

**Testimony of Christopher A. Padilla**  
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**before the**  
**House Committee on Foreign Affairs**  
**Subcommittee on Terrorism, Nonproliferation, and Trade**

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Chairman Sherman, Ranking Member Royce, Members of the Subcommittee:

The title of today's hearing asks an important question: are our export controls protecting security and facilitating exports? I believe that the answer is absolutely yes, and I am pleased to have the opportunity to appear before you today to discuss this critical role that export controls play in America's national security and economic well-being.

America's future security and prosperity depend on our ability to control the proliferation of sensitive technologies that can be used for nefarious purposes while ensuring continued U.S. competitiveness in the global economy. The Commerce Department's Bureau of Industry and Security (BIS) plays a key part in this effort by maintaining and strengthening an effective dual-use export control system. Dual-use technologies are those items – commodities, software, and technologies – that are primarily for civilian uses, but that also can be used for military purposes or to build weapons of mass destruction. A good example is this triggered spark gap. Triggered spark gaps, which resemble empty spools of thread, are in fact high-speed electrical switches capable of sending synchronized, high-voltage electronic pulses. They have two principal uses: to break up kidney stones and to detonate nuclear weapons.

BIS carries out its critical mission primarily through the regulation and licensing of dual-use exports from the United States. In Fiscal Year 2006, BIS processed 18,941 export licenses valued at \$36 billion. This marked a 13 percent increase over Fiscal Year 2005 and represents the highest number of applications reviewed by the Bureau in over a decade. Yet even as the Commerce Department reviews more license applications, we are doing so more efficiently. In Fiscal Year 2006, average processing time for dual-use licenses – including full interagency review – was 33 days. Through June 30 of the current fiscal year, the average licensing processing time has dropped to 29 days. That's down from 40 days in FY 2001. So while the number of license applications is up 74 percent, processing time is down 28 percent since the beginning of the Bush Administration.

One reason for this efficiency is a well-understood process, well-administered under the terms of a 1995 Executive Order. The vast majority of license applications received by the Commerce Department are referred to the Departments of State, Defense, and Energy and the Intelligence Community for review. This system ensures that the relevant agencies review and provide input into the licensing process, and that the Intelligence Community provides critical intelligence on end-users and uses. Guided by the 1995 Executive Order, this licensing system has worked well. We operate under clear time frames for reviewing and referring licenses and have a clear escalation and dispute resolution process when agencies disagree.

## **Changing Nature of the International System**

Although the dual-use regulatory system operates effectively, the system itself was designed to meet the challenges of an earlier era when there was a clear international consensus on the security threat facing the United States and its allies. During the Cold War, it was sufficient for export controls to focus almost exclusively on countries: exports to the Soviet Union and Warsaw Pact were broadly restricted, regardless of the customer.

Today, the threats are different and, in many cases, more diffuse. As a result, our current export control system must now cope with four broad challenges:

First, states no longer constitute the sole threat to our national security. Today, we face sub-state actors such as terrorists and proliferators who are capable of inflicting great harm on our country. These terrorists and proliferators do not wear uniforms, do not advertise their intentions, and are not limited in their quest for deadly weapons – including WMD – by a country's borders. They operate within and across states, even within the open societies of friendly nations, as recent events in Britain, Canada, and Spain clearly indicate. As the recently released National Intelligence Estimate noted, terrorists have shown continued strong interest in attempting to acquire chemical, biological, radiological, or nuclear materials. Export controls are an important tool in the fight against terrorism.

Second, America's relationships with emerging powers are more complex and multifaceted than ever before. With only a few exceptions, the United States can no longer broadly restrict all trade to targeted countries. Instead, our export control system must be able to promote trade and peaceful development, while at the same time addressing the national security issues posed by rapid foreign military buildups. Nowhere is this more evident than in the case of China. As President Bush has said, the United States welcomes the growth of a peaceful and prosperous China, and our policy is to encourage China to become a responsible stakeholder in the international system. This means working to expand and promote legitimate civilian trade, while prudently hedging against the uncertainties of a significant military expansion program in China. Our export controls must therefore distinguish between civilian and military customers within the large and diverse Chinese economy.

