

RETHINKING EXPORT CONTROLS

Testimony by John W. Douglass, President and CEO
Aerospace Industries Association
Before the Committee on Commerce, Science and Transportation
United States Senate
April 4, 2000

Mr. Chairman:

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

We welcome the opportunity to discuss our export control system with you this afternoon. The EAA, and its companion legislation, the Arms Export Control Act, form the legislative foundation for today's export controls systems. These laws were both passed in the mid-seventies, at the height of the Cold War. As I will note later in my testimony, much has changed in the political, technological, and business world since then. However, the laws have not been modified to reflect those changes.

Indeed, it is noteworthy that it is now a decade since the Berlin wall came down and the Cold War over. For over half that period, the EAA has been officially lapsed, as the executive branch and Congress have been unable to reach a consensus as to how to adapt that law to reflect current conditions. It is particularly embarrassing for the U.S. to preach the merits of a strong export control system to countries such as Russia and China, when our own law lapsed in 1994 and still refers to such Cold War fixtures as the Soviet Bloc and the Coordinating Committee on Multilateral Export Controls, or COCOM.

To the credit of the Senate Banking Committee, it made a bipartisan effort to redraft the EAA to bring it into conformity with today's world. Yet its efforts have been met with considerable second guessing from a number of critics, both from within and without the Senate. Partly this is because the legal and bureaucratic structure is not easy to understand. This was brought home to me last week, when following the testimony of Under Secretary of State John Holum before the House International Relations Committee, the State Department posted a report on the testimony on its web page. Let me quote one paragraph:

Much of the regulation of arms for commercial export was transferred by Congress from the Commerce Department to the State Department in the spring of 1999. In addition to conventional arms, the system also covers satellites, computers and other technology with a dual use that could fall into the wrong hands and jeopardize the security of the United States.

Almost everything in that paragraph is incorrect. The Commerce Department has never had responsibility for licensing commercial sales of arms. The sale of computers and other dual use items was not transferred to State. Only commercial communications satellites, not all satellites, were transferred from State to Commerce and then back again.

I am not trying to criticize a reporter for being confused, or even the State Department for posting a piece on such a subject without having a quality control system. What I am saying is that our current legal and bureaucratic export control system is confusing, and that it is high time the Congress to come up with an EAA that meets the security, foreign policy, and commercial needs of today, not yesterday.

This hearing will hopefully help us all get on with that job. This afternoon I would like to briefly comment on how times have changed, and address how S.1712 addresses those changes. I would also like to make a plea that even if the Congress passes some form of S.1712, the next President and Congress should still take a hard look at what kind of export control system would make sense in the twenty-first century, and work to devise such a system. Let me now briefly review the changed world for which we need to adapt our current export control system, and the degree to which S.1712 attempts to do so.

Background

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

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

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

At the same time, the distinction between military and commercial products has become less clear. The military is expanding the share of its budget that goes into such activities as communications, data processing, imaging, and simulation -- all areas of accelerated commercial activity. Furthermore, in order to hold costs down, the military must turn to standard, or near standard commercial products to

meet many of these needs. But lower costs and rapid technological innovation in the commercial sector are only possible for companies producing for a global marketplace, with the flexibility to rapidly penetrate new markets and to take on foreign partners.

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

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

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

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

Clinging to a failing policy of export controls has undesirable consequences beyond self-delusion. It can limit the special influence the U.S. might otherwise accrue as a global provider and supporter of military equipment and services. This obviously includes useful knowledge of, and access to, competitor military systems that only the supplier would have, and the ability to withhold training, spares and support. Equally obvious, shutting U.S. companies out of markets served instead by foreign firms will weaken the U.S. commercial advanced technology and defense sectors upon which U.S. economic

security and military-technical advantage depend.

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

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

S.1712

I believe there are short-term and long-term fixes we can make. One short-term fix is to move forward on S.1712, The Export Administration Act of 1999. That bill provides several features of importance to industry. I will highlight the most significant, and also explain why I would not want to see certain alterations that have been suggested by some in the Senate.

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

Title II also limits the President's ability to impose national security controls on products that are available from foreign sources or are mass marketed. This makes eminent sense. After all, the idea of national security export controls is to deny a purchaser a capability, not to deny U.S. exporters a market. If the target country is able to obtain a technology from other sources, then it makes no sense to strengthen U.S. competitors that do not cooperate with the U.S. in imposing export controls, while we weaken U.S. industry.

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

In this context I note that some have supported the idea of “carving out” certain technologies and products that would be subject to export controls irrespective of foreign availability. We would object to any provision that would carve out products prior to a study as to whether there was foreign availability. Once such information is in hand, we would agree that the President should still have the authority to impose controls if he believes there is a security reason for doing so. But such a decision should be made with the best possible information, and hence after the foreign availability review called for in S.1712, not before. After all, the whole point of the foreign availability and mass marketing provision is to determine whether a policy of controlling a particular technology has a chance of succeeding, or is simply wishful thinking. Acting without information is unlikely to improve the odds of the decision being a correct one.

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

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

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

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

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

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

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

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

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

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

- DoD needs to change substantially its approach to technology security

DoD should focus export controls on those technologies that are exclusively available from the United States. In other words, there should be higher export control walls around fewer items.

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

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

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

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

- DoD should facilitate transnational defense industrial cooperation and integration

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

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

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

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