EXPORT CONTROLS, ARMS SALES, AND REFORM: BALANCING U.S. INTERESTS, PART 1

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EXPORT CONTROLS, ARMS SALES, AND REFORM: BALANCING U.S. INTERESTS, PART 1

THURSDAY, MAY 12, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 o'clock a.m., in room 2172 Rayburn House Office Building, Hon. Ileana Ros-Lehtinen (chairman of the committee) presiding.

Chairman ROS-LEHTINEN. The committee will come to order.

After recognizing myself and the ranking member, my good friend Mr. Berman of California after 7 minutes each for our opening statements, I recognize the chairman and the ranking member of our Terrorism, Nonproliferation, and Trade Subcommittee for 3 minutes each for their statements. We will then hear from our witnesses. I would ask that you summarize your prepared statements in 5 minutes each before we move to the question and answer period with members under the 5 minutes rule as well.

Without objection, the witnesses' prepared statements will be made a part of the record. Members may have 5 legislative days to insert statements and questions for the record subject to the length limitations in the rules.

The chair now recognizes herself for 7 minutes.

This morning the committee is holding the first in a series of hearings examining United States strategic export controls, what I would prefer to call trade security, and sweeping changes proposed by the Executive Branch.

As members are aware, the main goal of export controls is to keep certain states or non-state actors from developing or acquiring military capabilities that could threaten important U.S. security interests. United States policy, with respect to the export of sensitive technology, has long been to seek a balance between the U.S. economic interest in promoting exports, and our national security interest in maintaining a military advantage over potential adversaries, and denying the spread of technologies that could be used in developing weapons of mass destruction.

Clearly, the U.S. has a compelling interest in protecting its critical technologies from theft, espionage, reverse engineering, illegal export, and diversion to unintended recipients.

In this regard, we understand from press reports that a U.S. helicopter with certain advanced radar-evading designs crashed during the otherwise flawless raid to capture or kill Osama bin Laden in Pakistan. While the U.S. team took steps to destroy the helicopter to protect the know-how relating to the design, engineering,

and manufacture of this sensitive defense item, there are reports that sufficient parts of the helicopter remained intact to afford foreign entities significant insight into our technology. Pakistani officials must offer full cooperation to the U.S. to safeguard and ensure the immediate return of any parts, and prevent the sharing of any information about them with third parties.

This example clearly illustrates the need and value of strategic export controls. Over the years, numerous Congressional hearings and GAO reports have called attention to the need to reexamine our export control system. Responding to these concerns, the President announced in August 2009 that he had directed the National Security Council to carry out such a study. Last year the administration proposed a complete reorganization of the current system, proposing a single export control list, a single licensing agency, a single primary enforcement coordination agency, and a single information technology system.

Ultimately, the new legislative authorities would be required to implement the administration's plan, a plan substantially at variance with the current statutory scheme for controlling defense articles under the Arms Export Control Act and dual-use items under the Export Administration Act, and requiring committee review. To date, a compelling case has not been made for the wholesale restructuring of our current system, especially one that would include the creation of a costly and perhaps unaccountable new Federal bureaucracy.

Although there are several aspects of the ongoing reforms that many of us do support, I want to focus on challenging issues associated with proposed reforms of the current munitions and dual-use control lists. We are particularly concerned that the pace and scope of the ongoing "list review," which simultaneously includes: Establishing a new "tiering" structure for controlled exports; a comprehensive review of the Munitions List; and a complete re-write of that list's 21 categories of defense items, is straining the system and its personnel to its breaking point.

The Executive Branch interagency review is only one part of the process. As required by section 38(f) of the Arms Export Control Act, any item which the Executive Branch proposes to remove from the Munitions List must first be reviewed by the Committees on Foreign Affairs and Foreign Relations of the House and Senate, respectively.

Although the committee intends to work with the administration to expeditiously review hundreds or thousands of 38(f) cases in the months ahead, we will and must vigorously perform our due diligence on these important security matters in accordance with existing protocols. The committee cannot fulfill its oversight responsibilities in this regard, however, until it understands fully how such articles would be regulated under Commerce jurisdiction, as well as assess enforceability of the new controls.

However, largely due to the complexity of the ongoing reforms, clarity with respect to future licensing policy has not been forthcoming. The administration should reconsider this time-consuming exercise and focus on common sense reforms upon which we can all agree.

One example may be the treatment of generic parts and components treatment; rivets, wire, bolts and the like currently controlled on the Munitions List because they were designed for military use but which have little in the way of inherent military utility. Toward this end, I intend to introduce legislation to clarify that generic parts and components need not be regulated in the same manner as the more sensitive defense articles. This modest, but important, step would address a key concern of small- and medium-sized enterprises, larger defense firms, and our allies.

Unlike the breathtaking scope of the proposed administration reforms, this initiative can be implemented in a timely manner without precipitating institutional gridlock or sparking significant friction within the Legislative Branch. In so doing, the committee will seek to ensure that this effort is fully consistent with our broader national security interests, including by: Preventing transfers or retransfers of such articles to Iran; ensuring consistency with current prohibitions on the transfer of defense and dual-use items to China, for example; and requiring that any subsequent lessening of controls for these items meet with the concurrence of the Department of State and the Department of Defense, as well as can be reviewed by Congress.

These, and other legislative changes, together with our intent to authorize a short-term extension of the lapsed Export Administration Act, will help enable Congress and the administration to tackle together the critical changes necessary to strengthen our national security, while advancing commercial interests.

I now recognize Mr. Berman, the ranking member, for his opening remarks.

[The prepared statement of Chairman Ros-Lehtinen follows:]

Remarks of the Honorable Ileana Ros-Lehtinen
Chairman, Committee on Foreign Affairs
Hearing on: "Export Controls, Arms Sales, and Reform: Balancing U.S. Interests (Part 1)"
May 12, 2011

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I now recognize Mr. Berman, the Ranking Member, for his opening remarks.

Mr. BERMAN. Thank you, Madam Chairman. And thank you, witnesses. And Ellen, particularly good to see you again.

In July 2009 Defense Secretary Gates and National Security Advisor Jones urged President Obama to launch the Export Control Reform Initiative that we are reviewing today. Their concern, which I share, is that our export controls are out of date, more unilateral and therefore less effective than they were in the past and are fast becoming a burden on our defense industrial base, our scientific leadership and our national security.

My concern is widely shared among our national security and scientific leaders. Two years ago the National Research Council published a report which concluded that America's national security is highly dependent on maintaining our scientific and technological leadership. The committee was co-chaired by former National Security Advisor Brent Scowcroft and Stanford University President John Hennessy. They were joined by former four star generals, admirals and senior intelligence officers, university presidents and Nobel Laureates.

In stark terms these leaders reported that our outmoded export controls were designed for the Cold War when the United States had a global dominance in most areas of science and technology. The current system of export controls now harms our national and homeland security as well as our ability to compete economically. It goes on to state that,

> "In the name of maintaining superiority, the United States now runs the risk of becoming less competitive and less prosperous. We run of the risk of actually weakening our national security. The Cold War mentality of Fortress America cripples our ability to confront the very real dangers of altered world conditions."

The Obama administration's Export Control Reform Initiative has taken on the mammoth task of reforming our export control system, and I commend them for doing so.

The administration formed an interagency task form of all agencies responsible for administering export controls, and there are a lot, to assess what needed to be done and how to implement changes. This task force has accomplished an astonishing amount of work in the last 18 months, proving that if focused, an efficient interagency review and planning is indeed possible under the right leadership.

Last week, the NSC-led interagency team doing the work on this project was selected as a finalist for one of the most prestigious awards for public service, the Samuel Heyman Service to America award. They deserve our congratulations and thanks.

I welcome and generally support the administration's Export Control Reform Initiative, although I have some questions about some aspects, especially the idea of a single-licensing agency. There are also measures that the Congress should take, such as giving the President the flexibility to determine how controls should be applied to exports of commercial satellites and related components. The House passed my provision to accomplish this in the last Congress with bipartisan support. I hope the House will approve again in this Congress.

But more broadly, we need to update and revise the Export Administration Act which lapsed from 1994 to 2000 and again in 2001. Shortly I will introduce legislation to accomplish that objective.

Reform has generally been interpreted in terms of making the military export control system more responsive to exporters, more efficient and more predictable. But reform is also a call for reassessment for questioning old assumptions and patterns of thinking.

For example, the Arab Spring has shattered old assumptions about the Middle East. It is a time of hope, but it is also fraught with peril. The region is in turmoil. We all hope that governments throughout the region will become more democratic and stable, but it is a real possibility that we will see new governments that are less sympathetic to our concerns; more hostile to Israel then the current regimes. It is time for a new level of caution on what we sell to the Middle East and Persian Gulf. Arms will not produce more democratic regimes.

I would be interested in hearing from the witnesses about the additional levels of review that arms sales to this region are now undergoing to lower the risk to the security of the United States and our friends and allies, especially Israel.

A second area of caution is that our controls on munitions largely ignore the domestic environment. Persons and companies in the United States are able to purchase military items that are controlled for export without a license and without so much as a background check so long as the item is not to be exported. This is a God-send to smugglers for Iran and other countries of concern, and a nightmare for Customs agents. Our export control system is literally fighting with one arm tied behind its back if we continue to ignore this loophole.

Investigators from the GAO using fake identities and front companies were able to purchase several defense items, including a flight computer for an F–16 aircraft and ship them out of the United States with no difficulty as commercial mail. I would be interested in the witnesses' thoughts about whether it makes sense to set up a system whereby all domestic purchasers of components for significant military equipment, excluding the firearms, should be licensed and vetted by the U.S. Government in order to purchase those components with an easily accessible database that defense manufacturers and distributors should check before selling to them.

In sum, our national security requires a wholesale revision of export control policy, a re-evaluation of our arms transfer policy in the Middle East and a critical review of domestic access to military technology.

Thank you very much, Madam Chairman. And I yield back my time.

Chairman ROS-LEHTINEN. Thank you very much, Mr. Berman.

We will hear now from Mr. Royce, the chairman of the Subcommittee on Terrorism, Nonproliferation, and Trade from 3 minutes, and then Mr. Sherman the ranking member.

Mr. ROYCE. Madam Chairman, thank you very much for holding this hearing and for recognizing me here.

And let me just make one overarching point that I have to keep our eye on, and that is that a country of particular concern as we engage in this whole effort has got to be China. As a matter of fact, that is where our focus needs to be. And the reason for it is because Beijing is targeting our technology by hook or by crook, and the Commerce Department and State Department have been naive regarding China. I would argue all of us in the United States have been woefully naive.

And I think that at the end of the day export control reform must be very clear-eyed about Chinese intentions. We should not kid ourselves anymore about what is going on.

So, as you know, Mr. Sherman and I have had several hearings in the TNT Subcommittee on export control reform. We heard about the broken U.S. export system, which is a relic of the Cold War that is poorly suited for today's global economy; we know that. The GAO has said export controls needs substantial reform and we do know bureaucracies fall behind the times. Conflicts between agencies further burden the system.

As one witness testifies: "Interagency commodity jurisdictions over the years have bordered on epic."

The losers here are America's national security and economic competitiveness. So this has to be fixed.

And in moving forward we must realize that it takes only one key piece of cutting edge technology slipping through the cracks to seriously compromise our security. Our technological capabilities will only become more important, too, as the costs of maintaining armed forces hits fiscal reality. So national security here is paramount.

So is our economic competitiveness, which is a core component of national security. And simply put: We will not remain a military super power without a world class technological base. Exports are essential to that base. So to balance these issues, the administration is proposing a single=licensing agency and putting fewer items behind higher walls. Higher walls should be a greater scrutiny and a law enforcement focus on key technologies.

So, we await the details.

Thank you again, Madam Chairman.

Chairman ROS-LEHTINEN. Mr. Sherman?

Mr. SHERMAN. Thank you, Madam Chairman, for holding these hearings. They would be justified even if it was just a chance to see our old friend Ellen Tauscher. But they are also justified by the substance that we are dealing with today. This is an issue critical not only to our national security but also our economy.

Before addressing the administration's export control efforts, I want to mention one little noticed State Department decision that is, I believe, still in process. And that is granting a waiver allowing for the inspection and repair of jet engines on the airplanes owned by Air Iran and the Iranian Mahan Air. Under Secretary Tauscher and I have discussed this. I have not been sufficiently persuasive up until now, but now I have another chance.

These are so-called civilian aircraft, but they have been used to ship weapons to Hezbollah, Hamas and other terrorist organizations. They have been used for terrorist/intelligent operations in

Europe. And Mahan Air, in particular, is known as a Revolutionary Guard affiliate.

It is natural for us to want all planes to be safe, but we do not have to fix these planes. We can tell the world loudly that they are unsafe and that no one should fly them, and that Iranians wishing to fly should fly anyone of the many dozens of Asian and European airlines that fly into and around Iran.

If instead, we fix the planes that are the very implements of Iranian terrorism, then we demonstrate that our sanctions against Iran go right up until the point where we might inconvenience any Iranian citizen or any American corporation which makes a mockery of those sanctions.

In early 2007, our Subcommittee on Terrorism, Nonproliferation, and Trade held hearings that highlighted the inefficiencies in the licensing process at the State Department's Directorate of Defense Trade Controls. I joined with Mr. Manzullo in introducing the Defense Trade Controls Improvement Act of 2007. I should point out our subcommittee has also had, as I think Ed Royce points out, over half a dozen hearings on this issue. The bill was substantively folded in the State Department Authorization Bill authored by Howard Berman. That bill did not become law because the Senate lacked adequate wisdom, but many of the provisions were acted upon and implemented by the State Department, showing considerable wisdom in that body.

Subsequently, the Obama administration has focused on export controls. It even garnered a couple of sentences in the State of the Union Address. This is in importance, though often thankless task.

The main focus of the effort seems to be the category-by-category review of the U.S. ML and Commerce list to loosen unnecessary controls and eventually produce a single unified list with different tiers.

I agree that we ought to have a higher fence around a smaller yard. And I agree with Mr. Berman that that higher fence has got to include licenses sometimes for domestic purchasers who otherwise could easily be front companies.

I see that my time has expired, and I look forward to questioning the witnesses.

Chairman ROS-LEHTINEN. Thank you so much.

Our first witness will be the always lovely, ever engaging and talented and smart and witty Ellen Tauscher, Under Secretary of State for Arms Controls and International Security.

Under Secretary Tauscher is well known to members of this committee, having previously served with distinction for 13 years in this body representing California's 10th Congressional District and a founding member of the Fun Gals' Caucus. We will not talk about that.

And Eric Hirschhorn serves as the Under Secretary of the U.S. Commerce Department's Bureau of Industry and Security. I am sure that he is a fun guy in his own right.

Prior to serving in this capacity, Mr. Hirschhorn worked as a partner in the Washington, DC, office of Winston and Straun. Thank you.

And then we will finish with Dr. James Miller, the principal Deputy Under Secretary of Defense for Policy. Prior to his confirmation

Dr. Miller served as Senior Vice President for Director Studies at the Center for a New American Security.

We welcome all of you. All of your statements will be made a part of the record. Please feel free to summarize it within the 5 minutes.

Honorable Tauscher is recognized.

STATEMENT OF THE HONORABLE ELLEN TAUSCHER, UNDER SECRETARY, ARMS CONTROL AND INTERNATIONAL SECURITY, U.S. DEPARTMENT OF STATE

Ms. TAUSCHER. Thank you, Madam Chairwoman and Ranking Member Berman, and members of the committee.

It is an honor to be here today. I have submitted my full statement for the record, and I will give an abbreviated statement because I appreciate the opportunity to be here today with you to speak on the Obama administration's effort to reform the United States export control system.

The Obama administration has two priorities in our efforts to reform the export control system. We want to improve the current system that it enhances United States national security and we want an efficient system to help American companies compete in the global marketplace.

I want to use my time to outline the administration's reform strategy and the actions that the State Department is taking to support that strategy.

For decades the United States export control system worked adequately to keep sophisticated United States technologies out of the hands of our Cold War adversaries. But today we face a different challenge. We no longer face a monolithic adversary like the Soviet Union. Instead, we face terrorists seeking to build a weapon of mass destruction, states striving to improve their missile capabilities with back door acquisitions of technology and elicit front companies seeking items to support such activities.

We also face far more rapid developments in technology beyond our borders. The United States is no longer the sole source of key items in technologies. In many cases, United States companies must collaborate with companies in allied countries to develop, product and sustain leading edge military hardware and technology.

In November 2009, the White House stood up a task force to create a new approach to export controls that would address today's threats and the changing technological and economic landscape. The task force included the Departments of State, Defense, Commerce, Energy, Treasury, Justice, Homeland Security and the Office of the Director of National Intelligence. The sheer number agencies involved in export controls alone is a key indicator for the need of reform.

The review found numerous deficiencies in our current systems. Agencies have no unified computer system that will permit them to communicate with each other, let alone with U.S. exporters. Exporters must deal with numerous paperwork requirements which in the case of my Department alone can be 13 different forms. And licensing requirements are confusing which causes delays for U.S. exporters and helps those who would evade our controls.

There is no regular process to review all of what we control, and so controls lists have not been comprehensibly updated since the early 1990s.

Our enforcement agencies do not always communicate well, so we have seen instances of enforcement actions that are ineffective and waste resources.

The task force recommended steps to address these problems by creating standardized policies and processes, and consolidating resources in four key areas which we refer to, and Madam Chairman talked about, we call them the four singularities. These include drafting a single control list, designing a single information technology system, implementing a single enforcement coordination capability and creating a single licensing agency.

We are implementing these recommendations in three phases.

In phase 1, we made core decisions on how to rebuilt our lists, recalibrate and harmonize our definitions, regulations and licensing policies and create an export enforcement coordination center, and to build a consolidated licensing database.

We have started to implement phase 2 by revising the U.S. Munitions List and a Commerce Control List. Dr. Miller will discuss this topic in more detail

The Departments of State, Commerce and Treasury are adopting the Department of Defense's export licensing computer system as an initial step to creating a government-wide computer system dedicated to supporting the export control process.

We will create a single form for applications to State, Commerce and Treasury, and exporters will submit these applications through a single electronic portal.

And we hope to work with Congress to pass legislation to create a primary U.S. export enforcement agency.

American businesses have complained for decades about the lack of clarity and predictability as to just what a munition is or what a dual-use item is. So we are creating a bright line between munitions and dual-use items to provide clear guidance on commodity jurisdiction issues.

The administration also wants to improve how Congress is notified about arms sales and a transfer of items from the United States Munitions List because the current process is lengthy and unpredictable. This reform is of special interest to me as a former Member of Congress. I know that by working together we can better.

In phase 3 we plan to create the four singularities that I mentioned, which will bring the initiative to its logical conclusion.

Unless we complete this agenda and create a single list and single licensing agency, we will miss the opportunity to better focus our export control efforts and face higher national security risks as a result. We have more to do to refocus our export control system, but we are committed to this initiative because it will enhance our national security and the competitiveness of American companies.

I am happy to answer any questions, Madam Chairman. But first, I would like to turn to my colleagues from the Commerce Department and the Defense Department to give their Department's perspectives on the reform effort.

[The prepared statement of Under Secretary Tauscher follows:]

Under Secretary Tauscher Statement at the House Committee on Foreign Affairs
Hearing on Export Control Reform
Rayburn House Office Building, Washington, D.C.
Thursday, May 12, 2011, 10:00 a.m.

Good morning Madam Chairwoman, Ranking Member Berman, and Members of the Committee. I appreciate the opportunity to be here with you today to speak on the Administration's efforts to reform the U.S. export control system.

These efforts flow from two priorities. Our first priority is to improve the current system so that it enhances U.S. national security and advances our foreign policy interests around the world. Our second priority is to create an efficient system by using modern management, analytical and information-sharing best practices. A timely and predictable system will benefit American companies by making them more competitive in the global marketplace while we solidify our economic recovery.

I will not review in detail what President Obama and Secretary Gates have said so eloquently about the need for reform, but I would like to reiterate Secretary's Gates' succinct statement of the problem from his speech to the Business Executives for National Security last year:

> "[It is] critically important …to have a vigorous, comprehensive export-control system that prevents adversaries from getting access to technology or equipment that could be used against us. The problem we face is that the current system, which has not been significantly altered since the end of the Cold War, originated and evolved in a very different era, with a very different array of concerns in mind. As a result, its rules, organizations, and processes are not set up to deal effectively with those situations that could do us the most harm in the 21st Century."

I would like to briefly note how the Obama Administration devised this new strategy and then provide a brief overview of some of the licensing actions that State is taking as part of the Administration's initiative. Licensing is one of the four pillars of our new system, together with enforcement, our control lists, and our information technology infrastructure.

My colleague Eric Hirschhorn will provide a summary of the Commerce-related licensing actions, as well as the Administration's plans for export enforcement, and my colleague Dr. Jim Miller will then provide the Defense perspective, including a summary of the key technical work he is leading in our list work, and the Administration's IT plans, and will conclude our testimony with our vision for the ultimate end-state of our new export control system.

As President Obama said last August:

> "We need fundamental reform in all four areas of our current control system – in what we control, how we control it, how we enforce those controls, and how we manage our controls."

For decades, the U.S. export control system worked adequately to keep sophisticated U.S. technologies out of the hands of our Cold War adversaries. But the 21st century presents us with a new set of challenges, and we need more than incremental change to meet those challenges.

In today's world, as you know, we no longer face a monolithic adversary like the Soviet Union. Terrorist groups seeking a critical component for a weapon of mass destruction, individual states striving to improve their WMD and missile capabilities, destabilizing accumulations of conventional arms in regions of tension, and illicit front companies seeking items to support such activities pose new dangers.

We also must recognize that the power of globalization, including the rapid pace of advances in technology and the technological capability that exists beyond our borders. It is no longer 1960, when the U.S. was largely self-sufficient and almost the sole source of key items and technologies. U.S. companies no longer can "go it alone" in the marketplace. In many cases, they need to collaborate with companies in allied countries to develop, produce and sustain leading edge military hardware and technology for U.S. and allied forces.

In November 2009, the President and his entire national security team agreed that we needed to devise a new approach to export controls that would address today's threats as well as the changing technological and economic landscape.

President Obama also directed that we maintain our multilateral commitments. The best controls are those that are multilateral. We remain firmly committed to our partners in the Missile Technology Control Regime, the Nuclear Suppliers Group, the Australia Group, and the Wassenaar Arrangement.

Finally, he instructed us to maintain appropriate controls on exports to terrorist supporting states, and to states of human rights concern.

To develop the new approach, the White House created a task force that included the primary departments involved in the licensing and enforcement of our strategic trade controls – the Departments of State, Defense, Commerce, Treasury, Justice, Energy, Homeland Security, and the Office of the Director of National Intelligence. I think you will agree that the sheer number of agencies involved in export controls alone is a key indicator of the need for reform.

The task force reviewed numerous studies, including GAO reports that have analyzed the strengths and weaknesses of our export control system during the past 20 years. Task force members consulted policy and technical experts within the government, reached out to our allies, and sought input from the business community to learn what works and what doesn't.

The review found numerous deficiencies in our current system. For example, agencies have no unified computer system that will permit them to communicate with each other, let alone with U.S. exporters, or easily leverage the information available across the government to help make informed decisions.

The current system presents exporters with a myriad of paperwork requirements, which in the case of the State Department alone, could be any one of 13 different forms. Licensing requirements in the current system are confusing and duplicative, which causes delays for U.S. exporters, and helps those who would evade our controls. The current system has no regular and timely process to review all of what we control, and as a result, we have lists that have not been comprehensively updated since the early 1990s.

The current system also has no standard set of data, including intelligence reporting, available to all agencies to use in evaluating proposed exports. Our enforcement agencies with jurisdiction over export control violations do not always communicate well or de-conflict investigations. As a result, we've seen

instances of competing enforcement actions that are ineffective and waste resources.

The task force recommended steps to address these problems by creating standardized policies and processes and consolidating resources in four key areas. This is what we refer to as the "Four singularities," which include a single control list, a single information technology system, a single enforcement coordination capability, and a single licensing agency.

The Administration is approaching implementation of these recommendations in a common sense, three-phase plan. All concerned agencies are working well together, which is a significant departure from previous reform efforts, and is a tribute to the strong leadership provided by the President and the relevant Cabinet Members.

