OPENING STATEMENT TO THE SUBCOMMITTEE

ON TERRORISM, NONPROLIFERATION AND TRADE

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I would like to begin by thanking the Committee for holding this Hearing. It is right and proper that the Foreign Affairs Committee, and this Subcommittee in particular, conduct oversight of United States arms transfer policy and procedures, because each of these is fundamentally an act of foreign policy.

In my testimony today I will outline why this is the case, and walk through the process and policy considerations by which the United States reaches a decision on when to – and when not to – offer or authorize the transfer of defense articles and services to a partner nation.

I would like to start, however, by acknowledging that there are two witnesses before the Committee today. I am joined by Vice Admiral Joseph Rixey, Director of the Defense Security Cooperation Agency (DSCA). Arms transfers and other forms of security assistance are interagency efforts and, as you will see, the partnership between the Departments of State and Defense (DoD) – and particularly between my Bureau of Political-Military Affairs and DSCA – are stronger now than they have ever been, which is key to our effective decision-making and policy implementation. Admiral Rixey will be departing DSCA soon, and I want to take this opportunity to thank him for the outstanding partnership he and his team have facilitated between our respective organizations.

Before I provide a detailed explanation of how the arms transfer process works, I would like to highlight a few key points.

- Arms transfers are foreign policy. When we transfer a system or a capability to a foreign partner, we are affecting regional – or foreign internal – balances of power; we are sending a signal of support; and we are establishing or sustaining relationships that may last for generations and provide benefits for an extended period of time.
- Arms transfers also support the U.S. defense industrial base and DoD procurement. Purchases made through the foreign military sales (FMS) system often can be combined with DoD orders to reduce unit costs for our own military; beyond this, the U.S. defense

industry employs over 1.7 million people across our nation or about 3.5 million including indirect employment. These individuals and the companies they work for represent a key part of American entrepreneurship and innovation, maintaining the United States as the world leader in the defense and aerospace sectors and helping ensure our armed forces sustain their military edge.

- The arms sales process works. The process is designed to review complicated and sometimes contentious proposed transfers while balancing a wide range of policy and technological considerations. Despite the inherent complexity of the process, the vast majority of sales move through the process quickly and efficiently, and United States remains by far ahead of other nations in defense sales. In some cases, certain considerations – for instance relating to technology security, human rights, or regional balance of power – may slow or preclude the approval of a transfer. When this happens, it is a sign that the system is working to apply the careful consideration that is needed for such important transfers.

Overall Framework

Our approach to arms sales is driven by statute, regulations, and policy.

The key statutes through which we conduct arms transfers are the Foreign Assistance Act of 1961, as amended (FAA), and the Arms Export Control Act, as amended (AECA).

- Pursuant to section 622(c) of the FAA, the Secretary of State is responsible for the continuous supervision and general direction of military assistance and military education and training programs, including whether there shall be such assistance for a country. It is through this authority that the Department of State approves the transfer of Excess Defense Articles (EDA) under section 516 of the FAA. Such transfers must be consistent with section 502 of the FAA, which provides that defense articles and defense services may be furnished to a foreign government only for specific purposes, including internal security, legitimate self-defense, and to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations.

- Section 1 of the AECA authorizes "sales by the United States Government to friendly countries having sufficient wealth to maintain and equip their own military forces at adequate strength, or to assume progressively larger shares of the costs thereof, without undue burden to their economies, in accordance with the restraints and control measures specified herein and in furtherance of the security objectives of the United States and of the purposes and principles of the United Nations Charter." Pursuant to section 2 of the AECA, "under the direction of the President, the Secretary of State (taking into account other United States activities abroad, such as military assistance, economic assistance, and food for peace program) shall be responsible for the continuous supervision and

general direction of sales, leases, financing, cooperative projects, and exports under this Act, including, but not limited to, determining - (1) whether there will be a sale to or financing for a country and the amount thereof; (2) whether there will be a lease to a country; (3) whether there will be a cooperative project and the scope thereof; and (4) whether there will be delivery or other performance under the sale, lease, cooperative project, or export, to the end that sales, financing, leases, cooperative projects, and exports will be integrated with other United States activities and to the end that the foreign policy of the United States would be best served thereby." Section 4 of the AECA provides the purposes for which defense articles and defense services may be sold or leased, which include internal security and legitimate self-defense.

