

STATEMENT FOR THE RECORD
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A Strategic and Economic Review of Aerospace Exports

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

December 9, 2009

Introduction

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

Why Do Aerospace Exports Matter?

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

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

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

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

Government and Congressional Activity Affecting Aerospace Exports

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

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

Export Control Modernization

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

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

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

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

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

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

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

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

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

- **Amending current law so the State Department's Directorate of Defense Trade Controls can use fees it collects from industry to implement improvements in its licensing and compliance activities.** Last year, the Directorate of Defense Trade Controls (DDTC) substantially increased registration fees levied on all US manufacturers of ITAR-controlled items. At the time, DDTC said higher fees were needed to implement procedural reforms mandated by National Security Presidential Directive 56, issued in January 2008. While DDTC has adequate funds to move forward on modernization, current law restricts the uses to which DDTC can direct these funds, with surplus funds diverted to other purposes. Industry opposed the fee increase, and we continue to believe adequate funding should be provided through normal appropriations channels. We are also concerned about the current fee collection process, which should move to an automated electronic registration system that allows electronic funds transfer for payments and electronic issuance of registration confirmations. For as long as these fees continue to be collected, they should be dedicated to modernizing DDTC operations.
- **Updating Congressional Notification Thresholds and Processes.** Thresholds used to determine which export licenses and foreign military sales must be notified to Congress have not been adjusted for inflation for more than thirty years. As a result, less-sensitive transactions are needlessly delayed. AIA supports H.R. 2410, which would raise thresholds for both foreign military and direct commercial sales. Industry also encourages dialogue between the State Department and the committees of jurisdiction to develop procedures for more efficient and predictable review of

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

- **Streamlining licensing for spare and replacement parts exported to governments in NATO countries, Australia, New Zealand, Japan, South Korea and Israel.** Even after the Administration and Congress approve sales of weapons systems to our allies, individual export licenses are required for spare and replacement parts to support these systems. This adds unnecessary volume to State's licensing caseload. Industry supports more efficient licensing for such spare and replacement parts. However, any measure related to spares and replacement parts that includes a domestic content requirement will prove challenging to industry. Such a restriction is impractical given today's global supply chain and would be too difficult and costly for companies to administer relative to getting a traditional license.
- **Returning authority to the Executive branch to determine licensing jurisdiction for commercial satellites.** A healthy domestic space industrial base is vital to US national security and foreign policy interests. Restrictive controls on all Commercial Satellite (COMSAT) technology have disadvantaged US spacecraft and component manufacturers in the global marketplace - without necessarily having achieved their intended objectives. Taking action will safeguard access to critical space technology for the U.S. defense and intelligence community, strengthen America's ability to compete in the \$144 billion global satellite market, and reinforce our nation's global technological leadership. Industry is not seeking any change to current restrictions on exports of satellites to or launch from China, and supports Congressional review of adjustment to controls through the Section 38(f) notification process.

Conclusion

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

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



December 2, 2009

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

Dear Mr. President:

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

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

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

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

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

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

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

Thank you for your consideration of our views.

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The Honorable Gary Locke, Secretary of Commerce
The Honorable James Jones, National Security Adviser
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Establishing More Appropriate Treatment of UAS Technology under the Missile Technology Control Regime

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

AIA RECOMMENDATIONS

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

BACKGROUND

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



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

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

AIA RECOMMENDATIONS

Improve the Commodity Jurisdiction (CJ) Process

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

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

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

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

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

Support Congressional Action on Commercial Satellites

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

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



Developing Transparent and Disciplined Processes for Disclosure Decisions

ISSUE: The Administration should develop more efficient procedures to ensure that all Defense Department (DOD) reviews of a proposed foreign release of U.S. technology are completed in a timely and consistent manner. Improved coordination and timeliness would strengthen allied coalitions, support acquisition reform by enhancing affordability, and help maintain the global competitiveness of the domestic defense industrial base.

AIA RECOMMENDATIONS

- Examine the mission, processes, resource requirements and timelines for each existing review committee, with an eye toward eliminating redundancies and improving efficiency.
- Conduct committee reviews concurrently (vs. consecutively), and take into consideration comprehensive and balanced policy and technical inputs.
- Enforce rigorous policies and timelines for each committee as regards entry, deliberation (including dedicated “blue teams” where appropriate), escalation, and exit procedures.
- Establish a time-bound debrief and appeals process for DOD/industry proponents of cases, as well as a process for reconciling divergent outputs at the SecDef level.
- Ensure appropriate oversight and accountability for timeliness and quality of committees’ advice at the Under Secretary and equivalent Military Department levels prior to SecDef or DepSecDef decisions on precedent-setting foreign release matters.
- Create an ongoing consultative process with industry to develop appropriate USD/DOD technology thresholds for U.S. exports.
- Inform relevant contractors upon completion of each committee’s review.
- Incorporate industrial base considerations into deliberations by accounting for program impacts, supporting direct commercial sale (DCS) and hybrid DCS/Foreign Military Sales (FMS) cases, and sponsoring technology disclosure cases for systems not in U.S. inventory.
- Issue DOD Instructions within 90 days of policy decisions, including the results of specific reviews that establish foreign release policy precedents.

BACKGROUND

A number of Defense Department committees review requests for release of classified or sensitive U.S.-origin defense articles and services. These committees have rules that govern when and how they conduct reviews, and often the length of the process as well as dispute resolution procedures. Unfortunately, current reviews fall short in several critical ways:

- Timetables for completing individual committee reviews are indeterminate and often entail lengthy wait times – a challenge since decisions regarding release necessarily must precede the State Department export license application process.
- Synchronizing the committees’ output and de-conflicting the ‘net effect’ of their decisions is often challenging, especially for complex, precedent-setting cases.
- Communication with industry - to support deliberations, raise industrial base or program considerations, help prioritize cases, or provide status updates - is sharply limited.
- Disparate processes and composition of the review boards compromise provision of comprehensive guidance, oversight, accountability, or coordination of release decisions.
- The different policies, procedures, and focus of the committees often result in inconsistent priorities and, in some cases, asymmetric foreign release decisions based on divergent intelligence inputs, technology evaluations and political/military perspectives.
- The committees are not integrated into programmatic decision-making that guides the development and production of weapon systems.