Phase I involved making core decisions on how to rebuild our lists, recalibrate and harmonize our definitions, regulations, and licensing policies to start to create the Export Enforcement Coordination Center, and decide on a consolidated licensing database. We have done that.

At this time, we are implementing Phase II.

This includes working to revise the U.S. Munitions List and the Commerce Control List so that they use common terminologies and structures. Dr. Miller will discuss this topic in more detail.

State, Commerce, and Treasury are also in the process of adopting the Department of Defense's export licensing computer system, which will be part of a unified, cross-government computer system for export control purposes. As part of this effort, exporters eventually will use a single form for applications to State, Commerce and Treasury. Exporters also will be able to submit those applications through a single electronic portal. This isn't rocket science; we are simply adopting modern business practices.

In addition, the President announced the creation of an Export Enforcement Coordination Center, which is the first step toward a partially consolidated and fully coordinated enforcement capability. And the Administration hopes to work with Congress to pass legislation to create a single primary U.S. export

enforcement agency, which we view as the logical final step in our phased implementation plan.

We have heard numerous complaints from U.S. businesses about the lack of clarity and predictability as to just what a munitions or dual-use item is.

Let me just say that interagency "commodity jurisdiction" discussions over the years have bordered on epic.

To address this problem, the State Department is working with the Departments of Defense and Commerce to create a "bright line" between munitions and dual-use items, which will finally provide clear guidance to exporters on commodity jurisdiction issues. This is necessary to update our system that is still designed with the assumption that technologies are developed for the military and only later find their way into the commercial sector, whereas, today, that is often the exception rather than the rule.

As I noted, the Department of Defense is leading a comprehensive review of the U.S. Munitions List. We have briefed the committee's staff on the initial proposal to revise the category that controls military vehicles.

As part of the list review, agencies are developing a process for transferring items from the U.S. Munitions List to the Commerce Control List which includes deciding on the appropriate licensing requirements on items that are moved to the Commerce Controlled List. We will continue to consult our oversight Committees as we move forward on these new processes.

I want to be clear. Our goal with the list review exercise is not to permit the free export of munitions items or sensitive dual-use technologies to any country in the world. First, we have multilateral control obligations to abide by. Second, we control sensitive technologies, many of which have lethal applications. This is why the experts in the Department of Defense are leading the list review exercise. Our goal is to focus controls on sensitive goods and technologies.

At the same time, we want to apply a consistent and realistic licensing policy to other controlled items that balances risk and legitimate secure trade. Not only will this ensure that we are fully interoperable with our Allies alongside us in the field, but it will provide a more predictable and level playing field for American companies.

The Administration also wants to improve the process for notifying Congress about arms sales and the transfer of items from the United States Munitions List. This reform is of special interest to me as a former Member of Congress. I understand that Congressional prerogatives must be respected, but over the years this process has become lengthy and unpredictable. I know that by working with you, we can do better. Secretary Clinton looks forward to talking with you and other Members on this issue, and I hope to be part of that discussion.

We realize that we have more work to do to refocus our export control system, but we are committed to this initiative because the American people will benefit. As President Obama noted last August:

> "…these reforms will focus our resources on the threats that matter most, and help us work more effectively with our allies in the field. They'll bring transparency and coherence to a field of regulation which has long been lacking both. And by enhancing the competitiveness of our manufacturing and technology sectors, they'll help us not just increase exports and create jobs, but strengthen our national security as well."

And that brings me to Phase III, which will complete the reform process by creating the "four singularities" – a single control list, a single information technology system, a single enforcement coordination agency, and a single licensing agency. This will bring the initiative to its logical conclusion.

Without completing this entire agenda and creating the single list and single licensing agency, we would miss the opportunity to better focus our export control efforts, and face higher national security risks as a result.

And, of course, we want to continue to work collaboratively with this Committee. I am happy to answer questions, but first I would like to turn to my colleagues from the Departments of Commerce and Defense, Under Secretary Eric Hirschhorn and Principal Deputy Under Secretary Jim Miller, so that they may give you their Departments' perspectives on the reform effort.

Chairman ROS-LEHTINEN. Thank you very much.

Mr. Hirschhorn?

STATEMENT OF THE HONORABLE ERIC L. HIRSCHHORN, UNDER SECRETARY, BUREAU OF INDUSTRY AND SECURITY, U.S. DEPARTMENT OF COMMERCE

Mr. HIRSCHHORN. Thank you very much, Madam Chairman, and Ranking Member Berman, members of the committee.

Chairman ROS-LEHTINEN. If you could turn on your microphone.

Mr. HIRSCHHORN. It is a pleasure to be here this morning. I appreciate the chance to discuss with you export control reform and the effort to bring that about.

The Export Control Reform Initiative recognizes that first and foremost, our export control policy must keep sensitive items out of the hands of end users who would harm our national security. It also must facilitate interoperability with our allies and, at the same time, should not undermine our defense industrial base.

As you know, BIS, the Bureau of Industry and Security controls exports and reexports of dual-use items. Working with our colleagues at the Departments of State, Defense and Energy, our policy and technical personnel evaluate more than 20,000 license applications a year to ensure that items sold abroad are destined for appropriate end-users and appropriate end uses.

In addition, we work on educating the regulated community about our regulations and enforcing those regulations, including a dedicated corps of special agents located here and aboard.

Under Secretary Tauscher has noted the four ultimate goals of export control reform. An interim but essential step is to harmonize the U.S. Munitions List and the Commerce Control List because the items we control and the means by which we control them are the cornerstone of an effective export control system. As part of this process, less critical items can be moved to the more flexible licensing system under the Export Administration Regulations. These items are primarily parts and components for military end items.

Many of the items to be moved are inherently similar and functionally identical to comparable items that are subject to the EAR. All items especially designed for military application will remain subject to control even after transfer unless there is a contrary consensus among the agencies, including the Departments of State and Defense.

We are also recrafting the Commerce Control List into a three tiered structure that allows controls on items to cascade over their life cycles based on their sensitivity and foreign availability. This will facilitate more quickly adding controls on new items and technologies while enabling the transition off the list of items that no longer warrant control.

We anticipate that items in the highest tier, for example, will require licenses worldwide.

For the second tier, a new license exception STA—for strategic trade authorization—would permit exports of certain dual-use items to our most trusted allies and friends, subject to certain safeguards and requiring consignees within that group of countries to

obtain authorization from the United States to re-export such items to any country not in the group.

Consignees, and their consignees, must agree not to reexport or transfer the items without authorization. This one piece of export reform will eliminate about 3,000 low risk licenses a year.

At the same time, we will continue to maintain controls on items for foreign policy reasons, such as specially designed implements of torture, and maintain comprehensive controls and sanctions on terrorist supporting countries.

Once the lists have been made positive and more specific, we will have two aligned lists that can be combined into a single control list. We believe that this single list can best be administered by a single licensing agency.

We are also harmonizing definitions of key terms such as "technology" and "specially designed" across the various sets of export control and sanctions regulations.

We owe a level playing field to those who seek to comply, and therefore we are going to continue to enhance our education outreach to the exporting and re-exporting community. And domestically on the compliance side we are expanding our enforcement operations and taking advantage of the permanent law enforcement authorities that this committee played a major role in providing last year as part of the Comprehensive Iran Sanctions Act. We appreciate that very much, and it is helping us do our job.

In November 2010, the President signed an Order creating the Export Enforcement Coordination Center. This will better enable us to share information with other enforcement agencies and prevent us from getting under foot between one another.

This brings me to my final point and a central issue before us today. The administration has recognized from the outset that it needs to work closely with the Congress to ensure that the goals of this reform initiative are met. This includes continuing to brief members and staff regularly, providing updates on our efforts and seeking your input on regulations, and of course and most importantly, the enactment of legislation. Success in this joint effort will strengthen our national security and in doing so, strengthen our economy as well.

Thank you very much, and I look forward to your questions.

[The prepared statement of Mr. Hirschhorn follows:]

Before the Committee on Foreign Affairs
U.S. House of Representatives

Hearing on
"Export Controls, Arms Sales, and Reform:
Balancing U.S. Interests, Part I"

Statement of
Eric L. Hirschhorn
Under Secretary of Commerce
Bureau of Industry and Security
United States Department of Commerce

May 12, 2011

Chairman Ros-Lehtinen, Ranking Member Berman, and Members of the Committee, I am pleased to be here today on behalf of the Department of Commerce and Secretary Locke. The issues we are here to discuss are of vital importance to our national security, our sustained economic viability, and the American people. We find ourselves in a rapidly changing world with emerging threats from often unseen sources. Because of this, we must find common ground upon which we can protect our nation.

The current export control role of the Department of Commerce

Let me begin with an overview of the Bureau of Industry and Security's (BIS) role in the export control system. BIS is a national security agency and export controls are by far the largest set of responsibilities in our portfolio. We also have an important role in monitoring the health and competitiveness of the defense industrial base, which provides our fighting men and women with the cutting-edge technologies they need to defeat our adversaries. President Obama's

export control reform initiative recognizes that our export control policy must keep sensitive items out of the hands of end users that undermine our national security and must ensure interoperability with allies, but also that it not undermine our defense industrial base. For these reasons, it is important to highlight that this initiative is first and foremost a national security-based mission to modernize our export control systems, but also will serve to ensure the vitality of U.S. manufacturers and businesses in the global economy.

BIS controls exports and re-exports of dual use items—that is, items that have both commercial and military applications —pursuant to the Export Administration Regulations (EAR). BIS is charged with controlling the export of these and similar technologies to promote our national security interests and foreign policy objectives.

Working in close collaboration with our colleagues at the Departments of State, Defense, and Energy, BIS policy and technical personnel evaluate over twenty thousand export license applications each year to ensure that items proposed to be sold abroad are destined for appropriate end users for appropriate end uses. BIS, with the assistance of these departments, also regularly updates the Commerce Control List (CCL) to ensure it reflects current technology levels and market realities.

In addition, we expend considerable resources on educating the regulated community about the existence and requirements of our regulations and on enforcing the EAR, including a dedicated corps of special agents located domestically and abroad.

Changes at the Department of Commerce

List Review and Licensing Policy

The Administration has made the goal of its Export Control Reform initiative the establishment of a single licensing agency, administering a single control list, operating on a single information technology platform, and enforced by a single primary export enforcement coordination agency. An interim but essential step toward achieving this goal is to harmonize

the U.S. Munitions List (USML) with the CCL, for the items we control and the means by which we control them are the cornerstone of an effective export control system.

Under Secretary Tauscher has already mentioned the Department of Defense-led review of the USML. As part of this process, less critical items can be moved to the somewhat more flexible licensing system implemented through the EAR. These items are primarily parts and components for military end items. Many of the items to be moved, such as brake pads and nutplates, are inherently similar to comparable items subject to the EAR. I want to stress that all items specially designed for a military application will remain subject to control by BIS unless there is consensus among agencies, including the Department of Defense. To implement this policy, we will create a new control series within the Commerce Control List that facilitates exports that enhance our interoperability with allies and partners but applies a strong policy of denial for such exports to the countries identified in section 126.1 of the International Traffic in Arms Regulations. This is a key feature of harmonizing our U.S. Government licensing policies to ensure that they meet our national security requirements while ensuring interoperability with our allies.

The USML is not the only focus of the Administration's attention. While the CCL is largely a "positive" list, we seek to make it more clear and precise. In December, State and BIS sought public comment on making USML and CCL entries more clear and based on objective facts, parameters, characteristics, and technical thresholds that are recognized and employed worldwide. The BIS notice also sought information on the foreign availability of CCL items to assist the U.S. Government in further differentiation of controls by tier.

We are re-crafting the CCL into a three-tiered structure that allows controls on items to cascade over their life-cycles, based upon their sensitivity and foreign availability. This change will facilitate more quickly adding controls to new items and technologies while correcting a long-standing deficiency of transitioning items off the control lists when they no longer warrant control. Items in the highest tier—those that provide a critical military or intelligence advantage and are available almost exclusively from the United States—would require a license to all destinations.

Items available from regime members that provide a substantial military or intelligence advantage will be in the second tier. We plan to implement this concept initially through a new License Exception Strategic Trade Authorization, or STA. STA would permit exports of certain dual-use items in this tier to our most trusted allies and friends subject to certain safeguards, while requiring consignees receiving controlled items to obtain authorization to reexport such items to a non-STA country. Consignees must provide the shipper a written statement prior to the shipment of any item under STA, and the written statement must include an agreement not to reexport or transfer the items without authorization. This statement will provide a new enforcement hook to prosecute companies that seek to misuse U.S. items. We believe that the proposed license exception STA has the potential to eliminate approximately 3,000 low-risk licenses that BIS issued last year.

CCL items that provide a significant military or intelligence advantage but are more widely available will be in the lowest tier. We envision this tier to be eligible for additional authorizations. This tier will also identify controls that may need updating, including possible decontrol because of their foreign availability, consistent with our multilateral obligations.

The preparation of the STA proposal began the process of identifying items for the highest tiers. We will now start identifying those items that may fall into the lowest tier to determine appropriate licensing and control policies. At the same time, we will continue to maintain controls on items for foreign policy reasons, such as specially designed implements of torture, and maintain comprehensive controls and sanctions on terrorist-supporting countries like Cuba, Iran, North Korea, Sudan, and Syria.

We already have demonstrated through our new encryption review process developed as part of the reform effort that streamlining license requirements can actually enhance national security. We have reduced the number of individual transactions requiring technical review prior to export by seventy percent in exchange for registration and an annual report on a company's encryption products. The result is that the Department of Defense gains access to more comprehensive data while reducing the transactional burdens on U.S. companies.

Additionally, we are developing a process, similar to the one under Category 21 of the USML, that would allow Commerce to impose a license requirement on any item not currently

controlled. This would ensure that our regulations are nimble enough to control an emerging technology of national security or foreign policy interest, another new feature that enhances our system.

Once the USML has been turned into a positive list and both it and the CCL have been tiered, we will have two aligned control lists that can be combined into a single U.S. control list. As a result, the lists of controlled items will also be more clear, current, and tailored. American exporters will thus become more reliable and predictable. They and their potential customers will be able to determine more easily what is and is not controlled for export to which destinations and why. National and economic security will, as a result, be enhanced. We are optimistic that with congressional support these alignment actions can be completed within the next 12 months.

A single, tiered, positive list is critical in allowing us to build higher walls around the export of our most sensitive items while allowing the export of less critical items under less restrictive conditions. This single list can best be administered by a single licensing authority with broad legal powers in order to manage this system in a manner that is transparent, predictable, and timely and will also provide the USG, Congress and industry a single point of entry into the licensing process.

We also are working on several other initiatives to produce a more streamlined, user-friendly control list. This includes developing a single license application form that the Departments of Commerce, State, and the Treasury will use, and harmonizing definitions of key terms such as "technology" and "specially designed" across the spectrum of export control and sanctions regulations.

Outreach

To those in the exporting community who seek to comply with the rules—and we recognize that compliance takes a substantial commitment of resources—we owe the level playing field that results when everyone subject to export controls is aware of that fact. For that reason, we seek to expand our outreach to the exporting and re-exporting community.

We have initiated a transshipment initiative designed to assist exporters identify red flags when shipping to and through transshipment countries, which can also help us identify end users of concern in order to stop shipments in transit using our temporary denial order authority and for our Entity List. In fact, the expansion of our Entity List has been a motivating factor in getting foreign companies to change their illicit behavior, particularly because many of our trading partners amend their public screening lists when we make changes to ours. And to enhance exporter knowledge of parties of concern, my agency has worked with the Departments of State and the Treasury to consolidate all screening party lists, including the Entity List, into a single list available for download on www.export.gov/ecr. This makes it easier for exporters, especially small- and medium-sized businesses, to comply, reduces honest mistakes that might let items get in the wrong hands, and makes it harder for illicit front companies to procure controlled items.

Compliance and Enforcement

Enforcement activities also have a high priority in the reform program in several important respects. BIS evaluates dual-use exports to ensure they comply with the EAR. We have worked with our colleagues at the Census Bureau and at U.S. Customs and Border Protection to enhance exporter compliance through new electronic validations to the Automated Export System (AES). To enhance our knowledge and review of foreign transaction parties, Commerce has established a new office to incorporate intelligence, enforcement, and export analyses into licensing decisions.

Domestically, we are expanding our enforcement operations to take advantage of the permanent law enforcement authorities conferred on our agents last year as part of the Comprehensive Iran Sanctions Accountability and Divestment Act. These enforcement tools enable us to prevent diversions and vigorously prosecute violators. For example, we disrupted a foreign network procuring electronic components of the type found in improvised explosive devices in Iraq and Afghanistan; prevented the unauthorized export of civil aircraft to Iran and Syria; and caused the grounding of other civil aircraft in both countries that had been previously reexported to those destinations.

BIS investigations in FY 2010 resulted in the criminal conviction of 31 individuals and

businesses for export violations. The penalties for these convictions came to more than $12 million in criminal fines, more than $2 million in forfeitures, and more than 522 months of imprisonment. BIS investigations also resulted in the completion of 53 administrative export and anti-boycott cases against individuals and businesses and more than $25.4 million in administrative penalties for violations of the EAR. BIS also issued or reissued Temporary Denial Orders (TDOs) against ten companies and three individuals, and issued six denial orders. The TDOs helped to disrupt Syrian and Iranian acquisition and use of aircraft subject to the EAR, and illegal Chinese procurement of dual-use electronics.

BIS worked with our sister agencies and the Congress in bolstering the U.S. Government's criminal penalties, by harmonizing the various different statutory criminal penalties to the same maximum. This is an important step to bolster our enforcement authorities and, as Secretary Gates has said, to build a "higher wall" around our controlled items.

Internationally, Commerce actively participates in bilateral engagements with key trading partners to increase international understanding of dual-use export controls and prevent the diversion of U.S. items. We meet annually with counterparts from India, Mexico, China, Hong Kong, Singapore, and the United Arab Emirates (the UAE), among others. Many of these same countries also host BIS Export Control Officers (ECOs) who conduct end-use visits for dual-use items. We have recently expanded our footprint in Asia so that in addition to our ECOs in India, Russia, Hong Kong, and the UAE, we have added a second ECO in China and a new ECO in Singapore; the Singapore ECO also will have responsibility for Malaysia and Indonesia. These checks, augmented by Sentinel visits from Export Enforcement Special Agents stationed domestically and U.S. Foreign Commercial Officers in embassies and consulates around the world, provide added assurance that U.S. items are not misused or illicitly diverted.

We have made some important changes to our enforcement philosophy, too. In the past, BIS typically has imposed penalties on *companies* involved in export violations. Now where a violation is the deliberate action of an *individual*, we consider seeking penalties against that individual—including heavy fines, imprisonment, and the denial of export privileges—*as well as* against the company. The same is true for supervisors who are complicit in deliberate violations by their subordinates.

At the same time, we recognize that even companies that have good intentions can make mistakes. We promote the submission of voluntary self-disclosures (VSDs) in these and other instances. We view VSDs, along with robust internal compliance programs, as important mitigating factors.

The Export Enforcement Coordination Center

In November 2010, the President signed an executive order authorizing the Department of Homeland Security to establish an Export Enforcement Coordination Center consisting of representatives from BIS, the Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, the Intelligence Community, the military law enforcement agencies, and other agencies involved in export controls and enforcement. Agencies will share information and leverage their resources to enhance compliance with export control laws and regulations.

The Coordination Center is an important step in the Administration's reform effort. The Administration also believes there should be—as part of the legislation to implement the four singularities—a primary export enforcement coordination agency to consolidate certain investigative agencies with shared enforcement responsibilities. Our export enforcement resources will be better utilized by creating a dedicated export enforcement unit as a companion entity to the single licensing agency, still working collaboratively with our other export enforcement, law enforcement, and intelligence authorities.

The Role of the Congress in Export Controls

This brings me to my final point and a central issue before this committee today. The Administration has recognized from the outset that it needs to partner with Congress to ensure the goals of the reform initiative are met. This includes continuing to brief Committee members and staff on a regular basis, providing updates on the reform efforts, and seeking your input on regulations and potential legislation in the future. Success in our joint effort will strengthen our national security and, in doing so, strengthen our economy as well.

Thank you for the opportunity to testify on this important topic. I would be pleased to

answer any questions you may have.

* * *

Chairman ROS-LEHTINEN. Thank you, sir.

Dr. Miller?

STATEMENT OF THE HONORABLE JAMES N. MILLER, JR., PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY, U.S. DEPARTMENT OF DEFENSE

Mr. MILLER. Thank you, Madam Chairwoman, and Ranking Member Berman and members of the committee for the opportunity to testify today on export control reform. I am very pleased to join my colleagues Under Secretary of State Ellen Tauscher and Under Secretary of Commerce Eric Hirschhorn.

I wanted to start by emphasizing what the chairwoman said the outset: "U.S. armed forces should always have the technology advantage, and we should take all reasonable steps to prevent potential adversaries from using our own technology against us." It is in fact because export controls are so important to our national security that reform is so essential.

As I think we all now recognize, over the years the bureaucracy that surrounds our current systems has grown into a byzantine set of processes with diffuse authority scattered throughout the government. This structure results in time wasted on process and jurisdiction issues, and it creates opportunities for mistakes, enforcement lapses and openings for problematic exporters to probe the system for the best results.

We have made incremental changes in progress in our export system over time squeezing our processes for efficiencies, but this is clearly not enough. We need to focus our efforts on the most critical technologies that underpin U.S. military advantages where they could be dangerous in the hands in others. We need to focus on what Secretary Gates has called "U.S. crown jewels."

In over 95 percent of U.S. export control cases we say yes, go off and only after a lengthy and cumbersome review mandated by our current processes. By focusing our efforts better, we will be better to protect the technologies and capabilities that really matter.

As you know, the administration has proposed what we have called the four singularities and that Ellen Tauscher outlined. I want to say just a few words about each of them.

We are already making very good progress on the first two. Last November, President Obama signed an Executive Order to establish an Export Enforcement Coordination Center which will bring together representatives from Commerce, FBI, ICE, the intelligence community, military law enforcement and components in other agencies. Agencies are now in the process of standing up the center and establishing procedures for its operation. So a single law enforcement coordination center is well underway.

We are also making good progress toward a single IT system. The DoD is the executive agent for the new U.S. Government-wide export licensing system which will be based on DoD's USXPORTS system. We signed a Memorandum of Agreement with the Department of State in February 2010, and expect initial operational capability by August 2011. We signed an MOU with the Department of Commerce in October 2010, and expect initial operational capability in October 2011.

So, good progress on the first two. And in addition, work is progressing toward the establishment of a single export control list. We obviously need congressional support to complete this task.

Establishing a single list is essential because the line between purely commercial and purely military technologies has blurred, and it will continue to blur. For example, high accuracy gyroscopes that were once used only by the U.S. military are now being used in commercial aircraft, conversely our military uses commercial computers and processors in military systems. From a national security perspective we should treat items with similar capabilities the same way, irrespective of whether an item was designed for a specific civil or military purpose.

A single list based on positive control language that capture key performance characteristics will allow us to focus our efforts on key items that provide the U.S. with an important military advantage or that pose risk to our security.

As you know, DoD has taken the lead in rewriting the U.S. Munitions List. This is a major undertaking that is an essential precursor to a single control list. We have involved experts from the military departments and are working closely also with the Departments of State, Commerce, Energy and other Departments and Agencies.

Under a single list items that we consider to be U.S. "crown jewels," those items and technologies that are the basis for maintaining our military technology advantage, especially those items that no foreign government or company can duplicate such as hot section engine technology, will be placed in that top tier, Tier 1 and guarded with extreme vigilance. This is the highest of our higher walls of expert control reform.

Items that provide substantial military and intelligence capabilities will be placed in tier 2 and would be available export on a case-by-case basis, including certain items that would be eligible for license exemptions to specified U.S. allies and partners as appropriate.

For tier 3, a license would be required for some but not all destinations.

As Under Secretary Hirschhorn noted, the administration has also begun revising and tiering dual-use controls on the Commerce Control List so that when coupled with revised USML, the two lists can be merged.

If we are able to move forward successfully to a single list, it makes perfect sense and would make no sense otherwise, to move forward with a single licensing agency. Our vision is that the expertises that we currently have in government from various agencies, including State, Commerce, Department of Defense, Treasury and others would be involved and that these individuals would work together to strengthen our approach. A Board of Governors consisting of the Secretaries of key department, including State, Commerce and DoD would oversee the work of the single agency.