- The AECA also authorizes the President, in "furtherance of world peace and the security and foreign policy of the United States" to "control the import and the export of defense articles and defense services." The AECA requires that decisions on issuing export licenses for defense articles and defense services "take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements."

- There are also a number of restrictions that apply to arms transfers in the AECA, FAA, other statutes, or that apply through regulation or United Nations sanctions.

- We are further bound by our commitments to a number of international export control regimes, such as the Missile Technology Control Regime and the Wassenaar Arrangement.

Under the AECA, there are three main authorities through which the United States can provide defense articles or services to another country: government-to-government Foreign Military Sales (FMS); licensed exports of direct commercial sales (DCS); and the lease of defense articles. We are also authorized to provide EDA under the FAA and to approve third-party transfer requests under both the AECA and the FAA.

A variety of regulations apply to these programs. On the FMS side, government-to-government sales are implemented by the Department of Defense, and the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement apply to all programs. Admiral Rixey will address this in more detail. On the DCS side, my Bureau manages the International Traffic in Arms Regulations (ITAR), which implements part of Section 38 of the AECA, authorizing the President to control the export, temporary import, and brokering of defense articles and defense services. Permanent imports of defense articles pursuant to section 38 of the

AECA are regulated by the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives.

The ITAR includes the United States Munitions List (USML) – 21 broad categories into which defense articles and services may fall, ranging from small arms to naval vessels, fighter jets, and satellites. The export of articles and services enumerated on the USML are regulated by the Department of State, through the Directorate of Defense Trade Controls (DDTC).

While I will speak in greater detail about exports under the ITAR, it is important to note that the AECA requires every person who engages in the business of manufacturing, exporting, or importing defense articles or defense services to register with the Department of State. The ITAR implements this statutory requirement and clarifies that a "manufacturer who does not engage in exporting must nevertheless register." This requirement, according to the ITAR, "is primarily a means to provide the U.S. government with necessary information on who is involved in certain manufacturing and exporting activities."

Finally, regardless of whether an article or service is being transferred via FMS, DCS, Lease, EDA, or third-party transfer, we have a policy framework through which we review every arms transfer on a case-by-case basis. This is the Conventional Arms Transfer (CAT) Policy, a Presidential-level policy last updated in 2014. The CAT policy identifies 13 considerations we must examine in reviewing each sale or export:

- Appropriateness of the transfer in responding to legitimate U.S. and recipient security needs.
- Consistency with U.S. regional stability interests, especially when considering transfers involving power projection capability, anti-access and area denial capability, or introduction of a system that may foster increased tension or contribute to an arms race.
- The impact of the proposed transfer on U.S. capabilities and technological advantage, particularly in protecting sensitive software and hardware design, development, manufacturing, and integration knowledge.
- The degree of protection afforded by the recipient country to sensitive technology and potential for unauthorized third-party transfer, as well as in-country diversion to unauthorized uses.
- The risk of revealing system vulnerabilities and adversely affecting U.S. operational capabilities in the event of compromise.
- The risk that significant change in the political or security situation of the recipient country could lead to inappropriate end-use or transfer of defense articles.
- The degree to which the transfer supports U.S. strategic, foreign policy, and defense interests through increased access and influence, allied burden sharing, and interoperability.

- The human rights, democratization, counterterrorism, counter proliferation, and nonproliferation record of the recipient, and the potential for misuse of the export in question.
- The likelihood that the recipient would use the arms to commit human rights abuses or serious violations of international humanitarian law, retransfer the arms to those who would commit human rights abuses or serious violations of international humanitarian law, or identify the United States with human rights abuses or serious violations of international humanitarian law.
- The effect on U.S. industry and the defense industrial base, whether or not the transfer is approved.
- The availability of comparable systems from foreign suppliers.
- The ability of the recipient to field effectively, support, and appropriately employ the requested system in accordance with its intended end-use.
- The risk of adverse economic, political, or social effects within the recipient nation and the degree to which security needs can be addressed by other means.

I would like to stress that the CAT Policy is a framework, rather than an equation. Every transfer or export is considered on a case-by-case basis against all of the policy's criteria, in support of our foreign policy and national defense objectives.

Arms Export Processes

Let me now walk through the processes by which the United States may transfer or authorize the export of arms.

