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**Before the Terrorism, Nonproliferation and Trade Subcommittee
House Foreign Affairs Committee for a Hearing on
A Strategic and Economic Review of Aerospace Exports**

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Introduction

Chairman Sherman, Ranking Member Royce, and distinguished members of the Committee, thank you for the opportunity to testify before the Terrorism, Nonproliferation and Trade Subcommittee of the House Foreign Affairs Committee, on the Department's role in controlling exports of "aerospace" items.

The Department's Bureau of Industry and Security (BIS), in conjunction with other federal agencies, administers controls on the export of a range of items, including "aerospace" commodities, software, and technology (items), to further U.S. national security, foreign policy, and economic objectives. BIS administers and enforces the Export Administration Regulations (EAR). The EAR governs exports, reexports, and transfers of dual-use items - those items that are for civilian use but may have a range of military or terrorist applications.

In the aerospace industry sector, there are many dual-use items. Dual-use aerospace items include composite material and manufacturing technology, certain inertial navigation systems, civil aircraft components and engines, and complete civil aircraft.

The aerospace market is the United States' most significant advanced technology export sector. In fiscal year (FY) 2009, \$80.9 billion worth of aerospace exports were made from the United States. These exports constituted approximately 8 percent of all U.S. exports (\$1,061 trillion) - the highest percentage of any industry sector. As such, it is one of the more challenging from an export control perspective, particularly because research, development, and production of sophisticated aircraft, engines, systems, and components take place around the globe. Advances in composite materials that can make commercial aircraft stronger and more fuel efficient, for example, might also end up making the fighter aircraft of potential adversaries more deadly. Our controls seek to allow U.S. companies to supply secure markets and to reap the benefits of technology collaboration while minimizing potential threats to national security and foreign policy.

Export Licensing Policy for Aerospace Items

Aerospace items, like all items that are subject to the EAR, are controlled, or classified, based on technical parameters. Export licensing requirements are based upon the item's technical characteristics the destination, and the end-use and user of the item.

Under the EAR, most civil aircraft and related parts, such as virtually all commercial aircraft and engines, can be exported to most of the world without an individual export license. Individual licenses are required to export these items, however, to Cuba, Iran, North Korea, Syria, and Sudan, as well as proscribed persons. Aerospace-related items that do require export licenses to most destinations include various technologies (materials, engine hot section, and navigation), certain instrumentation and navigation systems and hardware, and items for the International Space Station.

In FY 2009, BIS processed approximately 20,353 export license applications, of which 17,088 were approved, valued at about \$59.1 billion. Of these approvals, 1,230 (7.2%) were for aerospace products worth about \$1.3 billion (2.2%). The average processing time for all license applications approved in FY09 was 26 days, whereas the average processing time for aerospace items was 34 days.

Aero gas turbine engines constituted the highest dollar value of approved licenses. A total of 11 licenses were approved during this time period at an approximate value of \$281 million and an average processing time of 43 days. The single most commonly licensed commodities, by number of licenses, were instrumentation and navigation equipment and systems with 251 licenses issued totaling approximately \$176.1 million approved in an average processing time of 35 days.

Section 17c of the Export Administration Act

Amendments in 2008 to both the EAR and the State Department's International Traffic in Arms Regulations (ITAR) clarified regulatory jurisdiction of certain aerospace components that have a long history of use on both civil and military aircraft. Specifically, the amendments clarify which parts are controlled by the EAR as well as how the State Department implements criteria in Section 17(c) of the Export Administration Act in deciding commodity jurisdiction requests. Section 17(c) provides that any product: (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft; and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under the Export Administration Act. It appears that the clarification has served its purpose, as the number of commodity jurisdiction requests for the aerospace items in question, which had been significantly increasing, has dropped substantially after publication of the amendments.

Review of Control List

The export control system must continually evolve to address the current challenges of diffuse threats, technologies, and markets. An important aspect of this evolution is regular review of the Commerce Control List (CCL) to ensure that the list reflects global realities, including the availability of controlled items from foreign sources.

Input for updates to the CCL come from a variety of sources. One of the most significant sources is BIS's Technical Advisory Committees (TACs). Our TACs are comprised of industry experts who meet quarterly to provide input on technological developments and availability of controlled items from foreign sources.

In the aerospace area, BIS's Transportation Technical Advisory Committee (TRANSTAC) has been particularly active over the past several years. It has formulated modifications to the controls in the areas of hot section technology, composite materials, and avionics with the objective of making those controls more concise and current with respect to industry's state-of-the-art products. TRANSTAC members provide technical support to the interagency processes that support U.S. participation in two multilateral export control regimes - the Wassenaar Arrangement (WA) and the Missile Technology Control Regime. This past year, due to support from TRANSTAC members from General Electric and Pratt and Whitney, the United States, through the WA technical working group, was able to revise controls on Full Authority Digital Engine Controls for aero gas turbine engines. These simplified regulations will result in more effective control of those elements of greatest national security concern. Similar progress was made due to TRANSTAC support regarding certain composite materials. The successful partnership between the aerospace industry and BIS has been an effective tool in our continuing efforts to more precisely target our controls.

Export Enforcement

BIS's enforcement efforts help to ensure compliance with our dual-use aerospace export control policy.

Prevention

An important focus is on thwarting potential violations of the EAR. BIS conducts several hundred pre-license checks and post-shipment verifications annually to ensure the controlled items will be, or are being, used as authorized. Approximately 4% of these end-use checks last year were on aerospace items. These visits are performed either by BIS Export Control Officers (ECOs) posted in China, Hong Kong, India, the United Arab Emirates, and Russia or by personnel from the United States.