In conclusion, our national security will be far better served by a more agile, transparent, predictable and efficient export control regime. We have made good progress, but we need help and we need support from Congress to complete this critical effort.

Thank you very much for the opportunity to speak today, and we look forward to your questions.

[The prepared statement of Mr. Miller follows:]

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THE HOUSE FOREIGN AFFAIRS COMMITTEE

STATEMENT OF

DR. JAMES N. MILLER
PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
FOR POLICY

BEFORE THE HOUSE
COMMITTEE ON FOREIGN AFFAIRS

MAY 12, 2011

NOT FOR DISTRIBUTION UNTIL RELEASED BY
THE HOUSE FOREIGN AFFAIRS COMMITTEE

Thank you Madam Chairwoman, Ranking Member Berman, and Members of the Committee, for the opportunity to discuss the Department of Defense's role in the Administration's Export Control Reform initiative, and to describe how our efforts will enhance our nation's security. I am glad to appear here with Under Secretary of State Ellen Tauscher and Under Secretary of Commerce Eric Hirschhorn. Our work on Export Control Reform has been a great team effort, and I appreciate the Under Secretaries' leadership. I would also like to thank the staffs of our respective organizations and in particular the interagency Export Control Reform Task Force, and my staff at the Defense Technology Security Administration.

As you know, the Department of Defense is a strong proponent of fundamental change of our export control system. In his speech in April 2010 to Business Executives for National Security, Secretary Gates spoke about the need to adapt and reform America's national-security apparatus to better deal with the realities of the post-Cold War era. He outlined a simple but critical concept that has been the guiding principle behind the Administration's efforts: how to create "a system where higher walls are placed around fewer, more critical items."

I want to be absolutely clear that DoD continues to believe that export controls are vitally important to national security, including by helping us maintain a technological advantage for our forces and our Coalition partners. Our armed forces should always have the technological advantage. And we should take all reasonable steps to prevent future adversaries from using our own technology against us. Properly applied, export controls also help extend the useful life of military technologies, and save U.S. taxpayers the expense of developing countermeasures.

There are compelling national security reasons for export control reform.

First, we need to better focus our efforts to prevent potential adversaries from getting access to technology or equipment that could be used against us. This requires both "fewer items" and "higher walls." The two are fundamentally related. In over 95 percent of export control cases, we say "yes" – though often only after a lengthy and cumbersome review mandated by our current processes. Further, the number of export licenses we review has more than doubled over the last ten years. By focusing instead on the most critical technologies that underpin U.S. military advantages or that could be dangerous in the hands of others, we will improve our ability to protect the technologies that really matter. This includes a special focus on those items and technologies that are what Secretary Gates has called the U.S. "crown jewels."

Second, we need to improve the way the United States shares technology with Allies and partners in order to confront shared security challenges. One of the key lessons of the last decade is that success in future conflicts will require the ability to work effectively by, with, and through Allies and partners. In the past, there was a reasonable degree of certainty about the threats U.S. forces could be called to meet. Recent years have taught us that threats can emerge almost anywhere in the world, and that our own forces and resources will remain finite. To fill this gap effectively, the United States must be postured to effectively help our Allies and partners to operate alongside U.S. forces, or to address threats themselves. As Secretary Gates has said, in the irregular conflicts that characterize today's security environment, "the capabilities of the United States' allies and partners may be as important as its own, and building their capacity is arguably as important as, if not more so than, the fighting the United States does itself."

Over the years, we have made incremental changes in our export control system – squeezing our existing processes for efficiencies – but this is not enough. We need to set up new rules, organizations, and processes that deal effectively and efficiently with 21st century challenges -- fundamentally changing the regulations and procedures we have had in place since the Cold War. The bureaucracy that surrounds our current system has grown over time into a byzantine set of processes with diffuse authorities scattered throughout the government. While this structure might in theory balance competing interests, in practice it results in time wasted on process and jurisdiction. At best, this results in confusion and unnecessary effort on the part of both industry and government; at worst, it creates more opportunities for mistakes, enforcement lapses, and openings for problematic exporters to probe the system for the best result. This need for a more fundamental overhaul is the basis for the "four singularities" of our effort: a single control list, a single licensing agency, a single information technology (IT) system for export licensing, and a single primary enforcement coordination agency. As Under Secretary Tauscher has said, our reform effort is being conducted in three phases, with the third phase requiring enactment of legislation. We made a number of core decisions in Phase I: developing and testing the control list criteria and the methodology for how we will rebuild our control lists; implementing several new proposed licensing policies; and finalizing changes to our encryption controls which are critical to the Department of Defense and the Intelligence Community.

We are now in the process of implementing Phase II, and are making significant progress. The Department of Defense has taken the lead in rewriting the U.S. Munitions List – a

significant undertaking involving components from across DoD that is an essential precursor to a single control list. We have enlisted experts from the Military Departments and our laboratories to write "positive" controls for nineteen categories of the USML by July of this year. Our DoD experts are coordinating closely with experts at the Departments of State, Commerce, Energy, and other departments and agencies with specialized expertise to "tier" controls based on the level of sensitivity of items for military and intelligence purposes.

In conducting our review of the USML, we have discovered that some items should be moved from the USML to the Department of Commerce's dual-use control list because these items, by themselves, are deemed by our experts not to impart or contain any specialized or unique military capability that merits control as a defense article. Therefore, we recommend that they be controlled—not de-controlled— as dual-use commodities under the jurisdiction of the Department of Commerce until we are able to implement a single control list. We are working with the Department of State to develop a comprehensive and efficient notification process to Congress with respect to these items and want to work with you and Secretary Clinton on improving that process. At the same time, we will need to ensure that we adhere to our multilateral export control commitments. Some changes we propose may require negotiations with our export control partners.

Finally, the Administration has also begun revising and "tiering" dual-use controls on the Commerce Control List so that, when coupled with a revised positive USML, the two lists can eventually be merged into one.

I also want to comment briefly on our implementation of the single IT system. The Department of Defense has been designated as the Executive Agent for the new U.S. Government-wide export licensing system, which will be based on DoD's USXPORTS system. It is critical that we leverage the pockets of information we have in the different agencies to ensure that our licensing decisions are fully informed. We signed a Memorandum of Agreement (MOA) with the Department of State in February 2010 to transition it to USXPORTS, and expect initial operational capability by August 2011. An MOA with the Department of Commerce was signed in October 2010 – initial operational capability is projected for October 2011. We are working on a single-form that exporters can use to apply for a license that will facilitate entry into the process. Connectivity to IT systems used by the U.S. Customs and Border Protection will ensure that U.S. border agents can effectively and efficiently identify licensed exports. We

look forward to working with Congress to obtain budgetary authority sufficient to bring all relevant agencies into this much-needed, expanded system.

By the end of our Phase II work, we will have made significant improvements in efficiency. But we will still have two separate export control lists administered by two separate departments. We will not fully meet our "higher walls" objectives if we cannot fix the bureaucratic apparatus that has grown up around our export controls.

Our vision of a single licensing agency is one in which engineers, scientists, intelligence analysts, and licensing officers work together to review and process the majority of export licenses in an efficient and effective manner. A single licensing agency would have jurisdiction over items and technologies currently on either the munitions or dual-use list as well as items currently licensed by Treasury for embargoed destinations and would consult with other agencies as required for technical or policy reviews; it would also streamline review processes and ensure that export decisions are consistent and made based on the real capabilities of the technology. This agency would also reduce exporters' current confusion over where and how to submit export-license applications, as well as which technologies and items are likely to be approved.

Admittedly, a single licensing agency is not a new idea. Last July, the Government Accountability Office, pursuant to a request by then-Chairman Berman, published its review of the systems of six of our closest Allies and found that these governments – Australia, Canada, France, Germany, Japan, and the United Kingdom – have largely come to the same conclusions that we have regarding the "four singularities." And it is not just our Allies that have adopted this common-sense approach; as far back as 1991, a review by the House Committee on Government Operations issued a report on strengthening the export licensing system and recommended a single licensing agency, a single control list, and consolidated enforcement. We look forward to working with this Congress to achieve these much needed reforms.

Our proposed single licensing agency would oversee the implementation of a single control list. We believe that a single control list, administered by a single licensing authority, will be clearer for exporters and government, will greatly reduce bureaucratic disagreements on classification of items for export purposes, and will enhance our ability to control the exports of items critical to our national security. We will not spend time arguing about who controls an item– but instead will focus government resources on how important the technology is to U.S. national security, whether the item is appropriate for the stated end-use, and whether conditions

are required to mitigate risk. Critically, a single control list will also help expedite the provision of equipment to our Allies and partners.

Creation of a single control list has become more important as the line between purely commercial and purely military technologies has blurred in light of the demand for high technology goods in all sectors. From a national security perspective, we should treat items with similar capabilities the same way – irrespective of whether an item was designed for a specific civil or military purpose. For example, high accuracy gyroscopes that were once only used by the U.S. military are now being used in commercial aircraft. Conversely, our military uses commercial computers and processors in military systems. Thus, a single list, based on positive control language that captures key performance characteristics, will allow us to focus our efforts on key items that provide the U.S. with an important military advantage, and build higher walls around fewer items.

As Under Secretary Hirschhorn outlined, items we consider to be U.S. "crown jewels" – those items and technologies that are the basis for maintaining our military technology advantage, especially technologies and items that no foreign government or company can duplicate, such as hot section engine technology, will be placed in Tier 1 and guarded with extreme vigilance – the highest of our "higher walls" of export control reform. Items that provide significant military and intelligence capabilities will be placed in Tier 2 and will be exported on a case by case basis, including certain items that will be eligible for license exemptions to specified U.S. Allies and partners, as appropriate. We envision that items in tier 3 could be eligible for licensing to more countries and more licensing exemptions. Such items that have little significant military impact, or that use widely available technology, could be approved for export quickly. Finally, items that no longer merit control should be removed from the control lists in a manner consistent with our multilateral obligations. Over time, an item or technology could be "cascaded" from a higher to a lower level of control as its sensitivity decreases. As Under Secretary Hirschhorn mentioned, we need a more dynamic, tiered system that provides a more systematic way to quickly add controls to new items and technologies that provide the United States a significant military or intelligence advantage, and to transition items off our control lists that no longer warrant control.

It is important to note that the Department of Defense's national security responsibilities in reviewing export licenses would not be eliminated with the creation of a single licensing

agency. Rather, the Department would continue to review those license applications that require further technical review or pose particular national security concerns.

In conclusion, as you have heard from all three departments today, the re-organization of our government's export control bureaucracy – including a revised role for DoD – is not just helpful for efficiencies, but is vital to meeting today's security challenges. As Secretary Gates has stated: "We need a system that dispenses with the 95 percent of "easy" cases and lets us concentrate our resources on the remaining 5 percent. By doing so, we will be better able to monitor and enforce controls on technology transfers with real security implications while helping to speed the provision of equipment to Allies and partners who fight alongside us in coalition operations."

I look forward to working with Congress in developing the new authorities and processes that focus our energies on preventing exports to destinations of national security and proliferation concern, while facilitating our cooperation with Allies and partners for our mutual security benefit. Our national security will be far better served by a more agile, transparent, predictable, and efficient regime.

Thank you for the opportunity to speak to you today. I look forward to answering any questions you may have.

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Chairman ROS-LEHTINEN. Thank you very much for excellent testimony.

I will begin the round of questioning.

Under Secretary Tauscher, I wanted to ask about the Middle East. Can you assure this committee that arms sales proposals are based on well formulated, focused and realistic capability requirements or "wish lists" from our friends for the latest technology? Are you also confident that all sales comply with U.S. conventional arms transfer policy? And I ask because, as you know, the GAO recently found that State and DoD did not consistently document "how arms transfer to Persian Gulf countries advanced U.S. foreign policy and national security goals." And as Mr. Berman said, the Arab Spring is remaking the political map of the Middle East, go or for bad, creating new opportunities but new challenges.

So, what plans, if any, does the administration have to review arms sales to that ever changing region?

Ms. TAUSCHER. Thank you for that very comprehensive and timely question, Madam Chairwoman.

Yes, I can assure you that the United States State Department goes through significant processes and consultations both with the region, our allies and with the Congress, and with the other Departments before we agree to front military sales and agree to arm sales.

I know that everyone is sensitive about the Middle East. We have been consistently working on consultations both with House and Senate committees, but also inside the government and with the region before we go forward with any kinds of arms sales.

So, I think that the answer is yes, Madam Chairwoman, we are confident that we are consulting in a vigorous way. And, yes, we are confident that when we do make these announcements of a sale that they are going where they are supposed to be going and that are not transferred. But as you said in your testimony, it is very important that we make sure that there are no questions about this system, and that is why reform is so important.

It is important that we have common sense and we have a comprehensive nature to this reform. As you know, attempts have been made in the past through various administrations, both Democratic and Republican, to make these reforms. Both the bureaucracy fights it at times, and certainly just doing things the way we have done them before is a way for people to rationalize that we cannot make reforms. But the truth of the matter is, and Secretary Gates has said this very elegantly, "We cannot have a 20th century export reform regime for 21st century threats and for 21st century global competitiveness of American businesses."

So I think that, once again, I reassure you that we are confident that we are doing as best we can and that we are protecting what we need to protect.

Chairman ROS-LEHTINEN. Thank you.

And turning to Taiwan, it has been nearly 14 months since the last major arms sales was notified for Taiwan. Over a year ago, Assistant Secretary of State for Political Military Affairs Andrew Shapiro assured the Committee on Foreign Affairs that the State Department would undertake an extensive but honest discussion with our committee regarding Taiwan. No such discussions have been

held for nearly 9 months, and you have also violated requirements related to the Javits Report. So consistent with the Taiwan Relations Act, when will the administration be prepared to discuss Taiwan's defensive needs with our committee?

Ms. TAUSCHER. Madam Chairwoman, we will appear before the committee whenever you ask. And I will make sure that that is as timely and as soon as possible, depending on your schedule.

Chairman ROS-LEHTINEN. Thank you very much.

And a good place to start that discussion would be with Taiwan's increasingly urgent requirements for a new practical fighter aircraft. If Taiwan presents the administration with a letter of request for the transfer of the new F–16 CD Fighter Aircraft, will the administration accept that request? If not, why not? And does Communist China have a veto on U.S. arms sales to Taiwan?

Ms. TAUSCHER. No foreign country has a veto on any sales of military requirements to our allies and friends; that is for sure, and certainly not China.

But let me turn to Dr. Miller who can talk some more about the Taiwan requirements. But let me say this. This administration, like all previous administrations, values its relationships with its allies, whether they be NATO allies or near-NATO allies or members of different organizations that we belong to. These are prized relationships. And part of the projection of American power and American prestige is by selling armaments to our friends. And so we will do everything we can to have these consultations both open with you and at the same time respectful of the relationship of our allies and friends.

Chairman ROS-LEHTINEN. Very good.

Dr. Miller, just for 1 minute.

Mr. MILLER. Yes, of course.

Madam Chairwoman, let me first reiterate what the Under Secretary had to say, and that is that no nation including China has any veto over our export of arms, of course.

The Department of Defense in working with the Department of State and others owes a report to Congress, as you know, on Taiwan and arm sales. We are very close to concluding that. We have done the detailed analysis that has been requested and required in order to do that. And we will be prepared to come forward and brief very soon on the topic.

And just to reiterate what Ellen Tauscher, also pleased to come forward in whatever format you would like when you ask.

Chairman ROS-LEHTINEN. Look forward to it. Thank you so much.

My good friend Mr. Berman of California is recognized.

Mr. BERMAN. Thank you very much Madam Chairman. And thank all of you for your testimony.

In line with the chairman's question regarding the Middle East, for me the underlying question is there are huge changes going on, changes that none of us anticipated. With respect to future arms sales to that region, is there some process going on within the administration to reassess and re-evaluate those decisions in the context of what's happening and what the implications are? Has that kind of reassessment either formally or informally been undertaken? Are people thinking about undertaking it?

Mr. MILLER. Mr. Berman, let me answer in two time frames. First, in the near term the administration has put on pause, put on hold some transactions that were otherwise planned, as I think you know and I expect that you have been briefed on. It would probably be better to talk about those in a closed session. Be happy to provide more information.

For the longer, for the question of where we go next and does it imply a different set of guidelines. The administration is looking at the implications and looking both on the broad basis of Middle East and North Africa, looking on a country-by-country basis. And I can assure you that the question of what is the appropriate role of export and export control broadly for the region and on a country-by-country basis has got to be a part of that assessment.

Mr. BERMAN. Okay. In this vein, I do want to particularly congratulate the administration for its outreach and consultation with Israel on U.S. security policies in the Middle East, including possible arm sales. My own sense is the level of consultation that has gone directly with them by this administration far exceeds what I have seen in the past. And one way I know it is because I do not hear people complaining about the lack of consultation. So, I appreciate that.

Mr. Miller, I would like to just take sort of the devil's advocate's point of view for a second regarding the four singularities: A single IT system, a single licensing list, a single licensing agency and a single enforcement agency. As you may know, and I sure did not before my staff wrote this, in cosmological terms a singularity is a black hole, so dense that nothing useful, not even information can come out of it. And what goes on inside is a complete mystery beyond the law of physics.

There are redundancies in the current system, and that is what motivates a lot of us trying to get this reform. But let us take the other side of the coin for a second. That redundancy and that inefficiency and those different agencies and bureaucracies, in effect create a system of checks and balances with multiple agencies, with different missions review of sales from their own perspectives. One wants those different perspectives in this process. We want a Commerce Department that is thinking about America's technological edge. We want a State Department understand, evaluating the foreign policy implications of export decisions, we want a Defense Department that is thinking about what this is going to mean for our national security and our forces. How in a system of four singularities will those different perspectives still be brought to bear?

Mr. MILLER. Mr. Berman, let me very briefly comment on the term. I thought that we should use the four singles instead because, as you probably also know, singularities is referred to a situation in which artificial intelligence reaches the point at which it equals or surpasses human intelligence. So——

Mr. BERMAN. Is that on a case-by-case basis or——

Mr. MILLER. I will take under advisement to change our terminology. And I think the idea that four singles could equal a homerun would be, perhaps, more appropriate.

I agree, and the administration agrees with your suggestion that different perspectives need to brought to bear. Let me talk about that at two different levels.

The first is that different perspectives, different expertises on various technologies, on the expertise associated with military operations and no intelligence assessments of what other countries have and may have in the future have to be brought together. That is a key purpose of having a single licensing agency and a staff that is able to look across these various types of technologies and items. We expect that this staff of the SLA, the single licensing agency, would be able to deal with the straightforward issues to be able to implement guidance associated with it. But at the same time we expect that for cases that are particularly challenging because they represent a new technology or they represent an item of technology going to a country that we think is essentially marginal for the tier of the technology we are talking about, we fully expect that the Departments will contribute their views.

So while we would expect that some of our experts for the Defense Technology Security Agency for the Department of Defense would join the SLN, we also expect that we will continue to have experts on these issues that will provide a Department of Defense input, and that on the whole the number personnel involved will be about the same, perhaps slightly less. But in ballpark, about the same as they are today. But those people will be able to work directly together on what we think will be smaller number of difficult cases and be able to then bring in departmental expertise overseen by a board of governors that involves the Secretaries of these three Departments and others that will bring in that outside expertise and, where necessary escalate, take to higher levels those new choices where new policy has to be made.

Chairman ROS-LEHTINEN. Thank you very much.

Mr. Rohrabacher is recognized.

Mr. ROHRABACHER. Thank you very much, Madam Chairwoman for having us look at his very serious issue today. And special welcome to Ellen Tauscher. We are very, very pleased you are with us today.

And I would just like to start off by pointing out that I have a newspaper, this is put out by the Communist Chinese Government. And their headline is, "Dialogue Produces Positive Results." And I am sure that there were all sorts of newspapers like this before World War II were positive results with dialogues with the fascists and the Nazis that we had to deal with in World II, people thought that they were going to make war less likely and make friendship more likely by dealing with those folks. And the fact is that the Hitler regime benefitted greatly by its relationship to England, trade relationship with England just prior to the Second World War.

On the issue today, clearly what it sounds like at the end of this strategic and economic dialogue with China, which this headline is referring to, Chinese Vice President Wang stated, "The United States committed to accord China fair treatment in a reform of its export control regime and relaxed high tech export controls toward China."

It sounds like to me that the United States Government still cannot differentiate between a dictatorship that murders religious believers every day, has no opposition, political opposition, no opposition parties, no freedom of speech and press; that we cannot differentiate that country from Belgium or France, or even Brazil. There should be a differentiation between these countries, should there not in terms of the technology that they are allowed to import from the United States?

Ms. TAUSCHER. As my friend from California knows, engagement is not endorsement, as Secretary Albright said many years ago. And Secretary Clinton, if you read the American papers, gave a very, very tough and consistent message to the Chinese on a number of areas where we are not happy and we do not believe our relationship is as transparent or as forthcoming as it needs to be. Certainly on human rights, the Secretary gave a very, very tough message.

Mr. ROHRABACHER. Excuse me for interrupting. But are you trying to suggest that the Clinton administration should be looked at as making a tough statement with China? It was during the Clinton administration that the technology from our space program was transferred to China, which is now being used and has been used to perfect the Chinese rocket systems, for Pete's sakes.

Ms. TAUSCHER. I was speaking about Secretary Clinton just 2 days ago.

Mr. ROHRABACHER. Oh, pardon me.

Ms. TAUSCHER. Just 2 days ago.

Mr. ROHRABACHER. Pardon me.

Ms. TAUSCHER. And if you read the——

Mr. ROHRABACHER. Sometimes I get my Clintons mixed up here.

Ms. TAUSCHER. Yes, well it can happen.

But Secretary Clinton made very clear to the Chinese just 2 days ago, I was there, about many different issues, especially human rights. And that was a very tough message to give in an engagement.

Mr. ROHRABACHER. Yes.

Ms. TAUSCHER. But as I said, engagement is not endorsement. And we do have a complicated relationship with the Chinese. But nothing about that relationship includes special preferences. And I think that as often happens in newspapers around the world, the hometown paper sometimes engrandizes what exactly happened.

Mr. ROHRABACHER. Well, how about the statement of the Vice President? You know, it is one thing to make a tough statement on human rights and then the next day to leave people with the impression that the United States is committed to relax high tech export controls. I mean, this is a statement from the Vice President right out of meetings with the administration. And I can see why it might confuse them to think that we are actually serious about protecting specific transfers.

Let me just get right to the heart of the matter, because I got just a couple of seconds left. Should we have tougher export controls toward dictatorships that are potentially enemies, as China is potential, is an adversary but not an enemy, but it is a rotten dictatorship? Should we have more serious export controls and why is

that not mentioned in the interim report? Should it be a dual track?

Mr. HIRSCHHORN. If I may, Congressman.

The whole point of export control reform is to make exports to our friends and allies easier and to build higher walls to ensure that they do not go to improper places.

Mr. ROHRABACHER. Yes.

Mr. HIRSCHHORN. And with the chair's indulgence, I would like to read from the Joint Statement rather than from the——

Mr. ROHRABACHER. Okay. That list that you said, it does not include China, is that right?

Mr. HIRSCHHORN. That is correct.

Mr. ROHRABACHER. Okay.

Mr. HIRSCHHORN. I would like to ask that the record include the actual text from the Joint Statement.

Chairman ROS-LEHTINEN. Without objection, subject to size limitations.

Mr. HIRSCHHORN. Thank you.

Chairman ROS-LEHTINEN. Congressman Cicilline is recognized.

Mr. CICILLINE. Thank you, Madam Chairwoman.

And I thank the witnesses for their thoughtful testimony this morning.

Under Secretary Tauscher, I want to particularly thank you for your leadership on export control reform. We live in very challenging economic times and international arm sales I think are really critical to sustaining a strong industrial base here in our country, and certainly our national security as well as our interests in promoting robust job growth.

This is especially important in my District where several of my constituent companies are affected by the long process of arms sales. We received the letter in this committee from Secretary Clinton raising the issue of the long process of arm sales notification and congressional review. And I think like many members of this committee, I am interested in finding a solution that speeds up the process but also allows our committee to exercise appropriate oversight in order to protect our national security.