DCS

The first is Direct Commercial Sales. Generally in a DCS case, a foreign entity – be it a government, a corporation, or an individual – works directly with a partner in the U.S. defense industrial base to obtain equipment or services. Neither the U.S. military nor the U.S. government is directly involved in the sale or acquisition. If the articles or services in question constitute defense articles or defense services, as defined by the U.S. Munitions List and the ITAR, the State Department must authorize the transaction through a license or other form of approval. All such applications are reviewed under the CAT policy and other statutes or regulations as appropriate, and may include interagency review to ensure U.S. interests are properly protected. Depending on the nature of the transaction, the Department may convene an interagency working group to formulate policy recommendations on whether to grant the license or other form of approval. The composition of this group varies, but the main players include the Department and DoD. If the value of the license exceeds the levels identified in the AECA, the Department must notify the proposed license to Congress. Following State Department review, and, if required, the successful conclusion of Congressional notification, the Department may issue a license or otherwise approve the transaction.

FMS

The second major process is the FMS process. In FMS, a foreign country contracts with DoD to provide a defense article from stock or through a DoD purchase from the U.S. defense industry. In practice, this process constitutes several steps:

- Letter of Request (LOR) from the foreign partner. LORs can be vague, referencing simply an overall capability required, or they can lay out in detail a proposed procurement. LORs, which can be received via many channels, are processed by DSCA and turned into draft Letters of Offer and Acceptance (LOA), which provide far more detail, including cost. LOAs – once fully approved with the U.S. government and accepted by the foreign government – ultimately constitute an agreement between the partner and the United States Government.

- The draft LOA is provided by DSCA to the State Department, where we review the case under the statutory, regulatory, and policy frameworks identified above. While processing times can vary depending on the circumstances of individual proposed sales, the State FMS review process is an efficient one. State reviews and adjudicates FMS sales offers on a daily basis, typically providing its assent in all but a small minority of cases.

- If the LOA is above monetary thresholds established in the AECA, we must notify the case to Congress before the sale can be approved.

- Once the Department has approved the sale, DSCA may offer the LOA to the partner country. Its signature on the LOA is contractually binding. DoD then implements the case.

Beyond being a government-to-government process, FMS differs from DCS in several key ways. The first is in economy-of-scale buying power. When buying through the U.S. military, a country may be able to leverage a purchase that a particular Military Service is already buying for its own use to get a cheaper unit price than they would otherwise. Alternatively, the country may be able to pool with the purchase of another country that is also working within the FMS process. This provides benefit to our Military Services and promotes our ability to build meaningful partner capacity overseas.

Another reason a country might choose to use FMS is that it may not have the capability or capacity within its government to effectively oversee the acquisition, so they are paying DoD to do it for them. DoD provides contracting support, requirements evaluation, logistics support, and works directly with the U.S. supplier. As the exporting party in a Foreign Military Sales case is the United States Government, FMS sales are exempt from the requirement for export licenses.

FMS provides what is called "the total package approach," which includes the aforementioned services as well as sustainment, technical support, training, and software/hardware updates. The total package approach may make an FMS purchase more appear more expensive on the front end, but the country is receiving much more than a defense article.

Finally, there are many countries that appreciate the transparency that comes with the U.S. system. For them, demonstrating to its public that the acquisition is free of corruption is a significant selling point of the FMS system.

There are advantages, as well, to purchasing through DCS. DCS is not subject to the DoD acquisition process, and thus allows another country to set its own standards for competitions and negotiate directly with the U.S. defense industry. DCS may at times be faster, and might also prove better for acquiring items not purchased by the U.S. military for its own needs.

As a general matter of policy, the U.S. government takes a "neutral" position on whether a customer selects FMS vs. DCS although there are some systems which, because of technological or policy sensitivity, we only sell via FMS. The important element is that partners buy American; the mechanism through which they do so is typically their choice.

Leases

Pursuant to section 61 of the AECA, the United States may lease defense articles in DoD stocks to an eligible foreign country or international organization if there is a determination that there are compelling foreign policy and national security reasons for providing such articles on a lease basis rather than a sales basis and are not needed for public use. The recipient country must also agree to pay in U.S. dollars all costs incurred by the United States, including replacement costs of articles if lost or destroyed while leased.

Each lease agreement must be for a fixed duration not exceeding five years. The President, however, may terminate the lease and require the return of the leased article at any time during the duration of the lease.