Of the various types of preventive enforcement actions take in Fiscal Year 2009, many were on matters related to aerospace. The Temporary Denial Order (TDO) is one of the types of preventive enforcement actions employed by BIS.

Examples of recent Temporary Denial Orders (TDO) involving aircraft in FY 2009:

Temporary Denial Orders (TDOs) prevent the unauthorized export or reexport of items and the servicing of items illegally exported or reexported.

1. On September 11, 2009, BIS renewed a TDO suspending the export privileges of Mahan Airways (an airline operating in Iran). Evidence obtained by BIS showed that Mahan Airways continues to disregard U.S. export controls. BIS evidence also showed that Mahan Airways violated the EAR and the TDO involving reexports to Iran of U.S. origin aircraft and that such violations have been significant, deliberate and covert, and there is a likelihood of future violations.

Under the Denial Order, Mahan Airways is prohibited from directly or indirectly participating in or benefiting in any way from any transaction subject to the EAR for 180 days. Moreover, it is also a violation of the EAR for any person to participate in a transaction subject to the EAR involving this denied party. This prohibition is standard in TDOs and is significant because companies that are denied export privileges are prohibited from taking part in any export transaction involving an item subject to the EAR.

2. On December 4, 2008, BIS renewed a TDO suspending the export privileges of Galaxy Aviation Trade Company, three of its shareholders, and Iran Air for 180 days. This TDO was originally issued on June 12, 2008. Evidence obtained by BIS showed that the respondent parties were planning to reexport a U.S.-origin Boeing 747 cargo aircraft from Turkey to Iran in violation of the EAR. The U.S. Government maintains comprehensive economic sanctions on Iran as a result of Iran's sponsorship of international terrorism and its pursuit of weapons of mass destruction. The order also imposed a non-standard denial on Ankair, a Turkish airline involved in the reexport, which applies only to any transactions involving this specific aircraft.

Under the Denial Order, Galaxy Aviation Trade Company, its shareholders, and Iran Air, were prohibited from directly or indirectly participating in or benefiting in any way from any transaction subject to the EAR and again it was stated that it would be a violation of the EAR for any person to participate in a transaction subject to the EAR involving this denied party. Ankair, under the Denial Order, was prohibited from participating in or benefiting from any transaction involving the Boeing 747 at issue.

Prosecution

BIS also vigorously pursues violations of the EAR. In 2008, investigations resulted in the criminal conviction of 33 individuals and businesses for export control violations. The penalties for these convictions came to over \$452,409 in criminal fines, over \$1.5 million in forfeitures and over 993 months of imprisonment. Additionally, BIS investigations resulted in the completion of 51 administrative cases against individuals and businesses and over \$7.4 million in administrative penalties.

Examples of recent prosecutions involving aircraft or aerospace related items:

1. Three men were sentenced on October 8, 2009 in federal court for exporting high-modulus, carbon-fiber material to the China Academy of Space Technology in violation of United States export laws and regulations. According to their plea agreements, the defendants conspired to violate the EAR between March 23, 2007, and April 6, 2008, by exporting and attempting to export high-modulus carbon-fiber material without an appropriate license. For national security, nuclear proliferation and antiterrorism reasons, the U.S. Government requires a license to export that material because it has applications for rockets, satellites, spacecraft and uranium enrichment.
2. A Dutch aviation services company, its director and sales manager pleaded guilty on September 24, 2009 in the District of Columbia to federal charges related to a conspiracy to illegally export aircraft components and other items from the United States to entities in Iran via the Netherlands, the United Arab Emirates and Cyprus.
3. On June 11, 2009, defendant Traian Bujduveanu was sentenced in Miami federal court for his role in a conspiracy to illegally export military and dual use aircraft parts to Iran. Bujduveanu's co-defendant, Hassan Keshari, and his corporation, Kesh Air International, were sentenced in May 2009.

Export Administration Act

A significant challenge for BIS, especially with respect to its enforcement activities, is the long-standing lapse of the Export Administration Act of 1979, as amended (EAA). This lapse hinders the ability of BIS to employ up-to-date authorities to enforce the dual-use export control system. While in lapse, the EAA cannot be updated and thus the enforcement authorities of BIS Special Agents have not kept pace with an ever changing criminal landscape.

It is vital that BIS Special Agents acquire updated enforcement authorities to combat proliferation in an era of globalization. For example, BIS's agents are currently unable to work directly with their foreign law enforcement counterparts. In addition, they do not have the authority to conduct undercover operations - or even make a simple arrest - in the United States without undergoing a cumbersome bureaucratic process. While effective cooperation between U.S. law enforcement agencies has enabled our agents to overcome some of these hurdles, they need updated enforcement authorities to enhance our national security by enabling domestic and international investigations and enforcement actions to proceed more quickly, efficiently, and effectively.

Export Control Reform

On August 13, 2009, the President again signed an order to continue application of the EAR pursuant to emergency authorities given the lapse of the EAA. This is done on an annual basis. In addition to continuing our authority, the President also directed that the National Security Council launch a broad-based interagency process for reviewing the overall U.S. export control

system, including the dual-use process. The aim of the review is to consider reforms to the system to ensure that we are effectively promoting national security and foreign policy by addressing the threats and changing economic and technological landscape that we face today.

This review is well underway. The goal is to devise an export control system to best address the diffuse threats, technology, and markets of the 21st century.

Conclusion

Thank you for the opportunity to testify on the Department of Commerce's application of controls on the export of aerospace items.

I would be pleased to answer any questions you have.