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THE HOUSE FOREIGN AFFAIRS COMMITTEE

STATEMENT OF

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Thank you Mr. Chairman, Ranking Member Engel, and Members of the Committee, for the opportunity to discuss the Department of Defense's perspective on the successes of our work on Export Control Reform. Two years ago, former Principal Deputy Under Secretary of Defense for Policy, and now Under Secretary of Defense for Policy, Dr. James Miller, sat before this Committee and described the importance of overhauling the U.S. export control system. A functional export control system remains critical to ensuring that our Allies and partners can help us to meet global security challenges.

I am pleased to report that the hard work of all those involved in the Department of Defense, at Commerce, State and other agencies, has moved us closer to President Obama's vision of fundamentally reforming of our export control system—a vision supported by Secretary Gates, Secretary Panetta, and now Secretary Hagel. At the same time, we still have much work ahead to achieve a more transparent, flexible, efficient, and enforceable system based on the four singles of reform: a single licensing agency, working with a single control list, on a unified (IT) information technology system, and supported by coordinated enforcement activities. The Department of Defense remains committed to this effort because it will enhance our national security by allowing us to better protect those technologies that give our warfighter the technological edge on the battlefield and prevent our adversaries from acquiring technologies that can be used against us.

I would like to thank Members of Congress and your staffs for allowing us to explain our proposed changes to the first two categories—on aircraft and military engines—during the recent notification process. The completion of the first 38(f) was an important milestone for us, and will help us move forward, in concert with Congress, on the remainder of categories over the coming months. Our testimony today is the culmination of continuous briefings to Congress and industry since 2010.

I am also very pleased that recent legislation returned to the President the authority to determine controls on satellites and related items, which I will turn to in detail later in my testimony. Let me begin today by discussing Export Control Reform to date.

First and foremost, the goal of our revised controls is to be clearer and better focused on protecting those items and technologies that give our warfighters a military edge. As noted in previous Department of Defense testimony, our forces should always have the technological

advantage. Our new controls will help us better protect and leverage for a longer period of time those “crown jewel” technologies that give our military the decisive edge.

Second, the new strategic environment, coupled with increasing fiscal constraints, necessitates that we rely more heavily on Allies and partners to take on more of the security burden. While the U.S. will maintain the capabilities to defeat any adversary, anytime, anywhere, we will seldom go to war alone. This means it is in our national interest to equip our partners and increase their military capacity to meet mutual security needs. More flexible licensing requirements for certain items means that our Allies will no longer have to wait for a license for an essential, but militarily insignificant, spare part, such as a hose or switch. Reduced delays in repair time will help ensure that their systems can continue to support missions in areas where the U.S. may not be present or to fight alongside us in coalition operations.

Third, we do recognize that with increased flexibility and speed come compliance and enforcement needs. Accordingly, we have established new safeguards for these more flexible authorizations to mitigate risks. Exports of end-items and significant parts and components moved from the U.S. Munitions List (USML) to the Commerce Control List (CCL) “600 series” will continue to be subject to a policy of denial, if destined to embargoed or sanctioned countries, including China, including the reexport of any 600 series item integrated into a foreign system. The Department will continue to review license applications to determine whether they pose national security concerns.

We also carefully considered which countries to include in the list of those eligible for receiving under a license exception items transferred from the USML to the “600 series” on the CCL. The Administration is prepared to consider changing the list of countries on a case-by-case basis if they are, for example, members of security and export control regimes, and share common security interests. However, even in the case of our closest Allies, we are vigilant. The Strategic Trade Authorization License Exception mandates safeguards, including strict record-keeping and, for items moved to the CCL “600 series,” adherence to an ultimate “government end-use only” requirement for exports of end-items and significant parts and components.

Fourth, export control reform will promote the health of our industrial base. It will help U.S. exporters—particularly our defense industry—to compete more effectively. This will in

turn provide incentive for them to invest in advanced technologies that will enable the U.S. military to maintain its superiority in the future.

Let me explain the important work accomplished to rewrite our export control lists. This has been a painstaking and thorough effort that involved experts throughout the Department of Defense, the U.S. interagency, the private sector, and scholars. For DoD, this rewrite effort reflects a sea change in the way we approach and execute export controls. We have found balance between protecting our more significant weapons platforms and the imperative to share more capabilities with Allies and partners. DoD took the lead in the baseline assessment and review of controls on the USML, involving a broad range of experts at our labs, in the Services, and across other components. Thousands of hours were spent identifying, evaluating and writing new controls that would adequately protect our most critical capabilities.