EDA

Under section 516 of the FAA, the United States may grant transfer or sell EDA to foreign governments. Once a U.S. Military Service deems an article to be excess to its requirements, such articles may be made available to eligible foreign countries. EDA defense articles are made available on an "as-is, where-is" basis, meaning that partners are required to pay for any refurbishment or transportation costs associated with the acquisition. EDA is an extremely effective program, as it allows the U.S. to provide valued defense articles to our partners while reducing storage and destruction costs for our Military Services.

Third Party Transfer and Retransfers/Reexports

Finally, partners may also acquire U.S.-origin defense articles via third-party transfer. If a partner who was the original purchaser of a U.S. defense article wishes to transfer – via sale, exchange, or grant –to a third party, the two parties must seek permission from the Department of State for such a transfer, in order to ensure it comports with U.S. foreign policy goals and technology transfer concerns. Similarly, under DCS, all retransfers, which entail transfer of a U.S. defense article within the same foreign country, or reexports, which involve transfer to a third country, require authorization from the Department of State.

Congressional Notification

Congress has a critical role to play in oversight of arms transfers, and I will briefly walk through that process for you.

As I described above, arms exports – DCS or FMS – above certain statutory thresholds identified in the AECA must be notified to Congress before the license can be approved, or the LOA issued.

This process commences each year with the annual "Javits" report and briefing to Congress on anticipated arms transfers in the coming year.

On the DCS side, as we receive license applications that reach the statutory notification thresholds, we submit them immediately to the Committee for "concurrent review." This gives the Committee time to review the cases while we conduct our own internal policy and regulatory reviews but does not prejudice the ultimate decision on whether or not to move forward with the case.

For nearly all DCS and FMS cases, once the Administration has made a decision to approve a license or an LOA above the statutory notification threshold, we provide a draft notification to the Committee under a process we call "tiered review."

This entails a Congressional review period during which the Committees can ask questions or raise concerns prior to the Department of State initiating formal notification. The purpose is to provide Congress the opportunity to raise concerns, and have these concerns addressed, in a confidential process with the Administration, so that our bilateral relationship with the country in question is protected during this process. If, during the Tiered Review period, the Committee raises significant concerns about a sale or license, we will typically extend the review period until we can resolve those concerns.

Following the conclusion of the Tiered Review process, we submit formal notifications to Congress. Depending on the country, statute allows Congress either 15 days (NATO +5+1 countries) or 30 days for Congress to object to a sale or license, which it must do through a concurrent Joint Resolution of Disapproval. If no such bill has passed within the Notification timeframe, we may offer the partner country the LOA or issue the export license.

I want to note how much we value this process of Congressional engagement. It is my experience that Congress brings a unique and fresh perspective to arms transfers, asking questions that help us sharpen our thinking and raising concerns that cut across different considerations, from protecting American jobs against the offshoring of manufacturing to pressing us to use arms sales to gain leverage on other aspects of a country's behavior or performance. I speak on behalf of both Admiral Rixey and myself – and our entire Departments – when I thank you for your continued oversight and engagement on this critical matter.

End-Use Monitoring and Compliance

I would like to conclude by discussing two essential aspects of U.S. arms transfers: end use monitoring and compliance.

End-Use Monitoring

End-use monitoring (EUM) refers to the steps we take to ensure that defense articles or services we have provided are used, secured, and accounted for, consistent with section 40(a) of the AECA, our license terms, and in accordance with our agreements with the foreign government or international organizations. Section 40A requires an EUM program for defense articles and defense services sold, leased, or exported under the AECA or the FAA that is designed to provide reasonable assurance that *i) the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of defense articles and defense services; and ii) such articles and services are being used for the purposes for which they are provided*."

The U.S. government has three EUM programs for defense articles, technology, or services. EUM for USML articles and services exported via DCS is implemented via DDTC's Blue Lantern program. Blue Lantern's mission is to help ensure the security and integrity of U.S. defense trade. Blue Lantern helps prevent the diversion and unauthorized use of U.S. defense articles exported through DCS, combats gray arms trafficking, uncovers violations of the AECA, and builds confidence and cooperation among defense trade partners. Blue Lantern end-use monitoring includes pre-license, post-license, and post-shipment checks to verify the bona fides of foreign consignees and end-users, to confirm the legitimacy of proposed transactions, and to verify compliance with U.S. defense export rules and policies. Blue Lantern checks are typically conducted by U.S. embassy and consulate staff in over 100 countries every year. An unfavorable Blue Lantern determination may result in the denial or revocation of a license, entry on DDTC's Watch List, or, if there is evidence of possible criminal activity, referral to Homeland Security Investigations (HSI) or the FBI.