One suggestion has been made to add a time limit on the prenotification process, similar to what is in place in formal notifications. But, of course, some have criticized that idea as saying that a time limit could impede congressional oversight on sensitive arms transfers. And since you have the unique perspective of having been on both sides having served here in Congress and now at the State Department as Under Secretary, could you share with us your thoughts on that? And also comment on the State Department's concerns, if there are any, about this informal review process and whether or not the Department will propose a time limit for a period of review similar to what is in place in formal notifications?

Ms. TAUSCHER. Thank you very much, Congressman.

You know, I think that we all agree that we want to get this right, and this is not about a clock that would interfere with our ability to protect American technology, especially our most sensitive technology. But it is also important that we deal with the real world and the global marketplace where we no longer domi-

nant in so many areas and where it is very, very important for our economic recovery for American exports to move out into those marketplaces and to create jobs.

So what we have here is over the years the average time for the pre-consultation period for foreign military sales went from an average of 29 days to an average of 57 days. The different Departments have different time periods for the USML and for the CCL. It is about 15 days in the State Department, it is double that in the Commerce Department.

So we do not want to have an artificial metric. We do not want time to be the metric. We want it to be done right, but at the same time we believe that there are efficiencies that you can get in the system by doing things where there is a common view for the many different people and a common agency to go; one place to go, one phone call that gives what we hope are both comprehensive but common sense answers to how to go forward, especially for the small and medium businesses that are very, very dependent on exports for their livelihood.

So I think, Congressman, you have hit upon what is a difficult tension area: How do we do this efficiently, in a timely way so that we can trade with our allies, trade with our friends and keep growing businesses, but at the same time as Congressman Rohrabacher has made a very significant point, that we make sure that people that are trying to go around the system or trying to use the system, the inefficiencies in the system to beat us, do not get that victory.

So as Congressman Berman said, redundancies are important, so we need to build a system that has redundancies so that we are making sure that we are checking and balancing each other and getting things done in the right way. But stovepipes are not redundancies. They are barriers to efficient processes. And so what we want to do is remove these, and that is why the singularities have been developed. We think that that is the best way for us to give both the enforcers and the people that are going to say yes and no a common view, having common applications, things that are going to provide the efficiencies of the system but also have redundancies to check and balance and to move the system more quickly but we do not have a number of days that we have to meet. We expect that it will shorten, but this is not about just that.

Mr. CICILLINE. Thank you.

I yield back the balance of my time.

Chairman ROS-LEHTINEN. Thank you, sir.

Mr. McCaul of Texas is recognized.

Mr. MCCAUL. Thank you, Madam Chair.

And it is nice to see a former colleague in such high places now.

I want to talk about a couple of issues. I just got off the phone with Howard Schmidt, the Cyber Security Coordinator about the presence of proposed legislation on cyber. And I think that is important because while we can talk a lot about the physical espionage, we know that that is taking place every day in the virtual world. The Pentagon has been hacked into, NASA, and one of the most hacked into offices, as you know, is the Export Control Office in the Department of Commerce, and that is open source.

I just say that. I think beyond that we probably cannot talk a whole lot about that in a public hearing, but it is a big concern to

me. And I hope I can work with the administration on this important issue.

Secondly, end use monitoring as it pertains to Pakistan. We have teams that are supposed to be allowed to go in and monitor end use, and yet Pakistan is denying these teams access. To me that is very disturbing, particularly in light of the latest revolution of the helicopter being shown off to China. Can you very quickly in the time I have comment on the end use monitoring issue?

Ms. TAUSCHER. Well, any country that does not provide the access that we have in the agreement, immediately will come under suspicion. And all of the different processes to approve anything further will stop. So I think we have very good controls in the existing system.

But as you know, and perhaps, Congressman, the best thing to do is to offer you and other colleagues on the committee a more classified briefing on some of these issues. Because I think that we could satisfy some of your questions and certainly get your input in that kind of forum.

But the key here is that we already have processes and a system that stopped continuing business with people that do not live up to their agreements. If it is about end use monitoring or if it is about other kinds of controls that are part of the agreement, if they do not live up to those agreements, things begin to stop.

Mr. MCCAUL. Thank you. And I look forward to that briefing.

China has been on my radar screen for a long time. And when I worked in the Justice Department I worked on the Campaign Finance Investigation. I had the Johnny Chung case, which led us directly to the Director of Chinese Intelligence funneling money to him to be used in the campaign through China Aerospace. And it was very disturbing.

And going back to Pakistan and China, we have $3 billion in foreign aid, $1.5 billion of that for counterterrorism. And when I look at what they are using the money for, it is defense priorities, which is okay. It is supposed to be for counterterrorism, but it is being used to pursue a joint venture with China to develop the JF–17 Fighter Aircraft, a surface-to-surface nuclear-capable missile with the help of China, and a $1.3 billion deal which allows Pakistan to receive J–10 fighters and six submarines from China; is that of any concern to the administration?

Ms. TAUSCHER. Well, I think that it is fair to say that the relationship with Pakistan is a significant one because of its geography and because of the relationship and border with Afghanistan. But as you know, this is a very complicated relationship.

I think that once again, Congressman, if we could come in a classified setting, I think we could assure you in many ways of what is going on and have your input as to what you think should be done.

Mr. MCCAUL. Well, I would welcome that. Because I think it is very troubling and disturbing if this all is true because this is taxpayer money being used to further China's interest. You know, I think I speak for most Americans when I say we would prefer that money to be used to buy American.

And so I see my time is just about expired. With that, I will yield back.

And thank you so much for the testimony.

Chairman ROS-LEHTINEN. Thank you so much.

Ms. Bass of California?

Mr. Connolly of Virginia.

Mr. CONNOLLY. Thank you, Madam Chairwoman.

And Ellen Tauscher, welcome back to Congress. We are so glad to you, and we miss you.

I would like to ask the panel, I guess the longer I have looked at export controls of any kind, they strike me as something that with good intentions, that almost always go awry.

Technology, you know at the height of the Cold War maybe we could control the transfer of technology, maybe we could control certain sensitive items. But given the universality of technology and access to information, I guess I would ask this question: Are we on a full zone here? And that is question number one, and I mean it quite sincerely. As somebody who, you know I worked for a defense contractor and every year I had to take a refresher course in compliance with Export Administration controls. And I have to tell you, you almost needed a Ph.D. to fully understand all the implications to make sure you were never technically in violation of anything. And if you have not taken those tests, I urge each and every one of you take it and look it from the point of view of people who have to comply.

So, the first question is: Given the changes in technology, what are we doing here? And then secondly: What about unintended consequences?

One looks at the commercial satellite industry as a case study in good intentions that actually lead to all the results that were undesirable. China got the technology anyhow, the French got the business and we hurt our own domestic industry capacity which seems to run counter to President Obama's laudable goal of tripling our exports.

And let me before you answer, also applaud the administration for this thorough review. Long overdue. Thank you for doing it. But I wanted to add this other layer given the end of the Cold War and the universality of access to technology, how viable is an Export Administration in this part of the 21st century? And what about unintended consequences?

Mr. HIRSCHHORN. Let me take a moment, Congressman, to respond to at least the more general portion of your question and then either Dr. Miller or Under Secretary Tauscher can address the satellite issue if there is anything to add on that.

This is not a unilateral exercise on the part of the United States. We are members of four broad-based multilateral regimes that include just about all the Western industrialized countries and many other countries. There are between 35 and 45 countries that are members of each of those regimes, and we have general agreement on what is to be controlled. That covers most, if not all in some cases, of the places where this kind of technology is available. No one can deny that there has been a spread of technology. We and our allies and the members of these regimes do what they can, which is a great deal as we see from intelligence reports, to prevent the untoward spread of this technology. Some of it does get out, but

we are trying to retard it, we are trying to prevent it as best we can.

Mr. MILLER. Congressman, if I could add first a broad comment and then I will talk about a few key technologies of satellites in particular.

The broad comment is that I do think it would be foolish to try to continue our system with its inefficiencies and, as you have suggested, a number of self-inflicted wounds to speak specifically to satellites.

A couple of decades ago the United States had about 75 percent market share globally of satellites. We are down in the ballpark of 25 percent today. And when you see companies advertising USML free satellite components and so forth, you know that we have got some thinking to do. On that subject, we recently provided a summary of what has been a very extensive effort looking at applying export control reform to satellites. We are in the middle of an in depth review, in fact past the middle of an in depth review of Category 15 of the USML which is on satellites. And while we think at this point that there are a substantial number of items associated with commercial satellites that could be moved from the USML to the Commerce Control List, we expect that as we continue this review we will find a number of other items that are so widely available globally that we will feel comfortable in exporting them and allowing our companies to compete better.

And another category that, while not as widely available are available to our allies and partners, and we want to make sure that our companies are able to compete with that for those specific countries.

There is a few other examples. And one of the key points I want to make is that what is critical, what is not available to others changes over time and that is one of the reasons why we think the integration of these lists and a single focal point makes a lot of sense.

To date stealth technology remains a critical technology where we have a real advantage. Some propulsion technologies, including for space launch, I talked about hot section engine technology, that is actually applied now in commercial aircraft. We have a special variant basically that we use for the military aircraft that we really do not want to get out into——

Mr. CONNOLLY. Unfortunately, my time is up and the chairman is being very indulgent. And I know Ms. Tauscher knows how strict that time limit is. But I hope you will come and see me and talk about this. I have a deep abiding interest in the subject.

Thank you.

Chairman ROS-LEHTINEN. Thank you so much.

Mr. Royce is recognized.

Mr. ROYCE. Yes. Thank you. I appreciate Mr. Connolly's line of inquiry there. And my colleague's from California as well. And maybe we could get a little further into this right at this juncture while you are here, Mr. Miller.

And I guess it was a pretty meager report that came out the other day. I think it was a five pager. Is there a more detailed report behind that that you are going to be publishing subsequently? Is that my understanding?

Mr. MILLER. Excuse me, Congressman. Yes, there is.

Mr. ROYCE. Okay. Well let me ask you this——

Mr. MILLER. We had a, frankly, a lengthy report that did not take account of the ongoing review of Category 15 of USML. We would like to take that into account. And so as we complete that in July, we will give a report that, frankly, is based on the type of detailed analysis that you expect. And on behalf of the administration, I know that we are late and I apologize. We want to get it right.

Mr. ROYCE. Well I want to ask you this: Will that future report now that we have got a little time where it examined this question if the space industry-base continues to erode, what would that mean for U.S. national security? And specifically I think you should look, obviously, China. But I was going to ask what other countries you are most concerned with in this regard when it comes to satellites?

Mr. MILLER. Congressman, the focus of this report will be on the export control related issues.

Mr. ROYCE. I understand.

Mr. MILLER. We——

Mr. ROYCE. But how do we get to that question I just asked so that we are looking at this in sort of the totality of what it means to national security vis-á-vis satellites? How do we get you to do an addendum or a focused discussion of that especially as it relates to China?

Mr. MILLER. I was just about to say, one of the due outs from the National Security Space Strategy that was completed a few months ago is a hard look at our industry-base and our capabilities over time. If we look in the rearview mirror, we see a pretty daunting trend. And as we look forward, we see a lot of challenges. So the Defense Department is working on that and will be working with our interagency colleagues to provide an assessment. And as we move forward on that, we would be happy to come up and brief you and other members on that, sir.

Mr. ROYCE. Yes, I think Mr. Connolly and I, and Mr. Rohrabacher and others here would certainly appreciate that.

Let me ask a question of Under Secretary Hirschhorn, because in the testimony that I read Commerce you say is stepping up its presence in Asia adding an export control officer who will conduct end-use visits for dual-use items. So in reading this, and maybe I misread it. I might not understand this, but you say you have added a second ECO in China. And I was just going to ask you, does that mean that there are only two export control officers in all of China, or have I just misread that? Well, anyway, let me begin with that.

Mr. HIRSCHHORN. You are correct that there are two in China. We also have export control officers in a number of countries where we think they are needed.

Mr. ROYCE. Well, we have been holding a series of hearings, and of course I saw the agreement that we made with China the other day and just how focused they are on us loosening our expert control regime in certain ways. It just seems to me that given inordinate amount of attention on the other side of the Pacific, but especially given the amount of theft that routinely occurs of intellectual

property and attempts to get at this technology, that that seems questionable that we would only have two there. And I was also going to ask you about the language skills; whether these individuals are really going to be able to have access to Chinese facilities? Do they always have that access? Let me ask you that very quickly.

Mr. HIRSCHHORN. Well, we select which facilities we visit.

Mr. ROYCE. Yes.

Mr. HIRSCHHORN. And which licenses we think are important and ought to be followed up.

Mr. ROYCE. Can they really make a dent? Maybe this is something we have missed. Maybe we are just too light on our supervision on this front. But two export control officers in all of China for all of the factories in China in order to try to monitor what is going on given what we are finding out in the hearings that we are doing here, and the Harvard Business Review article from December of last year which is the expose on a lot of what China's done here. It just seems kind of lax.

Mr. HIRSCHHORN. Well, we are trying to do more, Congressman Royce. We have asked for an additional $10 million for enforcement——

Mr. ROYCE. Yes.

Mr. HIRSCHHORN [continuing]. In 2011 and now again in the 2012 budget. We are hopeful that we will see some of that funding, which will help our intelligence capability as well as add to our enforcement staff.

We also work with the other agencies and through the Export Enforcement Coordination Center which was established by the President's Executive Order, and ultimately through the primary enforcement coordination agency. We are trying to make sure we use these resources in the most efficient way we can and to be as aggressive as we can be.

Mr. ROYCE. Thank you, Mr. Hirschhorn.

And I am out of time, Madam Chairwoman.

Chairman ROS-LEHTINEN. Thank you very much.

Mr. Deutch of Florida.

Mr. DEUTCH. Thank you, Madam Chairwoman.

Just a follow-up Secretary Hirschhorn. I had a meeting not too long ago with a former BIS official who suggested that we could better verify end user status and better control our exports if we had more export control officers, particularly in China given the seemingly bipartisan support for this. And I know you spoke of the additional $10 million. How many additional export control officers; what would make a difference? I know there is now one more. What would you like to see and what impact would that have?

Mr. HIRSCHHORN. Well, what I would like to see and what we are able to see may be two different things. I would like to submit something to the committee on that, if I might.

Certainly we do not have too many in China. I certainly will grant you that.

Mr. DEUTCH. Right. We all agree.

Mr. HIRSCHHORN. But there are finite resources. We are trying to put them where they will do the most good and be the most efficient in finding diversions and making sure our technology is protected.

Mr. DEUTCH. I appreciate that. I would ask you to consider that further and, please, submit your thoughts.

I wanted to talk a bit about the ability of foreign nations to take U.S. commercial technology and convert it to military technology. Secretary Miller spoke earlier about the hot section of aircraft engines. The U.S. does strictly control what are considered the truly critical components of aircraft engines, which is the hot section. It is my understanding and I would ask Secretary Miller this question and Secretary Hirschhorn as well, that this amounts to only about 10 to 20 percent of the critical technology for aircraft engines, which allows other nations then to acquire 80 to 90 percent of the available technology for the aircraft engine through technology offset agreements and then focus their internal resources on the remaining 10 to 20 percent. The reason I am concerned about this is especially the fact that China has announced recently it is going to be investing a $1.5 to develop aircraft engines, could you speak to whether BIS is looking at increased controls of other parts of the engine? And Secretary Miller, if you could also address this issue that the notion quite simply that while we are protecting what is the truly critical component, the technology has advanced to the point that if 80 percent of the technology is available that sophisticated countries are able to then to adapt and figure out the remaining 10 to 20 percent?

Mr. HIRSCHHORN. Let me just briefly state that the hot section technology is, indeed, uniquely available to us. The other 80 percent of aircraft engine technology of which you speak is, as you rightly observe, pretty broadly available outside the United States. And that is a principal reason why we do not control it in the same way we control the technology that is critical for military purposes, and that we have close to a monopoly on.

I think Dr. Miller will add something about hot section technology.

Mr. MILLER. I think Under Secretary Hirschhorn got it just right. When you think about, in a sense, categories and the line moves over time. There is a category of this technology that is widely available internationally. I do not know what the percentage is, but it is creeping upward over time and it is creeping upward because of the indigenous interest in it. And I think that we just have to take that into account.

There has been some fairly sensitive technology that we can share with close allies, and then there is some that in our future system that we call tier 1, that the presumption would be against export that is really absolutely cutting edge and that we would expect that there would be very, very rare exceptions that they would be shared.

Mr. DEUTCH. I had this concern. I would like to explore this further with you, perhaps after the hearing.

I wanted to quickly change in my remaining minute to the technical advisory committees. And the suggestion that has been made to me that often the participants in these technical advisory committees are larger corporations. I would like to know whether there are alternative methods being considered by BIS to receive additional input to the technical advisory committee, particularly from smaller companies, perhaps retired industry experts, other ways to

provide information where there will not be a specific economic interest involved?

Mr. HIRSCHHORN. Well, we do look to the technical advisory committees to give us technical advice. And obviously in many cases the large companies have the most forward looking technology. That said, we are making a concerted effort to diversify those committees and to make sure that smaller and medium size businesses are represented. But it takes time. This is a long process because it involves not only a selection process, but an extended process of getting security clearances. We are trying to do that.

Mr. DEUTCH. I appreciate it.

And, Madam Chairwoman, if I just beg your indulgence for 15 additional seconds?

If you could provide my office some detailed information on what it is that the BIS is doing to include smaller companies, how you are reaching out to them, the standards that are being applied, that would be a great help to me and I believe, ultimately to these technical advisory committees as well.

And thank you, Madam Chair. I appreciate that.

Chairman ROS-LEHTINEN. Thank you. We would love to have access to that information as well. So if you could send it to the committee, also.

Thank you.

Mr. Manzullo is recognized.

Mr. MANZULLO. Thank you.

I appreciate you all being here, especially a former colleague.

Let me give some of our colleagues a real life example of what we are talking about.

This is a cable manufactured by one of our 2500 manufacturers in Illinois. It is a cable made to a specified length. It is an ITAR. If it were a quarter inch shorter, it would not even be regulated. This is the type of stuff which you call the nuts and bolts of plates that have a strategic hole in them. It is constant. It goes over and over. One of the reasons why our machine tool world share has shrunk to 4 percent is because of our insistence that anything involving access to more than four countries needs a license.

The United States now has a reputation of being an unreliable supplier. We have completely lost in the machine tool industry. The satellite industry, as Dr. Miller said, has gone from 75 percent down to 25 percent. Manufacturing jobs in this country have shrunk. It took three of us 3 years ago, 2 years to correct two sentences in Section 17(c) of the Export Administration Act to allow the additional billions of dollars in aircraft exports that were arbitrarily being held up by some bureaucratic problem because people just are not talking to each other.

A police helmet is uncontrolled, but you put a shield on it and it is on ITAR.

I have seen time after time again, my constituents involved in manufacturing having their European competition say that, "We are ITAR free."

You just reach a certain point where we end up binding ourselves. Fifteen years ago the United States led the world in neodymium iron boron and Samarium-cobalt permanent magnets.

Ninety-seven percent of that is now in China and we are desperately trying to get that type of manufacturing to this country.

I just want to commend the administration for spending a tremendous amount of time in my office with this new proposal. It is very transparent. To be able to combine the lists so that my constituents can access one portal and find out exactly what it is that they are doing wrong. We have been successful with the AES system so that now people are able to tell whether they are in compliance before they actually begin manufacturing the product.

But my big concern, again, is what is the big picture on this thing? I think it is absolutely essential that this country maintain a manufacturing base. What I would like to know are thoughts from the three of you as to how you think the new system that you are proposing with the one list and the portal can help the United States increase its manufacturing base?

Ms. TAUSCHER. Congressman, thank you for your support. And thank you for your consistent help in representing your District so well.

I think that what you are talking about is a very narrow area that needs special attention. It is called specially designed. And for many decades these specially designed systems and apparatus were basically based on the assumption that technologies and items were developed for the military and only later some subset found themselves to be commercially viable. The truth is the exact opposite is true in the 21st century.

And so we have many specially designed items that are under control that really do not need to be. They are commercially available all over the world and this really hurts American productivity, it hurts especially small businesses and medium sized businesses. It hurts job creation. And what we are proposing is a new definition for specially designed that will provide clear guidance consistent with how the phrase is used in international agreements for focus controls only on those items that we intend to control and not capturing big baskets of things that create all kinds of havoc for small and medium sized businesses.

Mr. MANZULLO. I appreciate that.

Just one unrelated question. The Section 1248 report, when do you expect that to be finalized?

Mr. MILLER. Congressman, we expect to finish the review of Category 15 on the USML in July, and to be able to provide the report, I think I would have to give us about a couple of months after that. So, I would say this fall. And we are, as I said earlier, conscious that we are late and we will move it forward as quickly as possible. And be very pleased to brief in the meantime as we have the intermediate steps, sir.

Mr. MANZULLO. Thank you.

Chairman ROS-LEHTINEN. Thank you.

Mr. Sherman is recognized.

Mr. SHERMAN. Thank you.

My first question is for the record because it deals with a detail that you will want to look at when you get back to your offices.

Right now a satellite license is pending at State. It is a communication satellite for the Government of Azerbaijan. Now this is packaged as if it is just a satellite that would allow people in Baku

to make cell phone cells or send emails. And, of course, that means a general in the Azeri army could make a call to his mother in Moscow or some general in Moscow, but that is, after all, just a telephone call or an email.

I would hope that you would look carefully at this license to see whether the particular satellite will give Azerbaijan the ability to do surveillance or jamming. And so my question for the record is will you reject this license if the satellite in question gives the Azeri government the capacity to jam or Armenian communications or surveil Armenia or Nagorno-Karabakh? So, I look forward to reading your answer.

I do want to pick up on the chairwoman's comments that you are moving forward with this. You are going to moving a lot of things from one list to another. Please give us enough time to review things. You have worked carefully with us in the past and you do not want us to protest 200 items just because you gave us 400 items and we only got time to look at 200.

My question relates to the industrial base of this country. If we do not export a particular item, then we do not get the money which helps build our industrial base. And somebody else gets the order and that builds their industrial base. But sometimes when you take something off the Munitions List what is being exported, perhaps, is not the product but the tools and the dies that allow somebody else to make the product or the technology, the plans.

Does a decision to take, say that wire that Don Manzullo hold up, if you took that off the Munitions List, does that mean that you would have to take off the list the tools, the dies, the plans on how to make that component or can you deal separately with the technology for manufacture and the product that is manufactured?

Mr. HIRSCHHORN. We do today treat technology separately from end items and from capital goods that manufacture end items. So the existing Commerce List, for example, does allow us to treat them differently. But in many cases, technology that is widely available is not going to be preserved by our controlling it. If it is out there, it is out there. And we are trying to limit——

Mr. SHERMAN. Yes. And the technology of making that particular wire may not be all that secretive.

But what you are saying is if you take a particular item off the Munitions list, you could very well leave on the list the plans, specifications, tools and dies that would allow somebody else to make that product?

Mr. HIRSCHHORN. It is certainly possible. And it is going to be an item-by-item review, but in many cases part of why these items are going to moved to Commerce control, and I stress that they still will be controlled but it is a more flexible set of controls, is because either the items do not have a particular military use or because the technology is——

Mr. SHERMAN. Let me ask the Under Secretary of State, I mean is there a jobs analysis here where we would say, "Well, exporting this particular product produces jobs in America and it is generally consistent with U.S. national security." And at the same time say, "We are going to prohibit the export of the manufacturing technology, both because that could give another country a lot more than just the product." I mean, it is the technology to make this

product and they could soup that up and make next year's product or next decade's product as well. It is a national security issue, but also it means exporting jobs. Is there going to be a separate analysis of the industrial-base input back fact of exporting a product versus exporting the tools and the dies and the techniques?

Ms. TAUSCHER. Well, Congressman Sherman, no, there is no specific jobs analysis but it is intuitive, and I think everyone believes, first and foremost this review is about national security. But we believe that the importance of protecting national security and having bigger fences over smaller property will give us the transfer of——

Mr. SHERMAN. I would point out that the statute says that our industrial-base is critical to our national security. And so it is not just the product, it is whether you are building the industrial-base of the United States or building an industrial base in a rival country. And so I hope that a job/industrial-base is part of it, not just talking to generals about what this particular box can do on that particular airplane

Chairman ROS-LEHTINEN. Thank you, Mr. Sherman.