Third, the globalization of research and development and the rise of new economic competitors challenge U.S. competitiveness. As a result of an unprecedented increase in the cross-national flow of goods, services, capital, and technology over the last three decades, U.S. companies now have access to billions of new customers. At the same time, our companies face the ever-growing challenge of operating profitably in a competitive global market. Export controls must not place an undue burden on U.S. companies, thereby undermining America's economic and technological competitiveness.

Finally, national perceptions of security risks are no longer as consistent among the United States and its partners as they were during the Cold War. At that time, under the Coordinating Committee on Export Controls, or COCOM, the United States and its allies broadly restricted most exports to the Soviet Union and Warsaw bloc. Any member of COCOM could veto the sale or export of dual-use items by another COCOM member. Today, while members of the multilateral export control regimes coordinate on common control lists and on certain regulatory

policies, there are disparities between the implementation of U.S. export controls and those of our allies.

The Commerce Department continues to effectively administer and enforce the dual-use export control system. However, we must at the same time address these four challenges by adapting and updating the dual-use export control system. An important part of this is renewal of the Export Administration Act (EAA). The Administration has been working with Congress to renew the EAA since its lapse in 2001. The Administration recently proposed legislation, the Export Enforcement Act of 2007, to renew the EAA and to address a few key enforcement issues vital to national security. This bill would give BIS the solid legal and statutory basis to oversee the dual-use export control system and strengthen its ability to punish violators, while laying the groundwork for more comprehensive reform in the future.

The Administration recognizes, however, that EAA renewal is not a substitute for comprehensive reform and has already begun talking with Congress and the private sector on ideas to update export controls for the 21<sup>st</sup> Century. Indeed, we at the Commerce Department welcomed the recent recommendations from the Coalition for Security and Competitiveness, and are working with our interagency partners to implement many of its suggestions, such as creating a Validated End-User program to remove license requirements for trusted civilian customers, and beginning a comprehensive review of the Commerce Control List. In addition, we have worked closely with the recently created Congressional Export Control Working Group, co-chaired by Congressmen Manzullo, Blumenauer, and Crowley, and have benefited enormously from its leadership on issues important to the export community.

I believe that any new system must have three defining features:

### **Developing an End-User Based Export Control System**

First, the dual-use export control system must become more end-user focused. As I just noted, the changing nature of the international system means that we can no longer rely solely on country-based controls. In an increasingly complex world in which the same economy may harbor legitimate customers and terrorists or proliferation networks, we must actively seek to facilitate trade in controlled items to trusted customers, while denying sensitive technologies to end-users engaged in WMD activities, conventional arms proliferation, support for terrorism, or other activities detrimental to U.S. national security.

To manage this shift, the Commerce Department has developed a number of new initiatives that will make export controls more effective in identifying legitimate and potentially dangerous end users throughout the world. On the “legitimate customer” side, Commerce recently published a regulation creating the Validated End User Program, a new and unprecedented initiative in the world of export controls. The program is simple: for customers who have demonstrated their ability to use controlled items responsibly, fewer export licenses will be required. In the past, the world of export controls was one of many sticks and few carrots. The Validated End User Program is a step in a different direction. For the first time, we will create an export authorization that will act as a market-based incentive for firms to demonstrate good export control behavior. Customers who act responsibly with sensitive products would have better access to such technology than would their domestic competitors. And U.S. exporters would be able to sell more efficiently to their best civilian customers.

On the “suspect customer” side, the Commerce Department is strengthening its ability to target and sanction proliferators, terrorist networks, and front companies. We recently published a regulation that would expand our current Entity List to target end users who are engaged not only in WMD-related activities, but also other activities contrary to U.S. interests, including conventional arms proliferation and support for terrorism.

We are also considering a possible new regulation to target countries of diversion concern. This proposal – for a Country Group C – “Destinations of Diversion Concern” – is one possible way to address the threats to national security posed by the illicit transshipment and diversion of sensitive dual-use technologies to end users and countries of concern.

To aid America’s exporters, we are providing more information about end users around the world that raise concerns. As I just mentioned, we recently published criteria for an expanded Entity List. We are also planning a draft proposal that would introduce a standard format for all U.S. Government screening lists. Our goal is to have a more complete continuum of information – from the Unverified List through the Entity List to the Denied Persons List – available for exporters to use in screening potential customers.