For FMS cases, EUM is conducted via DSCA's Golden Sentry program. The principal components of Golden Sentry's execution include obtaining pre-delivery end-user assurances from the recipient governments and international organizations regarding authorized end-use, re-transfer restrictions, and protection of U.S.-origin defense equipment. Routine and Enhanced

end-use monitoring by security cooperation organizations assigned to U.S. embassies worldwide verify end-use, accountability, and security of defense articles and services. Compliance Assessment Visits performed by the EUM Division personnel are also central to the Golden Sentry program. Golden Sentry personnel from DSCA verify compliance with the end-use terms and conditions of sale and other transfer agreements.

Certain defense articles require specialized physical security and accounting. For these highly sensitive items, the Golden Sentry program conducts specialized Enhanced End Use Monitoring (EEUM) – a program that requires DoD security cooperation officers at our embassies to conduct EEUM through planned and coordinated visits to host nation installations, where they verify by serial number a 100 percent inventory of EEUM-designated items on an annual basis.

Compliance

There are two aspects of compliance I would like to touch on today. The first relates to foreign partner nations, and the second to foreign and U.S. commercial entities.

If our EUM checks determine that an unauthorized third party transfer has occurred, or that previously-transferred sensitive U.S. technology has been exploited, we may be required under section 3 of the AECA to make a report to Congress regarding the violation of our agreement with the foreign entity. There are a number of steps we may take to address such situations, up to and including the suspension of defense sales or exports to the country in question.

Corporations involved in the defense trade are responsible for ensuring their compliance with the ITAR. Most U.S. defense manufacturers have personnel dedicated to ensuring such compliance, and we work with hundreds of companies each year to ensure they are aware of the requirements and to address any compliance issues that may arise.

When significant lapses in compliance occur in the context of DCS transactions, the AECA authorizes a number of options for the U.S. government. These include pursuit of civil cases against companies or individuals who have violated the ITAR, potentially resulting in fines or export restrictions, as well as criminal penalties implemented by our law enforcement partners and the Department of Justice, if warranted.

Our civil cases most frequently result in administrative settlements, which often include Department oversight of the steps the company takes to address the cause of their lapse in compliance. The Department may waive or reduce a civil monetary penalty when companies agree to implement compliance-improvement measures.

In cases where criminal conduct has occurred, we assist our law enforcement partners, including the HSI and FBI, to support criminal proceedings by the Department of Justice.

Conclusion

We recognize the challenges associated with U.S. arms transfers. Across the interagency, we work day in and day out to ensure transfers are carefully considered, and approved or denied for the right reasons that promote American security and American interests.

Each delivery of U.S. defense articles and services sends a message to our friends and foes. It is an act of support and trust for our partners and allies. It provides them the capabilities to defend themselves and to support the security and stability of their region.

At the same time, defense transfers and exports provide significant benefits to the United States, not only in strengthening our partners and partnerships but also in terms of our own military procurement and the health of U.S. defense industrial base.

Most arms transfer decisions have a clear and swift path to approval, as we work expeditiously with DoD to support our partners and allies worldwide. Others will be more difficult, owing to the wide array of criteria I've described today. While we cannot avoid accounting for the complexities of these foreign policy decisions, we must also continue to move ahead to build the capacity of our partners in support of our national security interests.

We recognize that to slow or impede this work would be to open the door for other suppliers and actors. It would hamper our allies' efforts to work with us on common security issues. It would distance us from our partners. It would disadvantage the very industry on which we rely for our technological security capabilities and advantage. It would take away our voice in circumstances where it might matter the most.

We therefore transfer arms within the context of laws, regulation, and policy designed to ensure that our security policy reinforces our diplomacy and foreign policy. And we see results every day, from support for coalition operations against shared threats, to multinational training exercises, to the conversations that occur between American troops and foreign partners – partners who came here for training and left here as friends. We will remain judicious in using arms transfers as a tool of foreign policy, but we should never forget that our national security is in many ways dependent upon, and advanced as a result of, our security cooperation.

Thank you.