Ms. Buerkle of New York is recognized.

Ms. BUERKLE. Thank you, Madam Chairman. And thank you for holding this very important hearing export control reform. And thank you to all of our witnesses this morning for being here.

I think that we can all agree that the export system in its current form is a complex, bureaucratic maze that we need to correct. The question is: What are those corrections going to look at?

If small or a medium sized firm looked at this reform, do you think it is going to be their assessment that this is going to be simpler, more streamlined approach to exporting?

Ms. TAUSCHER. I was actually going to answer Congressman Sherman. But, thank you, Congresswoman, I think that is a great question and it is a metric that is very important to us.

I think one of the reasons why the President's reforms are so supported by the Chamber of Commerce, the National Association of Manufactures and many technology business associations is for the very reason that the ancillary benefit is more American job creation and more streamlined system that protects national security.

Mr. SHERMAN. Will the gentleman yield for 10 seconds?

It is about jobs——

Chairman ROS-LEHTINEN. Hold on. Hold on. Hold on.

Ms. BUERKLE. Absolutely.

Mr. SHERMAN. It is about jobs, not profits. And if the Chamber of Commerce says it is great and the machinist says it is wrong, who cares about jobs?

I yield back.

Chairman ROS-LEHTINEN. Ms. Buerkle.

Ms. BUERKLE. Thank you.

And going back to my colleague Mr. Cicilline's point, it is about the clock when it comes to these businesses. And when I hear redundancy is important, not for businesses it is not important. They need to get their product out to market as quickly and as efficiently as possible.

Ms. TAUSCHER. But redundancy does not have to cost time. There has to be checks and balances that ensure that national security is the number one effort to make sure that we protect the most pre-

cious national security secrets. Redundancy does not mean that we have to have more time added to the clock. But we do have to ensure you and the American people that we have checks and balances in the system to make sure that we do not have a little slip between lip and cup and cause something to be transferred that is not meant to be transferred

Ms. BUERKLE. Thank you.

Mr. MILLER. Could I just briefly?

Ms. BUERKLE. Absolutely.

Mr. MILLER. The other thing from a business perspective I would think would be desirable is predictability. And as we shift USML to a positive Control List where we specify the elements that would be allowed and not allowed rather than say everything in a broad category is subject to review over some unspecified period of time, I think that predictability of outcome as well as timeliness would be valuable.

Ms. BUERKLE. Thank you.

Mr. Hirschhorn, my next question is for you. It is regarding the Coordination Center. How would you counter the argument that this just represents another bureaucratic layer on top of an already complicated system?

Mr. HIRSCHHORN. Well, it is not a bureaucratic layer. It is not going to involve, for example, additional personnel other than one or two people who will be permanently situated there. Everyone else will be participating from their existing agencies.

It is essential that the various agencies that have enforcement responsibilities in this area not step on one another's toes. The last thing we want is a situation where Agency A goes after a suspect company that turns out to have been Agency B's front operation, another enforcement agency's front operation. And the point of this Coordination Center and this coordination effort is to make sure we do not run into a situation like that, and also to make sure we do not duplicate one another's work.

I do not think it is creating another bureaucracy so much as making the enforcement system a lot more efficient. When we start a case, for example, we are going to submit the names of the people that are possibly involved to the Coordination Center. And we are going to get back from the other agencies whether they have any information on those kinds of individuals.

It is really quite convenient to have a place where everybody goes and the people can sit in the same place rather than having to rely on long distance kinds of communication.

Ms. BUERKLE. Thank you.

And my last question, and I will allude back to what my colleague Mr. Sherman mentioned in his opening remarks, and that is the coordination between Congress. I mean, I think we all agree that this export reform needs to be coordinated with Congress. And so I would like to just hear assurances of how you think that that will happen.

Ms. TAUSCHER. Yes, Congresswoman. We are anxious to continue briefing both staff and members. And as Dr. Miller said, the 1248 Report will be ready and in the not too distant future we look to bring that report up and have briefings. And I know for myself and for my colleagues, anytime you choose to call, we will be sure to

answer the call in the same day and get back to you. And come up on our horse as fast as we can to answer whatever questions you have.

Mr. MILLER. I agree fully with Under Secretary Tauscher.

Ms. BUERKLE. Thank you.

Chairman ROS-LEHTINEN. Thank you so much.

Mr. Rivera?

Mr. RIVERA. Thank you, Madam Chair.

With your permission and indulgence, my subcommittee chair, the gentlemen from California Mr. Rohrabacher has asked to follow-up on some questions. May I yield my time to him?

Chairman ROS-LEHTINEN. Mr. Rohrabacher is recognized.

Mr. ROHRABACHER. You know I have heard references to bolts earlier and to gyroscopes. Let us note that those were pivotal technologies in the development of the Chinese missile system. Before we gave them exploding bolts which permits stage separation, their long march rocket system was totally unreliable. And it was the United States that developed exploding bolts and this methodology of separating stages. Also at the same time we provided them the information they needed to have more than one payload. And, yes, that was for delivering satellites but guess what? It also makes sure their rockets now, their missiles now can deliver more than one nuclear warhead.

The gyroscopes that we are talking about as well. These are things that cost us billions of dollars to perfect. The United States has spent billions of dollars of research that ends up in the hands of a country that is targeting us with their missiles. Is there any doubt in anybody's mind out there what group is targeted by these Chinese missiles? It certainly is not Belgium, and it probably is not Great Britain. But we can rest assured we are high on the target list.

That is a travesty and we should make sure that never happens again, and yet we have another article by another Chinese Communist publication at the end of the meetings with the administration, "U.S. To Ease High Tech Limits." They are not meaning high tech limits to Belgium, they are meaning it to Beijing.

I hope that we are not on the way to another great transfer of technology in the name of some company getting a couple of years of higher profits.

The interim report restricts launch failure investigations. And let me just note that that was the vehicle in which these other technologies that I just mentioned that were transferred 15 years ago to the Chinese. But it also says that among the information that we can transfer to unspecified foreigners, is that technology which "will ensure a safe ride to orbit." Does that mean we can help the Chinese perfect? Because it does not say who they are referring to. Are the Chinese excluded from that, helping ensure a safe ride to orbit? It does not say they are excluded in the report. Are they excluded from that?

Mr. MILLER. Congressman, the principles that are outlined in that very short report which will be, as you know, as I said will be elaborated, are applicable. And that is that the answer will depend on what technology is helping provide a safe ride to orbit.

And that a country such as China will not be accorded the same treatment as a country such as the United Kingdom. And we——

Mr. ROHRABACHER. Okay. So there is something in the report that should suggests that creating a safe ride to orbit and the technology that does that will be permitted to a democratic country like Great Britain, but not to China? Where does it say that in the report?

Mr. MILLER. That report is a very short summary of——

Mr. ROHRABACHER. Then it will be in the full report? You are saying that that will be specifically delineated in the full report?

Mr. MILLER. Sir, no, what I am saying is that we will have a system and what we propose is to move toward a system where this is more transparent to Congress and to others——

Mr. ROHRABACHER. The answer is no, is that what you are telling me? You can answer that with a yes or no. Is that going to be in the report?

Mr. MILLER. Well, Congressman——

Mr. ROHRABACHER. It is not going to be, is it?

Mr. MILLER. Congressman, what I will tell you is that——

Mr. ROHRABACHER. Usually when people do not answer yes or no to questions like this, it is because they do not want to give a specific answer.

Mr. MILLER. Congressman, I will assure you that it is question that will be asked of the report by me as I review it.

Mr. ROHRABACHER. All right.

Mr. MILLER. As I said, I think the right answer——

Mr. ROHRABACHER. And who will it be answered by?

Mr. MILLER. I will review the report before it comes back up. And so I think the correct answer is to think that there categories of technology that can be broadly transferred, there are other categories that should not be broadly transferred. And other——

Mr. ROHRABACHER. There are some countries that should not be transferred——

Mr. MILLER. And there are some countries——

Mr. ROHRABACHER. And that should not be transferred to because they are violators of human rights and potential threats to our national security.

Last year this committee endorsed the removal of some satellites and components from the Munitions List, but clearly stated the exception of barring any of these transfers to China. I would hope that remains our policy, Madam Chairwoman.

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

And I thank the witnesses as well as the excellent questions from our members. We all look forward to working with you as this process moves forward either in an open setting or in a classified setting.

Thank you.

And with that, the committee is now adjourned.

[Whereupon, at 11:50 a.m., the committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

FULL COMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

Ileana Ros-Lehtinen (R-FL), Chairman

May 3, 2011

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held in **Room 2172 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at http://www.hcfa.house.gov):**

DATE: Thursday, May 12, 2011

TIME: 10:00 a.m.

SUBJECT: Export Controls, Arms Sales, and Reform: Balancing U.S. Interests, Part 1

WITNESSES: The Honorable Ellen Tauscher
Under Secretary, Arms Control and International Security
U.S. Department of State

The Honorable Eric L. Hirschhorn
Under Secretary, Bureau of Industry and Security
U.S. Department of Commerce

The Honorable James N. Miller, Jr.
Principal Deputy Under Secretary of Defense for Policy
U.S. Department of Defense

By Direction of the Chairman

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

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF FULL COMMITTEE HEARING

Day *Thursday* **Date** *May 12, 2011* **Room** *2172 Rayburn*

Starting Time *10:02 am* **Ending Time** *11:49 am*

Recesses [ ] (____to ____) (____to ____) (____to ____) (____to ____) (____to ____) (____to ____)

Presiding Member(s)

Chairman Ros-Lehtinen

Check all of the following that apply:

Open Session [✓]
Executive (closed) Session [ ]
Televised [✓]
Electronically Recorded (taped) [✓]
Stenographic Record [✓]

TITLE OF HEARING:

Export Controls, Arms Sales, and Reform: Balancing U.S. Interests, Part 1

COMMITTEE MEMBERS PRESENT:

Attendence Attached

NON-COMMITTEE MEMBERS PRESENT:

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

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Connolly SFR
Ros-Lehtinen QFR to each witness
Duncan QFR to each witness
Hirschorn letter to Rohrabacher, fact sheet, and joint statement

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *11:49 am*

Jean Carroll, Director of Committee Operations

Hearing/Briefing Title: **Export Controls, Arms Sales, and Reform: Balancing U.S. Interests, Part 1**

Date: **May 12, 2011**

Present	Member
X	Ileana Ros-Lehtinen, FL
X	Christopher Smith, NJ
	Dan Burton, IN
X	Elton Gallegly, CA
X	Dana Rohrabacher, CA
X	Donald Manzullo, IL
X	Edward R. Royce, CA
X	Steve Chabot, OH
	Ron Paul, TX
	Mike Pence, IN
	Joe Wilson, SC
	Connie Mack, FL
X	Jeff Fortenberry, NE
X	Michael McCaul, TX
	Ted Poe, TX
	Gus M. Bilirakis, FL
X	Jean Schmidt, OH
	Bill Johnson, OH
X	David Rivera, FL
	Mike Kelly, PA
	Tim Griffin, AK
	Tom Marino, PA
	Jeff Duncan, SC
X	Ann Marie Buerkle, NY
	Renee Ellmers, NC

Present	Member
X	Howard L. Berman, CA
	Gary L. Ackerman, NY
	Eni F.H. Faleomavaega, AS
	Donald M. Payne, NJ
X	Brad Sherman, CA
	Eliot Engel, NY
	Gregory Meeks, NY
	Russ Carnahan, MO
X	Albio Sires, NJ
X	Gerry Connolly, VA
X	Ted Deutch, FL
	Dennis Cardoza, CA
X	Ben Chandler, KY
	Brian Higgins, NY
	Allyson Schwartz, PA
	Chris Murphy, CT
	Frederica Wilson, FL
X	Karen Bass, CA
	William Keating, MA
X	David Cicilline, RI

The Honorable Gerald E. Connolly (VA-11)

Export Controls, Arm Sales, and Reform: Balancing U.S. Interests
Thursday, May 12, 2011
10am

After reviewing the history of the Export Administration Act and its effects on the dual-use export control industry, my assessment is that our defense industry is suffering unintended consequences of regulation. It is against our long-term national security and economic interests to weaken this industry. To think that our export control regime goes so far as to restrict otherwise innocuous items such as nuts, bolts, and widgets because these items were once part of an outdated list is difficult to comprehend. In trying to protect sensitive technologies, we have gone overboard, and have stifled innovation and America's competitive edge in certain industries—most notably the commercial satellite industry.

In the case of commercial satellites, the technology was so restricted that other nations were able to grow their industrial base in this sector. The result is that countries like France now have a significant share of the world satellite market, while U.S. companies have lost market share. To add insult to injury, China still managed to get access to satellite technology while our industry was mired in arcane regulations.

I have repeatedly expressed concern about the unintended harm that our export control system has done to our defense industrial base. The manufacturing sector of the defense industry, for example, has made a cogent point with regard to the Export Administration Act—if we restrict access to technology, companies in other nations can begin to fill American companies' market niche. This leads to two unintended consequences: a weak U.S industry and the unintended spread of technology to potentially hostile nations. Though we ought to be mindful of national security, we ought not to stifle our defense industry in the process.

I commend the Administration's efforts to review and reform our export control regime into a more streamlined set of regulations. The first phase, which consisted of evaluating the various criteria to control various items and technology, is complete. The second phase, which consists of evaluating various control lists, is under way. The goal in the current phase is to separate items into three tiers. The final phase will be to present legislation. This Committee has certainly codified the need to review our arms export policy in Title VIII of the Foreign Relations Authorization Act.

There are concerns that export control reform will result in more sensitive items going to countries whose security interests run counter to the U.S.'s interests. But the goal of reform is to more thoroughly control the sensitive items while recognizing that not every minor, everyday component ought to be controlled. The idea to move 74 percent of items from the U.S. Munitions List (USML) to the Commerce Control list provides the U.S. with greater flexibility for certain items, while items that are "specially designed" for a military application will have the same export restrictions to certain destinations, such as China.

The universality of technology means everyone has access. It is a fool's errand to restrict the most common technologies in the hopes that such an errand will be efficacious. I look forward to hearing from today's witnesses on how we can work together to streamline export control regulations. Thank you, Madam Chairman.

MATERIAL SUBMITTED FOR THE RECORD BY THE HONORABLE ERIC L. HIRSCHHORN, UNDER SECRETARY, BUREAU OF INDUSTRY AND SECURITY, U.S. DEPARTMENT OF COMMERCE

UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, D.C. 20230

MAY 27 2011

The Honorable Dana Rohrabacher
United States House of Representatives
2300 Rayburn House Office Building
Washington, DC 20515

Dear Representative Rohrabacher:

Thank you for your comments at the May 12 House Foreign Affairs Committee hearing entitled *Export Controls, Arm Sales, and Reform: Balancing U.S. Interests, Part I.* I commend you for your longstanding commitment to ensuring the strength of our nation's export control system.

During the hearing you referenced the recently completed U.S. – China Strategic & Economic Dialogue (S & ED) and read the following from the *China Daily* regarding agreements reached between the two countries regarding export controls:

Wang Qishan, Chinese vice-premier, said the US "commits to accord China fair treatment in the reform of its export control regime [and] relax high-tech exports control towards China."

The wording of the "commitment" described in the *China Daily* was not one made by the United States. It was, to the contrary, wording proposed by the Chinese delegation at the S&ED that the United States rejected. Rather, the joint statement to which the United States and China agreed stated only that the United States would give "consideration" to the PRC's "request" regarding export controls. At last week's hearing, I asked that the joint S&ED statement be entered into the record, but wanted to take the opportunity to provide you, personally, with the wording that was agreed to by the two countries regarding export controls:

The United States commits to give full consideration to China's request that it be treated fairly as the United States reforms its export control system. The United States will continue discussions, including technical discussions, on the export control status of designated parts, components, and other items of interest. Both sides agree to work through the U.S.-China High Technology Working Group (HTWG) to actively implement the Action Plan for U.S.-China High Technology Trade in Key Sectors Cooperation, hold U.S.-China fora on high-tech trade on a regular basis, and discuss high-tech and strategic trade cooperation through the HTWG.

Again, thank you for your continued interest and valuable contribution to reforming our Nation's antiquated export control system. Please contact me if I may be of any assistance to you on this or any other matter. I can be reached at 202-482-1455 or eric.hirschhorn@bis.doc.gov.

Sincerely,

Eric L. Hirschhorn

Third Meeting of the U.S.-China Strategic & Economic Dialogue Joint U.S.-China Economic Track Fact Sheet

5/10/2011

As special representatives of President Barack Obama and President Hu Jintao, U.S. Treasury Secretary Timothy Geithner and Chinese Vice Premier Wang Qishan concluded the meeting of the Economic Track in the third U.S.-China Strategic & Economic Dialogue in Washington today. They were joined by a high-level delegation of Cabinet members, agency heads, and senior officials from both countries.

The two countries reaffirmed the important commitments pledged by both countries during the state visit of President Hu to the United States in January 2011, as well as in previous Strategic and Economic Dialogues. The two countries released a "Comprehensive Framework for Promoting Strong, Sustainable and Balanced Growth & Economic Cooperation," as they committed to do in January, to elaborate principles for their work towards building a comprehensive and mutually beneficial economic partnership. In keeping with the principles set out in the Framework, the two countries announced further concrete measures, to be implemented through existing mechanisms, to promote strong, sustainable, and balanced growth; strengthen financial systems; and enhance trade and investment cooperation.

I. Promoting Strong, Sustainable and Balanced Growth

Since the second meeting of the Strategic and Economic Dialogue in May 2010, the economic recoveries in the United States and China have strengthened due to continued forceful stimulus measures undertaken by both countries, contributing to an improving outlook for the global economy. The two countries have also made progress on their commitments to promote more sustainable and balanced growth. To secure these gains and address potential challenges to the global outlook, we pledge to enhance macroeconomic cooperation to ensure that the global recovery is durable and promotes steady job growth, and to firmly establish strong, sustainable, and balanced growth.

In order to promote a more balanced trade relationship, China will continue to take steps to expand domestic consumption and imports in accordance with the 12th Five-Year Plan; and the United States will increase domestic savings and exports, including through the National Export Initiative. China takes promotion of employment as the priority objective for economic development, and strives to achieve full employment. China strives to raise the proportion of residents' income in gross national income, increase the proportion of wages in the primary income distribution, and realize the increase of people's income in line with economic development and the increase of workers' pay in line with gains in labor productivity. China's minimum wage has steadily increased in recent years and will continue to do so in the future. China will raise the ratio of services value-added to Gross Domestic Product (GDP) by four percentage points over the next five years, with measures to develop the services sector including expanding areas open to foreign involvement, encouraging and guiding a variety of categories of capital into the services sector, and actively developing services enterprises with diversified forms of ownership.

The U.S. economy is rebalancing toward sustainable growth, emphasizing higher domestic savings, a commitment to improving long-term fiscal sustainability and productivity-enhancing investments. The personal savings rate was 5.8 percent in 2010, which is the highest rate since 1993 and well above the 2.7 percent average between 2000 and 2007. Thus, much of the transition on the private side to higher saving has already taken place. To increase public saving, the President's Budget freezes discretionary spending for five years, freezes government salaries for two years, and brings the deficit to three percent of GDP by the second half of this decade – a path consistent with the Administration's commitments to cut the deficit in half by 2013, and to stabilize or reduce the national debt as a share of the economy. To lay the

foundation for future growth, including through greater U.S. exports, the United States will increase and improve investment in innovation, infrastructure, and education.

In accordance with economic recovery in the United States, the Federal Reserve will continue to adjust its monetary policy as appropriate to promote sustainable economic growth and price stability. The People's Bank of China will continue to adopt a mix of monetary policy tools to implement prudent monetary policy, in order to promote growth sustainability and price stability. The United States will maintain vigilance against excess volatility in exchange rates, and China will continue to promote RMB exchange rate flexibility.

The two countries reiterate their support for the G-20 Framework for Strong, Sustainable, and Balanced Growth, and reaffirm their commitments to improve the living standards of our citizens through strong economic and jobs growth, and use the full range of policies required to strengthen the global recovery and to reduce excessive external imbalances and maintain current account imbalances at sustainable levels. The two sides support a bigger role for the G-20 in international economic and financial affairs, and pledge to strengthen communication and coordination to follow through on the commitments of the G-20 summits and push for positive outcomes at the Cannes summit in November.

The two countries pledge to work together to strengthen the global financial system and reform the international financial architecture. The two countries will continue their strong cooperation to strengthen the legitimacy and improve the effectiveness of the International Monetary Fund (IMF) and the Multilateral Development Banks (MDBs). The two countries will continue to jointly promote efforts of the international community to assist developing countries, in particular the Least Developed Countries, to achieve the Millennium Development Goals (MDGs). The two sides will also, in partnership with the MDBs, explore cooperation that supports global poverty reduction and development, and regional integration including in Africa, to contribute to inclusive and sustainable economic growth.

The United States and China express their continued support for the government and people of Japan as they begin to rebuild from the tragic earthquake and tsunami, and affirmed their confidence in the health of Japan's economy. The two countries pledge to cooperate on efforts to ensure the smooth functioning of global energy markets and to avoid excess volatility in global commodity prices. The two countries reaffirmed support for efforts by European leaders to reinforce market stability and promote sustainable long-term growth.

The two countries recognize the value of initiatives that foster dialogue and cooperation on sustainable growth issues, and pledge to: continue to strengthen city-to-city and firm-to-firm communication, and explore new opportunities to promote enhanced local-level economic cooperation between the two countries, including through the U.S.-China Initiative on City-Level Economic Cooperation; work together under the Energy Working Group of Asia Pacific Economic Cooperation (APEC) to promote the Energy Smart Communities Initiative (ESCI); strengthen information exchange on energy saving and environmental protection technology, and promote cooperation in areas such as industrial energy efficiency; and explore opportunities to deepen cooperation on infrastructure development, including through technical exchange and the sharing of best practices and information.

II. Strengthening Financial Systems and Improving Financial Supervision

The two countries reaffirmed their commitment to deepen bilateral and multilateral cooperation on financial sector investment and regulation, in order to enhance global regulation, establish stronger international coordination to prevent future crises, and ensure a level playing field. Recognizing the positive contributions that financial institutions from each country can play, the two sides pledged to

support open environments for investment in financial services and cross-border portfolio investment, consistent with prudential and national security requirements.

The United States and China commit to further promote and strengthen financial sector reform. Following the passage of the Dodd-Frank Act, the United States is implementing comprehensive financial reform that better serves households, workers, entrepreneurs, and businesses by reducing systemic risk, raising prudential standards, establishing a comprehensive regulatory framework for derivatives, ending the problem of "too big to fail" financial institutions, creating a Federal Insurance Office, and ensuring robust consumer financial protection.

China will continue to deepen the reform of its financial system, which has supported the process of transforming its economic development model, developing a financial system that is comprised of diverse institutions, provides efficient service, controls risks, and encourages financial innovation. China will increase the use of direct financing channels, including stocks, bonds and private equity, to better satisfy the diverse demands in its economy for investment capital and financing. In accordance with the medium- and long-term development perspectives, China will push forward the market-based reform of interest rates.

The two countries will, in accordance with progress by international standard setting bodies on enhancing financial sector reform, continue to strengthen their own regulatory systems, further improve oversight of systemically important financial institutions, strengthen supervision of shadow banking activities, continue to enhance compensation policy reform, and strengthen oversight of credit rating agencies. Both countries commit to continue to strengthen information sharing on financial regulatory reform and take effective measures to ensure that financial regulatory reforms are in line with the principles of national treatment and non-discrimination for financial institutions in like circumstances. The United States and China reaffirm their commitment to fulfill the G-20 pledge in Seoul to "work in an internationally consistent and non-discriminatory manner to strengthen regulation and supervision of hedge funds, OTC derivatives and credit rating agencies."

The United States welcomes foreign investment in all sectors, including the financial sector, and remains committed to apply the same prudential and regulatory standards to applications made by Chinese banks, securities, and fund management companies as it applies to other foreign financial institutions in like circumstances.

The U.S. Administration has laid out a plan to reform America's housing finance market. The Administration is committed to have strong oversight of Government Sponsored Enterprises (GSEs) and to ensuring the ability of the GSEs to honor their obligations, and to not pursuing any reforms or supporting any legislative actions which would act to the contrary. The Administration will request input from all stakeholders during the reform process.