I will use the F-16 to illustrate how we decided which items should remain on the USML—an attempt to create a “bright line” between the two control lists. First and foremost, we decided the F-16 itself should remain on the USML, as well as other aircraft that perform essential military or intelligence missions, such as attack helicopters; intelligence, surveillance, and reconnaissance aircraft (ISR); and electronic warfare, airborne warning, and control aircraft. Our experts then identified the specific components and related technologies that provide key military or intelligence capabilities. Thus, in addition to the F-16, we also left on the USML its most sensitive components and weapons capabilities, such as the missile launchers, radar warning receivers, and laser/missile warning systems. These will continue to be subject to world-wide, except for Canada, licensing requirements under the International Traffic in Arms Regulation (ITAR). Other parts and components, such as the wings, rudders, fuel tanks, and landing gear, which, while essential to the functioning of the F-16, were determined not to provide a critical military capability. They were thus moved to the new “600” series of the Commerce Control List in order to provide greater licensing flexibility. These parts and components still receive careful consideration and require licenses, except where destined for ultimate end-use by the governments of our closest Allies and partners in accordance with the new safeguard measures. The end-items will require licenses to all destinations, with certain exceptions for Canada. These items may become eligible for more flexible licensing only after careful review and agreement by all agencies.

Our experts similarly analyzed the other eighteen categories of the USML. We carefully designed the revised lists to clearly define what is controlled on which list, and to complement each other, so that the two can eventually be merged into one list. We worked closely with our interagency counterparts to craft new controls on the USML and corresponding controls on the CCL. We carefully reviewed all public and Congressional comments and revised our controls when appropriate.

As I mentioned, I am also very pleased that recent legislation returned to the President the authority to determine controls on satellites and related items. As already shown in our NDAA Section 1248 report on satellite controls, we are carefully crafting controls to ensure that key satellites systems, technologies, launch services, and know-how that provide the United States with a military or intelligence advantage in space remain under USML licensing requirements. The 1248 Report recommended that commercial communications and less technologically advanced remote sensing satellites and related components be moved to the Commerce list. These items are similar to those readily available from other space capable nations and are more appropriately designated as dual-use. This change will protect national security capabilities. At the same time, it facilitates international cooperation, improves the competitiveness of the U.S. space industry, and strengthens our space industrial base which we rely upon for civil, commercial and national security space missions.

Let me underscore that we will establish a policy of denial for transfers of dual-use and commercial satellites and related items to prohibited countries such as China and state sponsors of terrorism as stipulated in the recent legislation. I am confident that these regulatory changes will adequately protect our national security interests and adequately protect sensitive U.S. military technology. The new satellite controls, based on the recommendations of the 1248 report, will soon be published for public comment. They are a perfect example of how we came to a win-win situation: protection of our most sensitive and decisive technologies, while adhering to a careful but more flexible set of controls for less significant technologies.

Rewriting our controls is an important interim step toward a single control list. We will spend much less time discussing commodity jurisdiction issues to determine whether an item should be controlled on one list or another. It will help create a coherent system in which we allocate resources toward protecting what is truly important for our national security.

Turning now to another important element of our export control reform efforts – the single IT system. The new system is being built on the backbone of DoD’s USXPORTS system. By integrating the Departments of Commerce and State licensing functions into DoD’s existing system, we have created a powerful tool designed to reduce license processing times by providing more flexibility and automation in staffing across the interagency. USXPORTS will also improve transparency to those agencies reviewing export license applications. This system will enable all of our interagency analysts to efficiently scrutinize complex licenses involving critical technology. It will also enable our analysts to quickly resolve and clear large numbers of licenses that may not require extensive interagency review. The single system will benefit both government and industry. We are on track to have the Department of State begin adjudicating munitions licenses on USXPORTS within the next few months. While we have made significant progress with the Department of Commerce, we have had to delay work on deploying USXPORTS at Commerce due to the impacts of sequestration.

I would also like to point to two other successes in fortifying our export control system. The multiagency Export Enforcement Coordination Center, led by DHS and comprised of 17 Federal agencies and the Intelligence Community, has been successful in de-conflicting over a thousand cases, thus strengthening our ability to stop illegal exports and exporters who seek to circumvent our controls. DoD is also working closely with the multiagency Information Triage Unit, located at the Commerce Department, on coordination of end-user assessment for export licenses.

I think it is also important to understand that DoD sees Export Control Reform as an integral component of a larger set of complementary initiatives intended to support our security cooperation objectives in a more efficient and effective way. Collectively, these initiatives will facilitate security cooperation in general and the transfer of technology in particular. First, under the rubric of security cooperation—a separate endeavor from ECR—DoD has changed the way we execute security cooperation, based on better planning and more precise assessments of partner requirements, and a more efficient Foreign Military Sales process.

Second, DoD has also consolidated decision making of multiple technology security and foreign disclosure processes under a single, high-level steering group – the Arms Transfer and Technology Release Senior Steering Group – to ensure the Department has a coordinated approach to deciding which sensitive technologies, such as electronic warfare and unmanned

aerial systems, are released to foreign partners and Allies. These efforts are complemented by other acquisition reform efforts.

In conclusion, we have made significant progress since we last testified in front of this Committee. The Department is committed to fundamental reform and strongly supports continued efforts to establish a single control list and a single control agency. Our national security will not be served if we stop mid-way. We must ensure that we protect those few critical technologies that are central to our U.S. military superiority and establish new export control mechanisms that best serve the national security objectives of this reform effort.

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

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