Let me especially emphasize that continued participation in the licensing process by the Intelligence Community will be critical to the effectiveness of an end-user based export control system. The Intelligence Community plays a key role in the export control process by providing timely, relevant, and in-depth analysis of end-users and technologies of concern to licensing agencies. These finished intelligence reports are a crucial factor for our licensing officers and foreign policy analysts when deciding whether a proposed export will be contrary to U.S. national security and foreign policy interests. The need for such support will increase as we continue to move toward more end-user focused controls.

### **Improving the Dual-Use Licensing Process**

Second, the system must be further improved to ensure America’s exporters are able to apply for and receive licenses in a timely, transparent, and efficient way. Although the majority of our controls are based on obligations under the four multilateral export control regimes and are thus shared by many of our allies, implementation of these controls among countries differs considerably. A French exporter, for example, may be able to receive blanket permission to export a certain technology controlled under the Wassenaar Arrangement in a matter of days, whereas a U.S. exporter may have to wait weeks before receiving permission to ship under strict conditions.

To ensure that U.S. companies are not put at a competitive disadvantage, the Commerce Department is working to further improve the licensing process. We recently developed and deployed the Redesigned Simplified Network Application Process (SNAP-R) that now enables exporters to submit export license applications, commodity classification requests, and associated documents to Commerce via the Internet. SNAP-R significantly improves security and ease of use for our exporters, and assists the Bureau in receiving and processing licenses in a more efficient and effective manner.

Commerce also conducts an extensive outreach program through which we provide timely information to U.S. industry regarding export controls. In 2006, we conducted 52 domestic export control seminars in 19 states. In addition, staff in our Office of Exporter Services assisted more than 54,000 people in one-on-one counseling sessions. Not only do these outreach efforts assist U.S. exporters in understanding and complying with our regulations, they allow Commerce to hear directly from companies and individuals directly impacted by the dual-use licensing system. This valuable feedback is critical to our efforts to further streamline the system.

## **Updating U.S. Controls**

Finally, the export control system must limit the export of sensitive products while still ensuring that controls do not unduly restrict the vast majority of legitimate, civilian high-tech trade. The Commerce Department is working closely with Congress, interagency partners, and the private sector to ensure that U.S. companies are not precluded from participating in global markets open to foreign competition. We are working to create a more formal process to take foreign availability into account in licensing and control decisions. For example, foreign availability assessments should consider the availability of foreign items and the relative controls placed on these items not only from “controlled countries”, but also from multilateral export control regime members.

Moreover, we recently published a notice in the Federal Register calling for public comment on ways in which the Commerce Control List can be revised. A systematic review of the CCL will help ensure that the regulatory regime is deliberative and incorporates all relevant data, including the competitive nature of the global marketplace and the changing nature of national security threats. We are also actively working with our Technical Advisory Committees to develop recommendations for updating and refining the CCL in institutional and standardized way.

These steps are critical to ensuring that we strike the right balance. An excellent example of changing technology and foreign availability is the U.S. imaging and sensors industry. Thermal imaging cameras are used in the medical and automotive industries, for fire-fighting and search-and-rescue, and for preventative maintenance. This industry plays a critical part in the U.S.-high technology and defense industrial base. But Commerce recently conducted an industrial base assessment of the industry and found that, while U.S. exports of all imaging and sensor products have increased steadily over the last six years the total U.S. share of global exports for imaging and sensors products has declined since 2001. In one area – uncooled infrared (thermal) imaging cameras – U.S. exports declined a disturbing 64 percent. Industry cites export controls as the reason.

So the Commerce Department is working with its interagency partners to develop a regulation that will ease controls on low-end cameras being exported to Japan and the EU, while ensuring that adequate controls remain on more sensitive cameras. These types of regulations are a key part of our efforts to ensure that we control only the most sensitive items while minimizing the impact of these controls on U.S. economic competitiveness and innovation.

## **Conclusion**

Adapting the dual-use export control system for the 21<sup>st</sup> Century will be difficult. But a more focused, customer-based system tailored towards new threats, and taking into account

technological and economic changes, will help ensure that we are able to maintain export controls that enhance security for the United States. The task is complex, but I am confident that working together with Congress, we will be able to develop technology controls that meet the security needs and economic imperatives of the 21<sup>st</sup> Century. Together, we can help ensure that in this era of globalization, our continued prosperity and well-being will not be jeopardized by those who would do us harm.

Thank you Mr. Chairman. I welcome any questions which you and the subcommittee may have.