China will amend relevant regulations to allow qualified locally-incorporated foreign banks that meet relevant prudential requirements to enjoy the same rights as domestic banks to distribute mutual funds and to obtain custody licenses for mutual funds. China will allow qualified locally-incorporated foreign banks that meet relevant prudential requirements to enjoy the same rights as domestic banks to act as Margin Depository Banks in Qualified Foreign Institutional Investors (QFII) futures transactions. China will actively study and push forward the opening of mandatory third party liability auto insurance to foreign-invested insurance companies.

The United States supports China's efforts to expand the use of the RMB in cross-border trade and investment, and to press ahead with making the RMB convertible under capital accounts. China will also research ways to develop more and wider channels for offshore RMB to come onshore.

The United States and China pledged additional measures to enhance financial regulatory cooperation, including: continuing to share supervisory information under the Memorandum of Understanding between the U.S. banking agencies and the China Banking Regulatory Commission through ad hoc written requests and supervisory meetings; strengthening communication and exchanging views on international insurance regulatory reform; and pursuing close cooperation and collaboration in the regulation of financial markets, including through self-regulatory organizations. The United States and China welcome continued dialogue between the bilateral competent authorities on the oversight of accounting firms providing audit services for public companies in the two countries, so as to enhance mutual trust and strive to reach agreement on cross-border oversight cooperation. Both countries agree to make joint efforts to accelerate the process.

The United States and China committed to further strengthen their respective financial systems against money laundering, counterfeiting, terrorism financing, and WMD proliferation financing activities. China will continue to develop and strengthen its regulatory framework for freezing terrorist assets. The two countries will continue to enhance both policy and operational cooperation on combating illicit finance. The two countries will also continue to work collaboratively in the freezing, seizing, and forfeiture of criminal proceeds. Both countries seek to rely on bilateral mutual legal assistance to implement forfeiture orders, and seek to avoid unilateral enforcement action of forfeiture orders to the extent possible.

III. Enhancing Trade and Investment Cooperation

The two countries, recognizing the importance of open trade and investment in fostering economic growth, job creation, innovation, and prosperity, re-affirmed their commitment to take further steps to liberalize global trade and investment, and to oppose all forms of trade and investment protectionism. The two sides reaffirmed their commitment to work proactively to resolve bilateral trade and investment disputes in a constructive, cooperative, and mutually beneficial manner.

China will take stock of the results of the Special Campaign against IPR Infringement and Fake and Shoddy Products (Special Campaign), and improve on the high-level, long-term mechanism of IPR protection and enforcement, building on the Special Campaign currently in place. China will strengthen the government inspection mechanism so as to make sure that the software being used by the government agencies at all levels is legitimate. China and the United States will strengthen cooperation in the JCCT IPR Working Group on software legalization.

The United States commits to give full consideration to China's request that it be treated fairly as the United States reforms its export control system. The United States will continue discussions, including technical discussions, on the export control status of designated parts, components, and other items of interest. Both sides agree to work through the U.S.-China High Technology Working Group (HTWG) to actively implement the Action Plan for U.S.-China High Technology Trade in Key Sectors Cooperation, hold U.S.-China fora on high-tech trade on a regular basis, and discuss high-tech and strategic trade cooperation through the HTWG.

China will eliminate all of its government procurement indigenous innovation products catalogues in implementing the consensus achieved during President Hu's January 2011 visit to not link innovation policies to the provision of government procurement preferences. China will revise Article 9 of the Draft Regulations Implementing the Government Procurement Law to eliminate the requirement to link indigenous innovation products to the provision of government procurement preferences. The United States and China are cooperating intensively in the High- and Experts-Level Innovation Dialogue to ensure that their innovation policies are consistent with the 2010 S&ED principles of non-discrimination; support for market competition and open international trade and investment; strong enforcement of

intellectual property rights; and, consistent with World Trade Organization (WTO) rules, leaving the terms and conditions of technology transfer, production processes and other proprietary information to agreement between individual enterprises. Both sides are committed to continuing the High- and Expert-Level meetings and to implementing the outcomes of those meetings.

The United States and China will consult through the JCCT in a cooperative manner to work towards China's Market Economy Status in an expeditious and comprehensive way. The United States pledges to give full and serious consideration to all "market oriented industry" claims made by Chinese parties in U.S. antidumping proceedings.

China and the United States reaffirm their prior SED outcomes on transparency. The United States welcomes China's statement that it will issue a measure in 2011, to implement the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the SCLAO website for a public comment period of not less than 30 days from the date of publication, except as specified in China's Protocol of Accession to the WTO or in public emergency situations. China will steadily increase its solicitation of public opinions on regulatory documents with a direct influence on the rights and obligations of citizens, legal persons, or other organizations. China welcomes the United States' commitment to implement measures in 2011, to enhance regulatory transparency, including by taking steps to ensure the online publication of the text of proposed regulations, as well as supporting technical and scientific information, at www.Regulations.gov for a public comment period of 60 days, and the United States' decision to strengthen the Office of Management and Budget's participation in the on-going Transparency Dialogue.

The United States and China recognize the importance of transparency and fairness in providing export credits. Both parties agree to exchange views on the importance of the export credit system.

The United States and China share a common concern regarding the difficulties confronting the Doha Development Agenda. We are committed to cooperating constructively, together with other WTO members, to explore productive next steps, in a way that underscores the strengths and the value of the World Trade Organization.

The United States and China agree on the importance of fostering an open, transparent and predictable investment climate. The United States and China affirm that the enforcement policies of their national competition agencies are not to discriminate on the basis of nationality.

The United States and China reaffirm their commitment to the ongoing bilateral investment treaty (BIT) negotiations, recognizing that a successful BIT negotiation would support an open global economy by facilitating and protecting investment, and enhancing transparency and predictability for investors of both countries.

China will continue to follow the generally accepted principles and practices of Sovereign Wealth Funds (SWFs). The United States reaffirms its commitment to upholding the open and non-discriminatory principles towards foreign investors, including SWFs as described in the Declaration on Sovereign Wealth Funds and Recipient Country Policies announced by the OECD in June 2008.

The two sides reviewed several case studies and agreed to continue to conduct the Joint Experts Dialogue on rules of origin (ROO) and to further exchange information and views on related laws, regulations, and practices in both countries.

The Civil Aviation Authorities of the United States and China will strengthen communication and cooperation in the field of aircraft airworthiness certification, through currently established channels, in order to promote reciprocal acceptance of civil transport category airplanes.

Annex:

I. Participants in the Economic Track of the Third Strategic and Economic Dialogue

U.S. Participants:

1. Timothy F. Geithner, Secretary of the Treasury
2. Thomas Vilsack, Secretary of Agriculture
3. Gary F. Locke, Secretary of Commerce
4. Hilda L. Solis, Secretary of Labor
5. Steven Chu, Secretary of Energy
6. Jacob J. Lew, Director of the Office of Management and Budget
7. Ronald Kirk, U.S. Trade Representative
8. Austen Goolsbee, Chair, Council of Economic Advisors
9. John P. Holdren, Director, Office of Science & Technology Policy
10. Gene Sperling, Director of the National Economic Council
11. Ron Bloom, Assistant to the President for Manufacturing Policy
12. Ben Bernanke, Chairman of the Federal Reserve
13. Sheila C. Bair, Chairman of the Federal Deposit Insurance Corporation
14. Mary Schapiro, Chairman of the Securities and Exchange Commission
15. Gary Gensler, Chairman of Commodity and Futures Trading Commission
16. Fred P. Hochberg, President of the U.S. Export-Import Bank
17. Leocadia Zak, Director, U.S. Trade & Development Agency
18. Lael Brainard, Department of Treasury, Under Secretary for International Affairs
19. Demetrios Marantis, Deputy United States Trade Representative
20. Robert Hormats, Department of State, Under Secretary for Economic, Energy, and Agricultural Affairs
21. Francisco Sanchez, Department of Commerce, Under Secretary for International Trade
22. Eric Hirschhorn, Department of Commerce, Under Secretary, Bureau of Industry and Security
23. Sandra Polaski, Deputy Under Secretary, Department of Labor
24. Charles Collyns, Department of Treasury, Assistant Secretary for International Finance
25. David Sandalow, Department of Energy, Assistant Secretary for International Affairs
26. Mike Froman, Deputy National Security Advisor for International Economic Affairs
27. David Lipton, Special Assistant to the President and Senior Director for International Economic Affairs, NSC
28. Chris Ledoux, Federal Insurance Office, Acting Director
29. Susan Voss, Iowa State Insurance Commissioner

Chinese Participants:

1. Vice Premier Wang Qishan
2. Minister of Finance Xie Xuren
3. Minister of Science and Technology Wan Gang
4. Minister of Commerce Chen Deming
5. Governor of the People's Bank of China Zhou Xiaochuan
6. Chairman of the China Banking Regulatory Commission Liu Mingkang
7. Chairman of the China Securities Regulatory Commission Shang Fulin
8. Chairman of the China Insurance Regulatory Commission Wu Dingfu

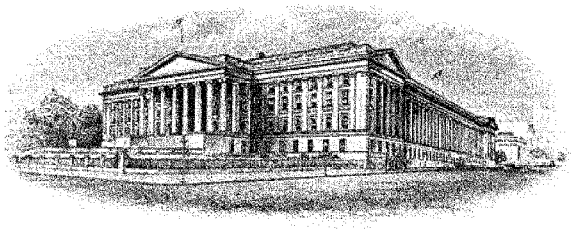
9. Chinese Ambassador to the United States Zhang Yesui
10. Vice Secretary General of State Council Bi Jingquan
11. Vice Minister of Foreign Affairs Cui Tiankai
12. Vice Chairman of the National Development and Reform Commission Zhang Xiaoqiang
13. Vice Chairman of the National Development and Reform Commission Liu Tienan
14. Vice Minister of Finance Zhu Guangyao
15. Vice Minister of Human Resources and Social Security Wang Xiaochu
16. Vice Minister of Railways Wang Zhiguo
17. Vice Minister of Agriculture Niu Dun
18. Vice Minister of Health Yin Li
19. Deputy Governor of the People's Bank of China Yi Gang
20. Vice Chairman of the State-owned Assets Supervision and Administration Commission Huang Shuhe
21. Chief Engineer of the Ministry of Industry and Information Technology Zhu Hongren
22. Director-General of the Department of Secretary and Administration of State Council Legislative Affairs Office Hu Keming

II. Institutional Arrangements

Both sides reaffirm that deepening bilateral economic cooperation and exchange between relevant agencies will advance our common objectives of increasing prosperity and improving livelihoods for people in each country, taking full advantage of opportunities for mutually beneficial trade and investment, and strengthening our financial systems.
In support of these objectives, both sides commit to further economic cooperation through additional dialogues and initiatives, including:

- Committing to hold the 2nd U.S.-China Initiative on City-Level Economic Cooperation in China at an appropriate time;
- Establishing a regular senior level program for technical communication mechanism and exchange between Federal Railway Administration and Ministry of Railways, to enhance the safety, and efficiency of railway transportation through the exchange of safety and technological standards, laws and regulations on railway including high-speed railway;
- Renewal of the MOU between the Ministry of Science and Technology of China and the Department of Health and Human Services of the United States on Health and Medicine Sciences Cooperation;
- Signing a letter amending the 2007 Memorandum of Cooperation on Intellectual Property Rights Enforcement between Customs and Border Protection and the General Administration of Customs of the People's Republic of China;
- Carrying out discussions through the fourth U.S.-China Investment Forum on topics including the two-way investment environment and experiences in attracting foreign investment, investment experiences of enterprises in both countries, development of foreign investment policies, policies and practices affecting foreign mergers and acquisitions, foreign investment in services and emerging industries, and creating a level-playing field for all investors aimed at furthering bilateral investment cooperation;
- Signing a Memorandum of Understanding between U.S. Department of Labor (USDOL) and Ministry of Human Resources and Social Security (MOHRRS) to continue an annual USDOL-MOHRSS Dialogue; in addition, USDOL and the State Administration of Work Safety of China (SAWS) signed a Memorandum of Understanding Regarding Cooperation on Work Safety and Health, and will continue to develop exchange and cooperation on mine and occupational safety and health issues;
- Strengthening bilateral communication and cooperation on agricultural sciences and technologies;

- China during 2011 will send two interagency delegations to the United States for workshops addressing AML/CFT and anti-counterfeiting priority issues;
- China intends to reinforce its PBOC representative office in America;
- China participates in the Super-efficient Equipment and Appliance Deployment (SEAD) initiative and the Global Superior Energy Performance (GSEP) initiative as an observer. Both initiatives are International Partnership for Energy Efficiency Cooperation (IPEEC) Task Groups and were mentioned in the Clean Energy Ministerial;
- In addition, the two countries will hold the Fourth U.S.-China Transportation Forum (TF) in the United States; participate in the Sino-America symposium on health care reforms and in the U.S.-China forum of communication and cooperation on traditional Chinese medicine.



U.S. TREASURY DEPARTMENT
OFFICE OF PUBLIC AFFAIRS

FOR IMMEDIATE RELEASE: May 10, 2011
CONTACT: Treasury Public Affairs (202) 622- 2960

THIRD MEETING OF THE U.S.-CHINA STRATEGIC & ECONOMIC DIALOGUE
JOINT U.S.-CHINA ECONOMIC TRACK FACT SHEET

As special representatives of President Barack Obama and President Hu Jintao, U.S. Treasury Secretary Timothy Geithner and Chinese Vice Premier Wang Qishan concluded the meeting of the Economic Track in the third U.S.-China Strategic & Economic Dialogue in Washington today. They were joined by a high-level delegation of Cabinet members, agency heads, and senior officials from both countries.

The two countries reaffirmed the important commitments pledged by both countries during the state visit of President Hu to the United States in January 2011, as well as in previous Strategic and Economic Dialogues. The two countries released a "Comprehensive Framework for Promoting Strong, Sustainable and Balanced Growth & Economic Cooperation," as they committed to do in January, to elaborate principles for their work towards building a comprehensive and mutually beneficial economic partnership. In keeping with the principles set out in the Framework, the two countries announced further concrete measures, to be implemented through existing mechanisms, to promote strong, sustainable, and balanced growth; strengthen financial systems; and enhance trade and investment cooperation.

I. Promoting Strong, Sustainable and Balanced Growth

Since the second meeting of the Strategic and Economic Dialogue in May 2010, the economic recoveries in the United States and China have strengthened due to continued forceful stimulus measures undertaken by both countries, contributing to an improving outlook for the global economy. The two countries have also made progress on their commitments to promote more sustainable and balanced growth. To secure these gains and address potential challenges to the global outlook, we pledge to enhance macroeconomic cooperation to ensure that the global recovery is durable and promotes steady job growth, and to firmly establish strong, sustainable, and balanced growth.

In order to promote a more balanced trade relationship, China will continue to take steps to expand domestic consumption and imports in accordance with the 12th Five-Year Plan; and the United States will increase domestic savings and exports, including through the National Export Initiative. China takes promotion of employment as the priority objective for economic development, and strives to achieve full employment. China strives to raise the proportion of residents' income in gross national income, increase the proportion of wages in the primary income distribution, and realize the increase of people's income in line with economic development and the increase of workers' pay in line with gains in labor productivity. China's minimum wage has steadily increased in recent years and will continue to do so in the future. China will raise the ratio of services value-added to Gross Domestic Product (GDP) by four percentage points over the next five years, with measures to develop the services sector including expanding areas open to foreign involvement, encouraging and guiding a variety of categories of capital into the services sector, and actively developing services enterprises with diversified forms of ownership.

The U.S. economy is rebalancing toward sustainable growth, emphasizing higher domestic savings, a commitment to improving long-term fiscal sustainability and productivity-enhancing investments. The personal savings rate was 5.8 percent in 2010, which is the highest rate since 1993 and well above the 2.7 percent average between 2000 and 2007. Thus, much of the transition on the private side to higher saving has already taken place. To increase public saving, the President's Budget freezes discretionary spending for five years, freezes government salaries for two years, and brings the deficit to three percent of GDP by the second half of this decade – a path consistent with the Administration's commitments to cut the deficit in half by 2013, and to stabilize or reduce the national debt as a share of the economy. To lay the foundation for future growth, including through greater U.S. exports, the United States will increase and improve investment in innovation, infrastructure, and education.

In accordance with economic recovery in the United States, the Federal Reserve will continue to adjust its monetary policy as appropriate to promote sustainable economic growth and price stability. The People's Bank of China will continue to adopt a mix of monetary policy tools to implement prudent monetary policy, in order to promote growth sustainability and price stability. The United States will maintain vigilance against excess volatility in exchange rates, and China will continue to promote RMB exchange rate flexibility.

The two countries reiterate their support for the G-20 Framework for Strong, Sustainable, and Balanced Growth, and reaffirm their commitments to improve the living standards of our citizens through strong economic and jobs growth, and use the full range of policies required to strengthen the global recovery and to reduce excessive external imbalances and maintain current account imbalances at sustainable levels. The two sides support a bigger role for the G-20 in international economic and financial affairs, and pledge to strengthen communication and coordination to follow through on the commitments of the G-20 summits and push for positive outcomes at the Cannes summit in November.

The two countries pledge to work together to strengthen the global financial system and reform the international financial architecture. The two countries will continue their strong cooperation

to strengthen the legitimacy and improve the effectiveness of the International Monetary Fund (IMF) and the Multilateral Development Banks (MDBs). The two countries will continue to jointly promote efforts of the international community to assist developing countries, in particular the Least Developed Countries, to achieve the Millennium Development Goals (MDGs). The two sides will also, in partnership with the MDBs, explore cooperation that supports global poverty reduction and development, and regional integration including in Africa, to contribute to inclusive and sustainable economic growth.

The United States and China express their continued support for the government and people of Japan as they begin to rebuild from the tragic earthquake and tsunami, and affirmed their confidence in the health of Japan's economy. The two countries pledge to cooperate on efforts to ensure the smooth functioning of global energy markets and to avoid excess volatility in global commodity prices. The two countries reaffirmed support for efforts by European leaders to reinforce market stability and promote sustainable long-term growth.

The two countries recognize the value of initiatives that foster dialogue and cooperation on sustainable growth issues, and pledge to: continue to strengthen city-to-city and firm-to-firm communication, and explore new opportunities to promote enhanced local-level economic cooperation between the two countries, including through the U.S.-China Initiative on City-Level Economic Cooperation; work together under the Energy Working Group of Asia Pacific Economic Cooperation (APEC) to promote the Energy Smart Communities Initiative (ESCI); strengthen information exchange on energy saving and environmental protection technology, and promote cooperation in areas such as industrial energy efficiency; and explore opportunities to deepen cooperation on infrastructure development, including through technical exchange and the sharing of best practices and information.

II. Strengthening Financial Systems and Improving Financial Supervision

The two countries reaffirmed their commitment to deepen bilateral and multilateral cooperation on financial sector investment and regulation, in order to enhance global regulation, establish stronger international coordination to prevent future crises, and ensure a level playing field. Recognizing the positive contributions that financial institutions from each country can play, the two sides pledged to support open environments for investment in financial services and cross-border portfolio investment, consistent with prudential and national security requirements.

The United States and China commit to further promote and strengthen financial sector reform. Following the passage of the Dodd-Frank Act, the United States is implementing comprehensive financial reform that better serves households, workers, entrepreneurs, and businesses by reducing systemic risk, raising prudential standards, establishing a comprehensive regulatory framework for derivatives, ending the problem of "too big to fail" financial institutions, creating a Federal Insurance Office, and ensuring robust consumer financial protection.

China will continue to deepen the reform of its financial system, which has supported the process of transforming its economic development model, developing a financial system that is comprised of diverse institutions, provides efficient service, controls risks, and encourages financial innovation. China will increase the use of direct financing channels, including stocks,

bonds and private equity, to better satisfy the diverse demands in its economy for investment capital and financing. In accordance with the medium- and long-term development perspectives, China will push forward the market-based reform of interest rates.

The two countries will, in accordance with progress by international standard setting bodies on enhancing financial sector reform, continue to strengthen their own regulatory systems, further improve oversight of systemically important financial institutions, strengthen supervision of shadow banking activities, continue to enhance compensation policy reform, and strengthen oversight of credit rating agencies. Both countries commit to continue to strengthen information sharing on financial regulatory reform and take effective measures to ensure that financial regulatory reforms are in line with the principles of national treatment and non-discrimination for financial institutions in like circumstances. The United States and China reaffirm their commitment to fulfill the G-20 pledge in Seoul to "work in an internationally consistent and non-discriminatory manner to strengthen regulation and supervision of hedge funds, OTC derivatives and credit rating agencies."

The United States welcomes foreign investment in all sectors, including the financial sector, and remains committed to apply the same prudential and regulatory standards to applications made by Chinese banks, securities, and fund management companies as it applies to other foreign financial institutions in like circumstances.

The U.S. Administration has laid out a plan to reform America's housing finance market. The Administration is committed to have strong oversight of Government Sponsored Enterprises (GSEs) and to ensuring the ability of the GSEs to honor their obligations, and to not pursuing any reforms or supporting any legislative actions which would act to the contrary. The Administration will request input from all stakeholders during the reform process.

China will amend relevant regulations to allow qualified locally-incorporated foreign banks that meet relevant prudential requirements to enjoy the same rights as domestic banks to distribute mutual funds and to obtain custody licenses for mutual funds. China will allow qualified locally-incorporated foreign banks that meet relevant prudential requirements to enjoy the same rights as domestic banks to act as Margin Depository Banks in Qualified Foreign Institutional Investors (QFII) futures transactions. China will actively study and push forward the opening of mandatory third party liability auto insurance to foreign-invested insurance companies.

The United States supports China's efforts to expand the use of the RMB in cross-border trade and investment, and to press ahead with making the RMB convertible under capital accounts. China will also research ways to develop more and wider channels for offshore RMB to come onshore.

The United States and China pledged additional measures to enhance financial regulatory cooperation, including: continuing to share supervisory information under the Memorandum of Understanding between the U.S. banking agencies and the China Banking Regulatory Commission through ad hoc written requests and supervisory meetings; strengthening communication and exchanging views on international insurance regulatory reform; and pursuing close cooperation and collaboration in the regulation of financial markets, including through self-regulatory organizations. The United States and China welcome continued dialogue between the bilateral competent authorities on the oversight of accounting firms providing audit

services for public companies in the two countries, so as to enhance mutual trust and strive to reach agreement on cross-border oversight cooperation. Both countries agree to make joint efforts to accelerate the process.

The United States and China committed to further strengthen their respective financial systems against money laundering, counterfeiting, terrorism financing, and WMD proliferation financing activities. China will continue to develop and strengthen its regulatory framework for freezing terrorist assets. The two countries will continue to enhance both policy and operational cooperation on combating illicit finance. The two countries will also continue to work collaboratively in the freezing, seizing, and forfeiture of criminal proceeds. Both countries seek to rely on bilateral mutual legal assistance to implement forfeiture orders, and seek to avoid unilateral enforcement action of forfeiture orders to the extent possible.

III. Enhancing Trade and Investment Cooperation

The two countries, recognizing the importance of open trade and investment in fostering economic growth, job creation, innovation, and prosperity, re-affirmed their commitment to take further steps to liberalize global trade and investment, and to oppose all forms of trade and investment protectionism. The two sides reaffirmed their commitment to work proactively to resolve bilateral trade and investment disputes in a constructive, cooperative, and mutually beneficial manner.

China will take stock of the results of the Special Campaign against IPR Infringement and Fake and Shoddy Products (Special Campaign), and improve on the high-level, long-term mechanism of IPR protection and enforcement, building on the Special Campaign currently in place. China will strengthen the government inspection mechanism so as to make sure that the software being used by the government agencies at all levels is legitimate. China and the United States will strengthen cooperation in the JCCT IPR Working Group on software legalization.

The United States commits to give full consideration to China's request that it be treated fairly as the United States reforms its export control system. The United States will continue discussions, including technical discussions, on the export control status of designated parts, components, and other items of interest. Both sides agree to work through the U.S.-China High Technology Working Group (HTWG) to actively implement the Action Plan for U.S.-China High Technology Trade in Key Sectors Cooperation, hold U.S.-China fora on high-tech trade on a regular basis, and discuss high-tech and strategic trade cooperation through the HTWG.

