. If it is not a target of Wassenaar, what is it? Are there any limits on what technology Wassenaar members can export to China? These are the sorts of questions that ought to be addressed.

With regard to other provisions that I would like to see included in any new legislation, I would rather frame my advice in terms of an item that **ought not** to be included in any legislation: It is imperative **not** to significantly alter the current inter-agency license decision-making structure, which allows a dissenting licensing official to escalate his or her concerns up to the next highest level of decision-making, all the way up to the President if the political level of the dissenting agency concerned is dissatisfied with the results of its appeal. This process was created by the Executive Order of 1995. To change this system into one which requires consensus at all licensing levels would be to re-introduce a veto system back into license processing. Any one individual licensing official at any level in any agency could then deny a license with little or no justification. This, almost certainly, would lead to vastly greater numbers of license denials and certainly much greater delays in the cases of those licenses that do ultimately receive approval. It would reverse what little progress there is in a system that is already too complex and too slow to allow, as I have demonstrated, the machine tool industry, among others, to compete effectively in China with our foreign counterparts.

We need more than just a "feel good" China policy, or a "feel good" renewal of the EAA. We need to ask if it is possible to convince our allies to share our strategic vision of China (assuming that we ourselves have concluded what that vision is). At the current time, as I have pointed out, we do not have a multilateral technology transfer organizational structure that is conducive to entering into a debate about China -- let alone one that would be able to enforce standards and rules about technology transfer if such a consensus were to be reached. Without such a multilateral technology transfer structure and without a clearer idea of what U.S. technology transfer policy toward China ought to be it will be difficult to draft an EAA that is an effective guide to policy.

I hope that these comments will be helpful to your consideration of any new export control legislation, and I would be happy to answer any questions that the Subcommittee might have

INTERNATIONAL RELATIONS
GOVERNMENT REFORM

CHAIR:
SUBCOMMITTEE ON
INTERNATIONAL ECONOMIC
POLICY AND TRADE

VICE CHAIR:
SUBCOMMITTEE ON
WESTERN HEMISPHERE

APRIL 4, 2000

Congress of the United States
House of Representatives
ILEANA ROS-LEHTINEN
18TH DISTRICT, FLORIDA

2160 RAYBURN BUILDING
WASHINGTON, DC 20515-0918
(202) 225-3931
FAX (202) 225-5620

DISTRICT OFFICE:
9210 SUNSET DRIVE
SUITE 100
MIAMI, FL 33173
(305) 275-1800
FAX (305) 275-1801

Statement by Hon. Ileana Ros-Lehtinen, Chair
Subcommittee on International Economic Policy and Trade
EAA Hearing- Part 2
Tuesday, April 4, 2000

American industry continues to create and realize an astonishing array of new and improved technologies. With these wonderful improvements come both opportunities as well as responsibilities given that these advancements may pose new and, yet unknown, threats to U.S. national security.

In an effort to address the needs of American companies and to capitalize on the advantages new technologies offer, this Subcommittee has been holding a series of hearings to discuss ways in which a new Export Administration Act may best manage export controls.

Based on the Cold War need to restrict access to sensitive technologies and the ability to control its proliferation due to U.S. predominance, the original Export Administration Act was drafted.
That legislation lapsed in 1990, leaving the U.S. to operate export control regulations through a series of executive orders issued under the International Emergency Economic Powers Act.
This was never intended to replace an EAA. However, attempts to reauthorize the bill have not been able to achieve the necessary consensus for passage.

The advent of the 21st century underscores the inadequacy of an export control system devised for a rigidly structured bipolar world prefacing the onset of the technological revolution. The world of the 21st century is one marked by a borderless fast-paced marketplace which requires a system to avoid the pitfalls of gridlock and regulatory bureaucracy.

By the same token, however, some experts contend that the new millennium is a much more dangerous world, devoid of clearly defined security parameters and riddled with new weapons, methods, and rogue states.

Some suggest that these competing needs can be reconciled and the answer to effective regulation lies in concentrating regulatory authority in fewer agencies.

Other approaches include giving preferential export control treatment to NATO members and such non-NATO allies as Australia, New Zealand, and Japan. Some see unilateral export controls as self injurious and instead would look to multilateral agreements as the only effective tools for non-proliferation.

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Still others refer to criteria which takes into account mass-market and foreign availability, as well as risk factors, end-use, diversion, and recipient countries.

We must avoid vast generalizations in formulating a new approach and refrain from removing restrictions and licensing requirements on controls or controls which threaten and seek to undermine U.S. national security.

There are differences of opinion on the specifics of the approach to be undertaken. However, all agree on the urgent need to develop a judicious, explicit and understandable policy which will govern the licencing, oversight, and review of dual-use technologies to be exported to foreign markets.

We look forward to the testimony from our witnesses in this the second in a series of hearings on the issue.

The Honorable Robert Menendez
Subcommittee on International Economic Policy and Trade
April 4, 2000

The Future of the Export Administration Act, Part II

I want to thank the Chairlady for hosting a second EAA hearing. The future of our export control laws is an important commercial and national security issue. I believe we need to hear from the broad range of public and private sector entities that are impacted by the EAA. For that reason, I'm sorry that this subcommittee's work has been stymied by our inability to hear from witnesses from the Department of Defense and from the sponsors of the Senate's EAA bill. I know that the Chairlady has been working with the full committee to bring these witnesses before the subcommittee. I appreciate her efforts to address this issue, but I am disappointed that we – the subcommittee of jurisdiction – have been censured by the full committee.

As I said at our previous hearing, the challenge of the EAA is to strike a balance between our national security interests and our

commercial interests. I do believe that this precarious balance is achievable, not to mention necessary. For far too long, we have been operating under a system developed for the Cold War Era. Today's Technology Era demands a system that is responsive to change, that acknowledges America's world leadership in the technology industry, and that recognizes the importance of exports to the American economy.

Senate Bill 1712, is a step toward achieving that balance. The bill developed by Senators Gramm and Enzi begins to address our national security concerns and our commercial concerns. The bill creates a National Security Control List, developed in conjunction with the Secretary of Defense that will streamline the licensing process to focus on exports to countries of concern and on exports of items that pose a national security concern.

The bill also addresses the issues of mass-market items and foreign availability to ensure that items, which are not

exclusively available from American companies, are not controlled by our export control system when they are available elsewhere. In today's global economy, if the U.S. prohibits the sale of a certain encryption technology, for example, an Israeli, Japanese or Chinese firm will most certainly make the sale, if we do not.

Lastly, the bill makes important improvements in the area of penalties and enforcement.

The U.S. is a member of the global economy and many businesses rely on exports for a large portion of their business. At our last hearing, we heard from a representative from the Aerospace Industries Association who noted the shift in the make-up of their sales. In 1989, 58% of aerospace company sales were to the Department of Defense and the U.S. Government and only 32% of their sales were exports. One decade later, in 1999, 42% of aerospace company sales were exports and only 35% were to the Department of Defense and

the U.S. Government.

American businesses are rightly concerned about losing business to less scrupulous nations or being seen as unreliable suppliers. Already, the American computer industry has been stymied in sales of basic desktop computers due to inflexible export controls. If the U.S. wants to continue to be a world leader in the field of technology, our export control system must be able to differentiate between exports of sophisticated satellite systems and the export of a desktop computer.

The reauthorization of the EAA is a serious matter that demands our attention. American industry deserves laws that our responsive to today's global economy, not laws that were created over two decades ago to respond to Cold War era threats. I look forward to working with the Chairlady on this challenge and to renewing Congress' voice on this important topic.

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