China will eliminate all of its government procurement indigenous innovation products catalogues in implementing the consensus achieved during President Hu's January 2011 visit to not link innovation policies to the provision of government procurement preferences. China will revise Article 9 of the Draft Regulations Implementing the Government Procurement Law to eliminate the requirement to link indigenous innovation products to the provision of government procurement preferences. The United States and China are cooperating intensively in the High- and Experts-Level Innovation Dialogue to ensure that their innovation policies are consistent with the 2010 S&ED principles of non-discrimination; support for market competition and open international trade and investment; strong enforcement of intellectual property rights; and, consistent with World Trade Organization (WTO) rules, leaving the terms and conditions of

technology transfer, production processes and other proprietary information to agreement between individual enterprises. Both sides are committed to continuing the High- and Expert-Level meetings and to implementing the outcomes of those meetings.

The United States and China will consult through the JCCT in a cooperative manner to work towards China's Market Economy Status in an expeditious and comprehensive way. The United States pledges to give full and serious consideration to all "market oriented industry" claims made by Chinese parties in U.S. antidumping proceedings.

China and the United States reaffirm their prior SED outcomes on transparency. The United States welcomes China's statement that it will issue a measure in 2011, to implement the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the SCLAO website for a public comment period of not less than 30 days from the date of publication, except as specified in China's Protocol of Accession to the WTO or in public emergency situations. China will steadily increase its solicitation of public opinions on regulatory documents with a direct influence on the rights and obligations of citizens, legal persons, or other organizations. China welcomes the United States' commitment to implement measures in 2011, to enhance regulatory transparency, including by taking steps to ensure the online publication of the text of proposed regulations, as well as supporting technical and scientific information, at www.Regulations.gov for a public comment period of 60 days, and the United States' decision to strengthen the Office of Management and Budget's participation in the on-going Transparency Dialogue.

The United States and China recognize the importance of transparency and fairness in providing export credits. Both parties agree to exchange views on the importance of the export credit system.

The United States and China share a common concern regarding the difficulties confronting the Doha Development Agenda. We are committed to cooperating constructively, together with other WTO members, to explore productive next steps, in a way that underscores the strengths and the value of the World Trade Organization.

The United States and China agree on the importance of fostering an open, transparent and predictable investment climate. The United States and China affirm that the enforcement policies of their national competition agencies are not to discriminate on the basis of nationality.

The United States and China reaffirm their commitment to the ongoing bilateral investment treaty (BIT) negotiations, recognizing that a successful BIT negotiation would support an open global economy by facilitating and protecting investment, and enhancing transparency and predictability for investors of both countries.

China will continue to follow the generally accepted principles and practices of Sovereign Wealth Funds (SWFs). The United States reaffirms its commitment to upholding the open and non-discriminatory principles towards foreign investors, including SWFs as described in the Declaration on Sovereign Wealth Funds and Recipient Country Policies announced by the OECD in June 2008.

The two sides reviewed several case studies and agreed to continue to conduct the Joint Experts Dialogue on rules of origin (ROO) and to further exchange information and views on related laws, regulations, and practices in both countries.

The Civil Aviation Authorities of the United States and China will strengthen communication and cooperation in the field of aircraft airworthiness certification, through currently established channels, in order to promote reciprocal acceptance of civil transport category airplanes.

Annex:

I. Participants in the Economic Track of the Third Strategic and Economic Dialogue

U.S. Participants:

1. Timothy F. Geithner, Secretary of the Treasury
2. Thomas Vilsack, Secretary of Agriculture
3. Gary F. Locke, Secretary of Commerce
4. Hilda L. Solis, Secretary of Labor
5. Steven Chu, Secretary of Energy
6. Jacob J. Lew, Director of the Office of Management and Budget
7. Ronald Kirk, U.S. Trade Representative
8. Austen Goolsbee, Chair, Council of Economic Advisors
9. John P. Holdren, Director, Office of Science & Technology Policy
10. Gene Sperling, Director of the National Economic Council
11. Ron Bloom, Assistant to the President for Manufacturing Policy
12. Ben Bernanke, Chairman of the Federal Reserve
13. Sheila C. Bair, Chairman of the Federal Deposit Insurance Corporation
14. Mary Schapiro, Chairman of the Securities and Exchange Commission
15. Gary Gensler, Chairman of Commodity and Futures Trading Commission
16. Fred P. Hochberg, President of the U.S. Export-Import Bank
17. Leocadia Zak, Director, U.S. Trade & Development Agency
18. Lael Brainard, Department of Treasury, Under Secretary for International Affairs
19. Demetrios Marantis, Deputy United States Trade Representative
20. Robert Hormats, Department of State, Under Secretary for Economic, Energy, and Agricultural Affairs
21. Francisco Sanchez, Department of Commerce, Under Secretary for International Trade
22. Eric Hirschhorn, Department of Commerce, Under Secretary, Bureau of Industry and Security
23. Sandra Polaski, Deputy Under Secretary, Department of Labor
24. Charles Collyns, Department of Treasury, Assistant Secretary for International Finance
25. David Sandalow, Department of Energy, Assistant Secretary for International Affairs
26. Mike Froman, Deputy National Security Advisor for International Economic Affairs
27. David Lipton, Special Assistant to the President and Senior Director for International Economic Affairs, NSC
28. Chris Ledoux, Federal Insurance Office, Acting Director
29. Susan Voss, Iowa State Insurance Commissioner

Chinese Participants:

1. Vice Premier Wang Qishan
2. Minister of Finance Xie Xuren
3. Minister of Science and Technology Wan Gang
4. Minister of Commerce Chen Deming
5. Governor of the People's Bank of China Zhou Xiaochuan
6. Chairman of the China Banking Regulatory Commission Liu Mingkang
7. Chairman of the China Securities Regulatory Commission Shang Fulin
8. Chairman of the China Insurance Regulatory Commission Wu Dingfu
9. Chinese Ambassador to the United States Zhang Yesui
10. Vice Secretary General of State Council Bi Jingquan
11. Vice Minister of Foreign Affairs Cui Tiankai
12. Vice Chairman of the National Development and Reform Commission Zhang Xiaoqiang
13. Vice Chairman of the National Development and Reform Commission Liu Tienan
14. Vice Minister of Finance Zhu Guangyao
15. Vice Minister of Human Resources and Social Security Wang Xiaochu
16. Vice Minister of Railways Wang Zhiguo
17. Vice Minister of Agriculture Niu Dun
18. Vice Minister of Health Yin Li
19. Deputy Governor of the People's Bank of China Yi Gang
20. Vice Chairman of the State-owned Assets Supervision and Administration Commission Huang Shuhe
21. Chief Engineer of the Ministry of Industry and Information Technology Zhu Hongren
22. Director-General of the Department of Secretary and Administration of State Council Legislative Affairs Office Hu Keming

II. Institutional Arrangements

Both sides reaffirm that deepening bilateral economic cooperation and exchange between relevant agencies will advance our common objectives of increasing prosperity and improving livelihoods for people in each country, taking full advantage of opportunities for mutually beneficial trade and investment, and strengthening our financial systems.

In support of these objectives, both sides commit to further economic cooperation through additional dialogues and initiatives, including:

- Committing to hold the 2nd U.S.-China Initiative on City-Level Economic Cooperation in China at an appropriate time;
- Establishing a regular senior level program for technical communication mechanism and exchange between Federal Railway Administration and Ministry of Railways, to enhance the safety, and efficiency of railway transportation through the exchange of safety and technological standards, laws and regulations on railway including high-speed railway;
- Renewal of the MOU between the Ministry of Science and Technology of China and the Department of Health and Human Services of the United States on Health and Medicine Sciences Cooperation;

- Signing a letter amending the 2007 Memorandum of Cooperation on Intellectual Property Rights Enforcement between Customs and Border Protection and the General Administration of Customs of the People's Republic of China;
- Carrying out discussions through the fourth U.S.-China Investment Forum on topics including the two-way investment environment and experiences in attracting foreign investment, investment experiences of enterprises in both countries, development of foreign investment policies, policies and practices affecting foreign mergers and acquisitions, foreign investment in services and emerging industries, and creating a level-playing field for all investors aimed at furthering bilateral investment cooperation;
- Signing a Memorandum of Understanding between U.S. Department of Labor (USDOL) and Ministry of Human Resources and Social Security (MOHRRS) to continue an annual USDOL-MOHRSS Dialogue; in addition, USDOL and the State Administration of Work Safety of China (SAWS) signed a Memorandum of Understanding Regarding Cooperation on Work Safety and Health, and will continue to develop exchange and cooperation on mine and occupational safety and health issues;
- Strengthening bilateral communication and cooperation on agricultural sciences and technologies;
- China during 2011 will send two interagency delegations to the United States for workshops addressing AML/CFT and anti-counterfeiting priority issues;
- China intends to reinforce its PBOC representative office in America;
- China participates in the Super-efficient Equipment and Appliance Deployment (SEAD) initiative and the Global Superior Energy Performance (GSEP) initiative as an observer. Both initiatives are International Partnership for Energy Efficiency Cooperation (IPEEC) Task Groups and were mentioned in the Clean Energy Ministerial;
- In addition, the two countries will hold the Fourth U.S.-China Transportation Forum (TF) in the United States; participate in the Sino-America symposium on health care reforms and in the U.S.-China forum of communication and cooperation on traditional Chinese medicine.

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QUESTIONS SUBMITTED FOR THE RECORD TO ALL WITNESSES BY THE HONORABLE ILEANA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRMAN, COMMITTEE ON FOREIGN AFFAIRS

Questions for the Record of the Honorable Ileana Ros-Lehtinen, Chairman
Committee on Foreign Affairs, U.S. House of Representatives
"Export Controls, Arms Sales, and Reform:
Balancing U.S. Interests (Part I)"
May 12, 2011

For all Witnesses:

Please provide the Committee with a written and, if necessary, classified assessment of the extent to which your agencies, at present, are being adequately supported by the intelligence community in your export control mission. To what extent, if any, do you anticipate current support levels from IC being changed in the near future? In providing this answer, please be specific in terms of which component or components of the IC are providing support to the export control agencies in the exercise of their policymaking, licensing, or enforcement functions.

Please estimate the expected impact on the workload of licensing officers at the U.S. Department of Defense Trade Controls, the Bureau of Industry and Security and the Defense Trade Security Administration (in man-hours annually) as a result of implementing the proposed changes in control list criteria and licensing policy.

a) For each agency, is the total workload expected to remain the same, or to increase or decrease, and if so, by how much?
b) For each agency, what percentage of the licensing officers' workload (in man-hours annually) is expected to be re-allocated from current levels as a result of implementing the proposed changes?

Former National Security Advisor Jones announced in his June 30, 2010 speech on export controls that the administration has decided to create a single independent agency for export control licensing with cabinet members (from the existing export control agencies) serving as its board of directors. Why would a single agency with board members representing a variety of agencies eliminate or materially diminish current interagency disagreements over the application of U.S. export controls?

Wouldn't a separate singe export control agency dilute the foreign policy authority of the Secretary of State as provided by the Arms Export Control Act and Executive Order 11958?

Would this new agency be housed in the Executive Office of the President? If so, how would it be made accountable to Congress and subject to legislative oversight?

Would the agency be independent or would the process actually be controlled by one of the existing department?

How would the administration ensure that the independent agency have sufficient political leadership and accountability?

How will decision making be handled among cabinet officials?

Will you provide the Committee, which has primary jurisdiction over these matters in the House of Representatives, with assurances that the administration will not attempt to insert authorization for the single export control agency and single control list into legislation not principally within the jurisdiction of this Committee?

Questions for Under Secretary Hirschhorn

The administration has asserted that reformulating the U.S. Munitions List to more closely resemble the Commerce Control List will end jurisdictional disputes and ambiguities by making it a "positive list" (characterized by technical parameters). Isn't this assertion undermined by the Commerce Department's own statistics which reflect that for 2010 alone it received 7,360 commodity classification requests from companies asking where on the "positive" Commerce List their products were controlled?

The administration also proposes that the reformed control lists must be easily updated as technology emerges. How will this be accomplished? Will these reviews be conducted among the interagency? How will you continuously assess foreign availability and its impact on licensing? How will you ensure that the new process is more effective than the current process?

A small and medium sized exporter might look at these reforms and ask whether they will really simplify the system. How will the basic processes of licensing be simplified and made more transparent by the administration's proposed reforms?

Will the end-result of this export control reform effort materially lessen the extent of controls the U.S. applies to sensitive exports? Many assume that consolidating the USML and CCL into a single, tiered control list would lead to liberalization of controls. Will this be the case? Why or why not?

A significant difference between current State Department and Commerce regulations involves the treatment of export authorizations to employees of company whose nationality is different from the country of incorporation (e.g., an Iranian-born national working for a French company or a Chinese holding dual nationality). The State Department considers country of birth, whereas Commerce considers only the most recent nationality of an employee. Which rule will govern U.S. export control policy under the administration's reform plan?

As you know, businessmen, scientists, engineers, and academics, as well as state security services from a large number of countries, continue to target U.S. technology. Yet the General Accountability Office reported in February that the Commerce Department has virtually stopped

screening visa applications submitted from overseas posts in order to detect linkages between foreign entities of concern and visa applicants. Isn't this practice leaving the United States more vulnerable to the exploitation of sensitive technologies by hostile actors abroad?

In your written testimony, you state that "where a violation is the deliberate action of an *individual*, we consider seeking penalties against that individual—including heavy fines, imprisonment, and the denial of export privileges—*as well as* against the company." Can you give us some examples where penalties against both the individual and the company have been imposed, according to this new policy?

Do you intend to expand or otherwise adjust current Commerce "catch-all" controls on certain exports likely intended for China's military? If not, does that mean that former munitions list items may now be exported without restriction to the PRC?

There is no mention in your written testimony of the Validated End User (VEU) program, which was created primarily to allow license-free bulk exports to select Chinese companies that have instituted approved inventory and compliance plans. The Chinese have been less than enthusiastic about this program, and it has gone largely unused by most of the companies involved. How successful has this program been? Will it be expanded? Has it brought about more cooperation and compliance by China's government and Chinese companies with our export controls? Has it significantly reduced BIS's licensing burden?

To date, why hasn't the Department focused more export enforcement resources on the People's Republic of China? Are current resources deployed to China sufficient to fully advance U.S. interests in end-use visits, export compliance, and export control cooperation?

The EU and its Member States are moving toward a new policy of license-free transfer within the EU of most dual-use items. Have you evaluated the effect of this impending policy on US re-export controls, particularly if the STA regulation is implemented?

[NOTE: Responses to these questions were not received by all witnesses prior to printing. Responses received follow this page.]

WRITTEN RESPONSES RECEIVED FROM THE HONORABLE ERIC L. HIRSCHHORN, UNDER SECRETARY, BUREAU OF INDUSTRY AND SECURITY, U.S. DEPARTMENT OF COMMERCE, TO QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE ILEANA ROS-LEHTINEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND CHAIRMAN, COMMITTEE ON FOREIGN AFFAIRS, AND THE HONORABLE JEFF DUNCAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Questions for the Record of the Honorable Ileana Ros-Lehtinen, Chairman
Committee on Foreign Affairs, U.S. House of Representatives
"Export Controls, Arms Sales, and Reform:
Balancing U.S. Interests (Part I)"
May 12, 2011

For all Witnesses:

1. Please provide the Committee with a written and, if necessary, classified assessment of the extent to which your agencies, at present, are being adequately supported by the intelligence community in your export control mission. To what extent, if any, do you anticipate current support levels from IC being changed in the near future? In providing this answer, please be specific in terms of which component or components of the IC are providing support to the export control agencies in the exercise of their policymaking, licensing, or enforcement functions.

A: For dual-use license reviews, the Department of Commerce receives intelligence support from the Defense Technology Security Administration (DTSA), which may refer certain applications to the Defense Intelligence Agency (DIA) for input, evaluation, and circulation for interagency review. Commerce also relies on the intelligence support other reviewing agencies receive in formulating their recommendations on license applications (e.g., the Department of Energy shares intelligence-related information for the cases it reviews). The National Security Agency (NSA) continues to be directly involved in the review of encryption exports, because of its technical expertise and the associated national security factors. For cases that are escalated for interagency resolution, the Central Intelligence Agency's Weapons Intelligence Nonproliferation and Arms Control Center provides agencies with an export licensing report and may participate in interagency meetings. The Department of Commerce is establishing a *Strategic Intelligence Liaison Center* to identify relevant classified information from the Intelligence Community in support of the licensing process. In addition, the Administration is preparing a plan to have the Intelligence Community provide more direct support to the dual-use review process.

2. Please estimate the expected impact on the workload of licensing officers at the U.S. Department of Defense Trade Controls, the Bureau of Industry and Security and the Defense Trade Security Administration (in man-hours annually) as a result of implementing the proposed changes in control list criteria and licensing policy.

   a) For each agency, is the total workload expected to remain the same, or to increase or decrease, and if so, by how much?
   b) For each agency, what percentage of the licensing officers' workload (in man-hours annually) is expected to be re-allocated from current levels as a result of implementing the proposed changes?

A: Although the details are still being finalized, the current estimate is that approximately 3,000

license applications to the Department of Commerce will be eliminated and approximately 30,000 of the license applications the State Department currently processes annually will become the responsibility of Commerce and its more flexible, tailored regulations. This means that the licensing load for Commerce, and related training and compliance-related obligations, will likely more than double, although the net burden the U.S. Government export control system in general imposes on exporters will decrease.

3. Former National Security Advisor Jones announced in his June 30, 2010 speech on export controls that the administration has decided to create a single independent agency for export control licensing with cabinet members (from the existing export control agencies) serving as its board of directors. Why would a single agency with board members representing a variety of agencies eliminate or materially diminish current interagency disagreements over the application of U.S. export controls?

A: The single licensing agency will benefit both U.S. Government (USG) operations and the public. It will consolidate similar functions performed by multiple agencies under one roof and will streamline decisions on the application of export controls because the agency will work from a single set of rules and policies agreed to by agencies whose directors will be represented on the single licensing agency's governing board. Currently, multiple agencies are involved with reviewing export control actions. Each of these agencies follows different standard operating procedures (SOPs) and draws on separate pockets of information for reviewing licenses. This can consume time with processes that add little or no value to the merits of a case. Going forward, we are working to pull together the disparate pockets of information earlier in the license review process, which will ultimately be a new upfront screening process within the single licensing agency. While the single licensing agency will incorporate the views of the national security, foreign policy, and economic security agencies, it will operate under one set of SOPs that will focus discussion on the merits of a case, not process issues or applications of policies inconsistent with regulatory administration. It also will leverage the technical and policy expertise of multiple existing agencies to create efficiencies in terms of staffing numbers, time, and resources.

From an exporter's perspective, it will provide "one-stop-shopping" in terms of regulations, license applications and related forms (e.g., classifications), Internet portal and outreach. This will help eliminate confusion that can impact industry compliance and streamline costs associated with complying with U.S. export control regulations.

4. Wouldn't a separate single export control agency dilute the foreign policy authority of the Secretary of State as provided by the Arms Export Control Act and Executive Order 11958?

A: The Department of State would continue to lead development of USG foreign policy with regard to exports of items subject to the new agency's licensing jurisdiction. The Department of State would continue to lead delegations to the multilateral export control regimes and bilateral discussions on all issues concerning the export of items subject to the new agency's licensing jurisdiction. The Department of State would continue to review licenses for foreign policy and national security concerns. This would include conducting reviews for human rights and counterterrorism purposes. The Secretary of State would be a member of the

proposed Board of Directors of the new agency, and as such would exercise full voting rights on all matters pertaining to operation of the new agency. For licensing matters about which there is disagreement, the Secretary of State would continue to have the ability to escalate the issue to the President.

5. Would this new agency be housed in the Executive Office of the President? If so, how would it be made accountable to Congress and subject to legislative oversight?

A: No. The single licensing agency will be an independent agency subject to the oversight of Congress.

6. Would the agency be independent or would the process actually be controlled by one of the existing department?

A: Currently, plans reflect an independent agency administered by a board comprised of the Secretaries of State, Defense, Commerce, Energy, the Treasury, Homeland Security and the Director of the Agency. Other Members of the Board shall be the Attorney General, the National Security Advisor, the National Economic Advisor, the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff, but these members would not vote on issues before the Board. In this way, decisions would be made consistent with broad national security, foreign policy, and economic policies of the United States, but independent of those individual departments so that the merits of a case are decided by the overall best interests of the United States.

7. How would the administration ensure that the independent agency have sufficient political leadership and accountability?

A: Through legislation the independent agency would have the appropriate leadership and Congressional oversight as existing departments and agencies. It would be governed by a Board of Directors at the Secretarial level to ensure that the agency fully meets U.S. national security, foreign policy, and economic objectives. Issues would be resolved via the normal interagency process, including the Office of Management and Budget Circular A-19 process, the convening of the appropriate National Security Staff committee meetings, or other mechanisms established by the board.

8. How will decision making be handled among cabinet officials?

A: The Director of the Agency will make decisions within the guidelines established and approved by the consensus of cabinet agencies. Agencies comprising the voting members of the board will have the ability to escalate a decision of the Director prior to implementation of that action (e.g., via the normal Office of Management and Budget process, the convening of the appropriate National Security Staff committee meetings, or other mechanisms established by the Board).

9. Will you provide the Committee, which has primary jurisdiction over these matters in the House of Representatives, with assurances that the administration will not attempt to insert authorization for the single export control agency and single control list into legislation not principally within the jurisdiction of this Committee?

A: The Administration will work with the House Committee on Foreign Affairs to garner support for the introduction of a bill that will implement the President's four export control reform priorities.

Questions for Under Secretary Hirschhorn

10. The administration has asserted that reformulating the U.S. Munitions List to more closely resemble the Commerce Control List will end jurisdictional disputes and ambiguities by making it a "positive list" (characterized by technical parameters). Isn't this assertion undermined by the Commerce Department's own statistics which reflect that for 2010 alone it received 7,360 commodity classification requests from companies asking where on the "positive" Commerce List their products were controlled?

A: No. The majority of requests for formal commodity classification determinations are submitted for reasons unrelated to any ambiguity in the Commerce Control List (CCL).). For example, several of the companies that submitted the largest number of requests in 2010 did so to implement the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). The Department of the Treasury's Office of Foreign Assets Control (OFAC) has determined that a formal classification decision is required before it can issue a license pursuant to TSRA authorizing the export of unlisted ("EAR99") medicines and medical devices to Iran. Additional common reasons why companies submit requests for official classification determinations even when there is no ambiguity regarding the classification status of the items at issue include:

1. The need to get an official determination as part of a due diligence review of a company to be acquired;
2. The need to change records when a company changes its name;
3. An internal corporate compliance program requirement to get an official determination when an amendment to a regulation has changes the control status of an item; and
4. For Customs record keeping purposes.

Notwithstanding the foregoing, there is a significant area of export activity under the Export Administration Regulations (EAR) that motivates a large number of the requests for formal classification determinations – exports of encryption items. Although the encryption regulations allow for exporter self-classifications in many instances, a number of exporters continue to seek formal commodity classifications for various reasons, including definitive classifications, recordkeeping purposes, and so they can provide such documentation to foreign import/export control authorities who may regulate encryption differently than the United States. The Administration is attempting to resolve such issues, but, in any event, the unique situation of the encryption regulations does not detract from a cornerstone of the

Export Control Reform Initiative, which is to create two parallel-constructed control lists in the short-term (i.e., the CCL and U.S. Munitions List (USML)) that do not conflict with one another, while developing one control list in the long-term. Currently, an exporter might conclude that a given item is subject to both the CCL and USML because the item can meet the technical parameters of the CCL while being "specifically designed, developed, configured, adapted, or modified for a military application," particularly in light of the fact that "specifically designed" is not defined in the International Traffic in Arms Regulations (ITAR). Moreover, the proliferation of commodity jurisdiction cases over the past five years is a testament to the lack of clarity facing exporters and underlies the importance of creating a "positive" USML. While exporters will continue to be eligible to request classifications after the USML and CCL are aligned "positive" lists, exporters will enjoy substantial benefits of being able to use technical specifications to self-classify their products and the U.S. Government will benefit from deconflicted lists that will assist with licensing, compliance and enforcement activities.

11. The administration also proposes that the reformed control lists must be easily updated as technology emerges. How will this be accomplished? Will these reviews be conducted among the interagency? How will you continuously assess foreign availability and its impact on licensing? How will you ensure that the new process is more effective than the current process?

A: The three-tiered control structure provides a means for the U.S. Government to maintain up-to-date lists. As an item matures over its life cycle and becomes more foreign available, the three-tier control structure will provide the U.S. Government with the flexibility to control it in a more appropriate manner. Any changes to the Commerce Control List (CCL) will require clearance by the Departments of Commerce, Defense, and State (and Energy where appropriate). Agencies are using input from Technical Advisory Committees (TACs), the general public through an Advanced Notice of Proposed Rulemaking which solicited, inter alia, foreign availability information, and information available to agencies (e.g., via license application forms, institutional knowledge, intelligence reports, and international regime discussions) to tier the CCL. Once the CCL is tiered, the U.S. Government will establish a structure, using public solicitations for data, TAC input, and interagency data for conducting *systematic* interagency reviews to ensure the lists remain up-to-date. In the past, Commerce relied on ad hoc reviews of the CCL. In addition, Commerce will establish a new export control classification number that will allow us to immediately impose controls on emerging technologies, similar to Category XXI on the USML, to ensure the CCL is up to date.

12. A small and medium sized exporter might look at these reforms and ask whether they will really simplify the system. How will the basic processes of licensing be simplified and made more transparent by the administration's proposed reforms?

A: Export control reform will simplify the licensing process in three primary ways for exporters: (1) it will deconflict the CCL and USML by making both lists "positive," thereby clearly articulating what items are subject to control and allowing exporters to self-classify their products based on technical specifications with confidence; (2) a single licensing form

through a single Internet-based portal will replace the multitude of license applications under the EAR, ITAR, and sanctions regulations along with uniform definitions of commonly used terms in all three sets of regulations will simplify the process of complying with export control regulations; and (3) new electronic compliance tools in the Automated Export System and a consolidated list of Commerce, State, and Treasury parties to screen transactions against will continue helping exporters comply with regulatory requirements.

13. Will the end-result of this export control reform effort materially lessen the extent of controls the U.S. applies to sensitive exports? Many assume that consolidating the USML and CCL into a single, tiered control list would lead to liberalization of controls. Will this be the case? Why or why not?

A: The reform effort will better focus controls and enforcement activities on truly sensitive items. For Commerce, this means reducing the number of license requirements for exports to ally and partner destinations, while focusing our licensing, compliance, and enforcement activities on more sensitive items, destinations and end-users. Additional actions, such as expanded outreach, a consolidated list of screened parties, best practices for shipping through transshipment hubs in addition to new analytic tools for evaluating transshipment trade, and restored enforcement authorities, will enhance the effectiveness of the system.

Working toward and implementing a single, tiered control list will strengthen the licensing, compliance, and enforcement functions further. This is because the single list concept requires items to be "positively" listed (using technical performance parameters). A "positive" list will clearly articulate whether an item is subject to control, which will avoid "gaps" that can occur in the current system where the control lists are not fully compatible because the CCL is performance parameter based and the USML is design-intent based. It also will simplify for compliance analysts and enforcement personnel evaluations of whether exports are occurring in compliance with export control regulations.

14. A significant difference between current State Department and Commerce regulations involves the treatment of export authorizations to employees of company whose nationality is different from the country of incorporation (e.g., an Iranian-born national working for a French company or a Chinese holding dual nationality). The State Department considers country of birth, whereas Commerce considers only the most recent nationality of an employee. Which rule will govern U.S. export control policy under the administration's reform plan?

A: The Administration is considering how to address this issue.

15. As you know, businessmen, scientists, engineers, and academics, as well as state security services from a large number of countries, continue to target U.S. technology. Yet the General Accountability Office reported in February that the Commerce Department has virtually stopped screening visa applications submitted from overseas posts in order to detect linkages between foreign entities of concern and visa applicants. Isn't this practice leaving

the United States more vulnerable to the exploitation of sensitive technologies by hostile actors abroad?

A: No. The screening of visa applications in and of itself has not proven to be an effective technique in terms of targeting appropriate high-risk individuals and delivering positive law enforcement outcomes. In part, this is due to the sheer volume of applications received by U.S. consular facilities around the world, which process roughly 35,000 daily. Since 2001, the year cited in the Government Accountability Office report as the beginning of a screening program, BIS has refined its approach, resulting in a more effective screening program in this area.

Screening of all applications, as well as manual screening of a smaller number of randomly selected samples, proved to be both ineffective and counterproductive. The resulting review resulted in an inordinate concentration of resources on random samples, few if any of which resulted in actionable intelligence. Moreover, this approach lowered capacity to analyze more directed information from intelligence and other sources.

BIS's Office of Enforcement Analysis (OEA) has transitioned to an alternative approach that integrates targeting of potential violators based on known diversion threats indicated by intelligence data, information generated by investigations, and end-use check results.

BIS is currently discussing with the Department of Homeland Security's U.S. Citizenship and Immigration Service (USCIS) and the Department of State's (DOS) Bureau of Consular Affairs how to implement processes and procedures to more efficiently provide data on foreign nationals who were issued H-1B specialty visas for both compliance and enforcement purposes. Due to the volume and storage processes in place at USCIS and DOS, we have not finalized how the information will be transferred and are still in the data gathering phase. Once this is completed we will be able to map out when the process will be implemented and conduct an assessment.

16. In your written testimony, you state that "where a violation is the deliberate action of an *individual*, we consider seeking penalties against that individual—including heavy fines, imprisonment, and the denial of export privileges—*as well as* against the company." Can you give us some examples where penalties against both the individual and the company have been imposed, according to this new policy?

A: BIS has imposed penalties on several individuals since this new policy was announced on August 31, 2010, although it is difficult to directly attribute these penalties to this change in policy, since those investigations were already well under way.

Full implementation of this policy will be reflected in the longer term as investigative resources are more focused on individual culpability during the course of our investigations. In addition, all cases investigated and reviewed for penalty assignment going forward will be reviewed against this policy.

17. Do you intend to expand or otherwise adjust current Commerce "catch-all" controls on certain exports likely intended for China's military? If not, does that mean that former munitions list items may now be exported without restriction to the PRC?

A: The Department of Commerce intends to maintain its current military end-use controls on certain low level dual-use items no longer subject to multilateral control. For USML items "specially designed" for a military application that are transferred to the CCL, we will apply a licensing policy of presumptive denial for exports to proscribed destinations in Section 126.1 of the ITAR, which includes China.

18. There is no mention in your written testimony of the Validated End User (VEU) program, which was created primarily to allow license-free bulk exports to select Chinese companies that have instituted approved inventory and compliance plans. The Chinese have been less than enthusiastic about this program, and it has gone largely unused by most of the companies involved. How successful has this program been? Will it be expanded? Has it brought about more cooperation and compliance by China's government and Chinese companies with our export controls? Has it significantly reduced BIS's licensing burden?

A: The Validated End-User (VEU) program has advanced U.S. national security interests. All VEU applicants are vetted by an interagency review team comprising the Departments of Commerce, Defense, Energy, and State to confirm the bona fides of a company and assess whether specified items will be used only for civil end uses. Pre- and post-approval on-site reviews can be conducted to validate such decisions. On a semi-annual basis, Commerce then conducts detailed reviews of the business practices, internal compliance programs, shipping records and classified reporting (if any) of all qualified participants. Facilitating pre-vetted exports of U.S. items provides the U.S. Government visibility of Chinese companies' use of controlled technologies for civil end-uses.

In bilateral discussions with China's Ministry of Commerce, our counterparts have increasingly expressed support for the program, including through agreement on an on-site review mechanism and assistance identifying potential applicants for VEU consideration. Currently there are 11 Chinese VEUs with 20 different qualified facilities and we continue to review potential additions to the list.

VEU participants and VEU applicants tell us that the Chinese companies participating in the program are viewed as having the "gold standard" of export compliance programs by both their customers and their suppliers. This result is beneficial for program participants and has drawn attention to the VEU program as well as to the importance (and benefit) of rigorous export control practices in China.

The VEU program increasingly reduces the number of license applications that Commerce must review for exports to VEUs. In this sense, the program is achieving one of its objectives, namely fewer license applications for items destined to VEUs. Since the interagency licensing officers do not have to process license applications for VEUs, about

which we know a great deal, they have more time to focus on license applications involving less well known end users.

During the first quarter of 2011, U.S. companies have exported $26.2 million in controlled authorized items to approved VEUs. Since the program went into effect in 2007, more than $46.3 million in exports have been made to VEUs. More than half of the value of total exports under Authorization VEU has consisted of capital equipment, which is significant because the purchase of U.S.-origin manufacturing equipment by Chinese factories commits the factories to a long-term relationship with the U.S. manufacturers of the equipment, the U.S. suppliers of parts and components, etc.

19. To date, why hasn't the Department focused more export enforcement resources on the People's Republic of China? Are current resources deployed to China sufficient to fully advance U.S. interests in end-use visits, export compliance, and export control cooperation?

A: Because of the recognized risk of illicit transfers to China, both directly and through transshipment points in the region, BIS maintains dedicated enforcement personnel in multiple relevant locations. These include Export Control Officers (ECOs) in Beijing, Hong Kong and Singapore. This summer BIS will enhance its presence by adding a second ECO in Beijing. The ECO in Hong Kong also spends roughly half of his time performing licensing checks outside of Hong Kong in Southern China.

The ECOs that BIS maintains in China are highly trained specialists in export control and law enforcement. They have been trained as investigators at the Federal Law Enforcement Training Center managed by the Department of Homeland Security, and are credentialed Federal Special Agents. In addition, they undergo training as Foreign Commercial Service Officers by the Department of Commerce International Trade Administration, and are fully grounded in export regulation and compliance practice by BIS in Washington before they are posted to the Embassy or (in the case of Hong Kong) consulate.

The primary mission of ECOs in China, as in other locations around the world, is to perform pre-license checks and post-shipment verifications of licensed items. Typically our ECOs perform approximately 40 such checks each per year at locations throughout China.

In addition to license checks, these officers perform a range of other activities in support of BIS's enforcement mission. For example, they support investigations, serve as a liaison with other U.S. law enforcement representatives at the Embassy, perform Validated End-User on-site reviews, and are the primary interface with the PRC Ministry of Commerce.

Another important role of our ECOs in China and the Hong Kong Special Administrative Region is industry outreach. ECOs respond to questions and provide guidance on U.S. export control regulations to U.S., Chinese and third country businesses that handle U.S.-origin products and technology. This support may include visits to manufacturing and R&D sites and speaking engagements at industry events.

While the three ECOs in China and Hong Kong cover a substantial geographic scope, only a very small portion of overall U.S- China trade remains subject to validated licensing requirements and associated checks. Most dual-use export compliance involving export trade with China and other foreign countries depends on an ongoing partnership between BIS and industry, including export compliance programs that companies implement. Such Internal Control Programs are subject to audit, investigation and analysis by BIS's enforcement personnel.

As a result, the ECOs on the ground in China should be viewed as the local arm of a large and dedicated team of Special Agents and analysts, who pursue leads on illicit shipments from a wide range of intelligence and other sources and take appropriate action.

BIS is in the process of analyzing and addressing the expected increased workload of its ECOs in China and the associated analytical support at Washington headquarters.

BIS Export Enforcement efforts have been focused on China, as illustrated by a number of recent important cases. The most notable involved the manager of a Massachusetts electronics company who was sentenced in January 2011 to 36 months imprisonment for conspiring over a period of 10 years to export military electronics components and sensitive electronics used in military systems to the People's Republic of China. The Waltham, Mass., company she managed, Chitron Electronics, was fined $15.5 million stemming from their convictions last year. Several Chinese military entities were among those to whom the defendants exported the equipment. This case was investigated by the Department of Commerce's Office of Export Enforcement (OEE), the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), and the Defense Criminal Investigative Service (DCIS).

Another defendant in the case, Zhen Zhou Wu, a Chinese national who traveled to the United States on an annual basis using business visas, was sentenced to 97 months imprisonment for conspiring to illegally export U.S. Munitions List parts and restricted sensitive technology to China over a period of ten years, illegally exporting electronics to China on 14 occasions between 2004 and 2007, and conspiring to file, and filing, false shipping documents with the U.S. Department of Commerce from 2005 through 2007. Wu was also ordered to pay a fine of $15,000, a special assessment of $1,700 and forfeit $65,900. This case was investigated by agents of the OEE, ICE, FBI, and DCIS.

Another important case involved a key, leading edge dual-use technology, Unmanned Air Vehicles (UAVs). Between 2007 and 2008, ARC International LLC, a Maryland company operated by Harold and Yaming (Nina) Hanson, illegally exported miniature UAV autopilots to the Xian Xiangyu Aviation Technology Group (XXATG) in Xian, China. UAV capability is sought by a number of potential U.S. adversaries, including Iran and China, and the procurement of key components such as autopilots complements and extends domestic military research and development efforts in this area. This case was investigated by agents of the OEE and the FBI.

Ultimately, the Hansons plead guilty to making false statements. Nina Hanson was sentenced in the U.S. District Court in the District of Columbia to 105 days in jail plus a one-year supervised release. Harold Hanson was sentenced to 24 months of probation. In addition, XXATG was identified as a procurement and development center for Chinese UAV technology and placed on the BIS Entity List, closing down an important procurement network for this critical technology.

Another significant case involved Printing Plus, a company located in Los Angeles. In 2007, OEE received information from a thermal imaging company about a suspicious request for a quote for thermal imaging cameras that would require a license for export. After repeated warnings that the items could not leave the US, the items were purchased by Printing Plus.

Agents coordinated with industry, conducted surveillance, and intercepted the controlled thermal imagers that were concealed in luggage of two individuals destined for China. The case was jointly worked with FBI, ICE, U.S. Citizenship and Immigration Service, and Customs and Border Protection. Three individuals were sentenced for a total of 90 months for their involvement in this scheme, and included convictions on International Emergency Economic Powers Act conspiracy charges.

These and other cases demonstrate that illicit exports to China remain one of the highest priorities of BIS's enforcement efforts.

20. The EU and its Member States are moving toward a new policy of license-free transfer within the EU of most dual-use items. Have you evaluated the effect of this impending policy on US re-export controls, particularly if the STA regulation is implemented?

A: EU rules impacting intra-EU trade do not affect U.S. licensing requirements for exports to and reexports within or from the EU. License Exception Strategic Trade Authorization (STA) does not rely on EU requirements. Rather, it creates a new "higher fence" around eligible items that are exported to an eligible EU destination by requiring foreign consignees to obtain a license from the Department of Commerce in order to reexport to non-eligible destinations and by requiring such consignees to formally recognize this requirement. Specifically, prior to receiving STA-controlled items, the consignee must agree in writing to not reexport the item to a non-eligible destination (including EU destinations) without obtaining a Commerce license first. This will put the consignee on record as having recognized this obligation and is necessary to hold consignees accountable for any misuse by them of the license exception, with the aim of preventing such misuse. We also have conducted outreach with key European governments and trade associations on STA requirements.

Duncan Questions:

1. In the past year, the Bureau of Industry and Security (BIS) in conjunction with DHS-ICE, the FBI, and other agencies, have uncovered and disrupted a number of Iranian procurement networks, both here in the U.S. and abroad. Can you outline the measures BIS is taking to

ensure U.S. technology does not fall into the hands of Iran? How many agents does BIS have devoted to stopping exports to Iran?

A: BIS plays a vital role in enforcing the embargo by investigating transactions that may constitute exports or reexports to Iran in violation of the Export Administration Regulations (EAR). The EAR prohibit the export or reexport of nearly all items on the Commerce Control List to Iran, and it is a violation of the EAR to export or reexport any item subject to the EAR to Iran if such transaction is prohibited by Treasury's Iranian Transactions Regulations and not authorized by Treasury. BIS has over 100 federal law enforcement agents in nine field offices throughout the United States and its headquarter office. BIS's Office of Export Enforcement (OEE) currently has 280 open investigations involving Iran, which constitute about 36 percent of all open investigations of potential violations of the EAR.

In addition, BIS has Export Control Officers (ECOs) in six foreign locations – United Arab Emirates, China, Singapore, Hong Kong, India, and Russia. These ECOs are BIS enforcement agents temporarily assigned to the U.S. & Foreign Commercial Service. The ECOs conduct pre-license checks and post-shipment verification visits to verify that items will be, or are being, lawfully used and have not been diverted to prohibited users or uses within the country or illegally transshipped to another country such as Iran.

Commerce also can bring to bear unique tools to enforce U.S. export controls on Iran. These tools include Temporary Denial Orders (TDOs) and the Entity List. A TDO is a legal order that can be issued quickly, for 180 days at a time, to prevent imminent violations of the EAR. For example, in 2008, we issued a TDO denying the export privileges of Balli Group PLC and related companies and individuals ("Balli Group"), Blue Airways, and Mahan Airways for 180 days. This TDO has been renewed for successive periods of 180 days and still remains in effect for Mahan Airways.

Evidence obtained by our agents showed that the parties knowingly reexported three U.S.-origin aircraft to Iran in violation of the EAR and were preparing to reexport three additional U.S.-origin aircraft to Iran in further violation of the EAR. The TDO effectively precluded U.S. or foreign parties from engaging in any activity related to the aircraft. Ultimately, the TDO prevented the illegal reexport of three commercial aircraft to Iran.

The Entity List is a regulatory tool that can be used to prohibit the export or reexport without a license of any item subject to the EAR, including items not on the CCL, to any listed entity when in the national security or foreign policy interests of the United States. In 2008, BIS added 75 foreign parties to the Entity List because of their involvement in a global procurement network that sought to illegally acquire U.S.-origin electronic components and devices capable of being used to construct Improvised Explosive Devices (IEDs). These commodities had been used in IEDs or other explosive devices against U.S. and Coalition Forces in Iraq and Afghanistan. This network acquired U.S.-origin commodities and illegally exported them to Iran.

As a consequence of the addition of these entities to the Entity List, no U.S. or foreign party may export or reexport items subject to the EAR to them without a license. Exporting or reexporting an item to any of these entities without the required license would constitute a violation of the EAR.

2. In February, the U.S. Treasury Department sanctioned the Jafari network, a multi-million dollar procurement network based in Turkey, which provides support to Iran's missile industries. How concerned is the U.S. that Iran is obtaining sensitive technology from Turkey? What is the Administration doing to stop Iranian procurement activity in Turkey?

A: The United States and Turkey have an ongoing dialogue on Iran and on counter-proliferation efforts; Turkey is an important non-proliferation partner of the United States. Turkey has committed to fully abide by all relevant UN Security Council Resolutions regarding the proliferation of illicit arms and material, and shares the United States' goal of preventing Iran from acquiring a nuclear weapons capability. The Department of Commerce's Office of Export Enforcement (OEE) played a critical role in the Jafari investigation, executing search warrants, detaining missile related items that Jafari was going to supply to Iran and providing evidence to the U.S. Treasury Department for use in their designation packages. Turkish officials have followed up to ensure that the Jafari network is no longer a threat.

On June 6, 2008, BIS issued a TDO naming, among others, the Turkish airline Ankair for its role in re-exporting a Boeing 747 cargo aircraft to Iran Air. An investigation into that transaction is ongoing.

3. It is my understanding that the Administration will soon issue a license to allow for the maintenance of certain U.S. origin aircraft and engines that are currently in Iran. I am concerned that many of these aircraft are used by Iran to import parts for their nuclear and missile programs. Reports indicate that some of these aircraft may have ties to the Iranian Revolutionary Guard Corps, which is sanctioned by the U.S. and the U.N. Would you explain to me why we would repair aircraft that are being used by Iran to facilitate the proliferation of nuclear and missile components? What steps is the Commerce Department taking to ensure additional U.S. aircraft are not illegally exported to Iran?

A: We cannot comment on any potential license. Any such licensing might require a waiver under the Iran-Iraq Arms Non-Proliferation Act of 1992 and would be based on State Department policy guidance to the Treasury Department's Office of Foreign Assets Control (OFAC). BIS has an active TDO against Mahan Air of Iran and the issue is being discussed at the interagency level Regarding what steps the Commerce Department is taking to ensure that U.S. aircraft are not illegally exported to Iran, OEE has worked with aircraft manufacturers, the State Department and foreign governments to remove U.S.-origin aircraft from service in Iran or prevent aircraft from being delivered to Iran. BIS has investigated a number of aircraft diversion cases; many of these cases are ongoing. Most notably, on May 11, 2010, after an extensive OEE investigation, Balli Aviation was sentenced to a $2 million criminal fine and corporate probation for five years. On February 4, 2010, Balli Group PLC and Balli Aviation entered a civil settlement with BIS and OFAC, which includes a civil

penalty of $15,000,000 – the largest civil penalty imposed under the EAR, of which $2,000,000 is suspended pending no further export control violations. In addition, a five year denial of export privileges was imposed on Balli Aviation and Balli Group, which will be suspended provided that during the suspension period neither Balli Aviation nor Balli Group commits any violations and has paid the civil penalty. On May 19, 2011 BIS revoked the suspension of the $2,000,000. Related to this case, BIS has maintained a TDO against Mahan Air of Iran since March 21, 2008.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE ELLEN TAUSCHER, UNDER SECRETARY, ARMS CONTROL AND INTERNATIONAL SECURITY, U.S. DEPARTMENT OF STATE, BY THE HONORABLE JEFF DUNCAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Questions/Statement for the Record of the Honorable Jeff Duncan (SC-03)
Committee on Foreign Affairs, U.S. House of Representatives
Hearing: "Export Controls, Arms Sales, and Reform: Balancing U.S. Interests, Part 1"
May 12, 2011

TO: Ellen Tauscher, Under Secretary, Arms Control and International Security, Department of State

- Israel's Qualitative Military Edge (QME) – essentially the ability of Israel to defend itself against any threat or possible combination of threats – has long been a part of the U.S. commitment to Israel and policy in the region. How has the potential for regime change factored into previous decisions to sell arms to Egypt, Saudi Arabia, and other Arab governments? What steps is the Administration taking to evaluate future arms sales to these countries? What protections are you putting in place to ensure the arms do not fall into the hands of terrorist organizations?

- The $60 billion arms package to Saudi Arabia announced last year was the largest arms sale in U.S. history. While this sale has been approved, the actual delivery of many of the arms will not take place for several years. Given the dramatic events unfolding in the Middle East, is the Administration re-evaluating last year's arms package to Saudi Arabia and other countries in the region?

- With delays in the F-35 production schedule, it appears likely that Saudi Arabia will acquire its new fleet of F-15s before Israel acquires its F-35s. Was this timing considered in judging the Saudi arms sale against Israel's QME? Will the State Department reexamine the timing of delivery in light of the new schedules?

- I understand that Taiwan has requested the U.S. to sell F-16 C/D Block 50/52 fighters to replace its aging and obsolete F-5 E/F fighters, but the U.S. Administration has not accepted Taiwan's Letter of Request. Recently, amid Taiwan's announcement that it would postpone the purchase of U.S. patriot missiles and black hawk helicopters, Taiwan's President Ma Ying-jeou renewed his request for the U.S. to sell the F-16s to Taiwan. What is the current status of Taiwan's request of F-16 fighters? Can you explain what is holding up the arms sale to Taiwan when such a sale has a value of approximately $5 billion and would create around 10,000 U.S. jobs?

[NOTE: Responses to these questions were not received prior to printing.]

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE JAMES N. MILLER, JR., PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY, U.S. DEPARTMENT OF DEFENSE, BY THE HONORABLE JEFF DUNCAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Questions/Statement for the Record of the Honorable Jeff Duncan (SC-03)
Committee on Foreign Affairs, U.S. House of Representatives
Hearing: "Export Controls, Arms Sales, and Reform: Balancing U.S. Interests, Part 1"
May 12, 2011

TO: James Miller, Principal Deputy Under Secretary of Defense for Policy, Department of Defense

- What is the Administration doing to ensure that U.S. support for the Lebanese Armed Forces (LAF) does not indirectly or direct benefit Hezbollah? What is our current policy regarding military assistance to Lebanon? If you had evidence of direct influence of Hezbollah over the LAF, would you stop funding to the LAF?

[NOTE: Responses to these questions were not received prior to printing.]