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**Before the Terrorism, Nonproliferation and Trade Subcommittee
House Foreign Affairs Committee for a Hearing on
"Transshipment and Diversion: Are U.S. Trading Partners Doing Enough to
Prevent the Spread of Dangerous Technologies?"**

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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, regarding the work the Department of Commerce is doing to prevent diversion of controlled goods through transshipment areas.

The Department's Bureau of Industry and Security (BIS) administers and enforces the Export Administration Regulations (EAR) to further U.S. national security, foreign policy, and economic objectives. Commodities, software, and technology subject to the EAR are generally "dual-use" items that are for civilian use but also may have a range of military or terrorist applications or foreign policy implications. In administering and enforcing the EAR, BIS works closely with a number of other agencies, including the Departments of Defense, Energy, Homeland Security, Justice, State, and the Treasury, and the intelligence community.

Transshipment and Diversion

BIS employs a variety of methods to prevent diversion of items subject to the EAR to unauthorized destinations and uses. These methods include interagency review of export license applications, identification of high-risk foreign parties, extensive outreach to the business community, end-use checks, and review of export data.

Export Licensing

BIS, pursuant to its legal authorities, controls the export, reexport, and transfer of all items subject to the EAR. Control levels vary depending on the level of technology, the destination, and the end-use. In Fiscal Year 2009, BIS processed 20,351 export license applications valued at approximately \$62.4 billion for items subject to the EAR

The licensing process provides BIS and the Departments of Defense, Energy, and State the opportunity to review all aspects of the proposed export to evaluate the risk of diversion either in-country or to a third country and to evaluate any other national security or foreign policy risks. Under Executive Order 12981, Defense, Energy, and State can review all license applications submitted to BIS.

BIS frequently revises the EAR with the concurrence of the Departments of State and Defense and other agencies as appropriate, to ensure that the list of controlled items (the Commerce Control List), the licensing requirements, and policy for items subject to the EAR are current and effective.

Restricted Parties

In addition to controls based on technology level, BIS has export, reexport, and transfer restrictions on a range of foreign persons, in a variety of countries. These persons include those that have not cooperated with end-use checks, those that have made or seek to make unauthorized exports, reexports, or transfers of items subject to the EAR, those involved in weapons of mass destruction programs in specified countries, or those that act in other ways contrary to the national security or foreign policy interests of the United States.

The Entity List is one tool that is increasingly used to address the diversion issue. The Entity List, found in Supplement No. 4 to Part 744 of the EAR, notifies the public of license requirements for the export, reexport, and transfer of items subject to the EAR to listed entities. In coordination with the interagency End-User Review Committee, BIS places entities on the Entity List based on specific facts that the entities have been involved, are involved, or pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. Entities acting on behalf of such entities may also be added to the Entity List.

While the Entity List initially targeted foreign entities involved in weapons of mass destruction programs, BIS now includes foreign entities engaged in a range of activities contrary to U.S. national interests. Since its expansion, BIS has added 192 entities to the Entity List. The expanded Entity List has proven to be an extremely effective tool against diversion and has significant consequences for the listed entities BIS has received numerous inquiries from entities seeking to be removed from the list. The entities

seeking removal state that their placement on the Entity List severely limits business opportunities and leads to financial problems, sometimes including bankruptcy. Their suppliers do not want to do business with them for fear of being added to the list. Several entities have cooperated with U.S. enforcement agencies to facilitate removal from the list. The Entity List is constantly updated and currently includes over 200 specific entries, including individuals, companies and government organizations. BIS published six revisions to the Entity List in the Federal Register in 2009 and four revisions thus far in 2010.

In addition to its specific Entity List entries, the EAR also imposes export, reexport, and transfer controls on certain persons included on lists maintained by other U.S. Government agencies, including the Specially Designated Nationals List maintained by the Department of the Treasury and the Debarred List administered by the Department of State.

BIS also imposes restrictions on exports and reexports to certain persons through the issuance of Temporary Denial Orders (TDOs) that are published in the Federal Register. TDOs are issued by the Assistant Secretary for Export Enforcement and deny the export privileges of a company or individual to prevent an imminent export control violation. These orders are issued ex parte for a renewable 180-day period and cut off not only the right to export from the United States, but also the right to receive, participate in, or benefit from exports from the United States. In addition, once a TDO is issued, it

becomes a violation of the EAR for other persons to participate in export or reexport transactions involving the denied person.

Outreach Activities

In addition to enforcement activities, BIS participates in various outreach events with the public and private sector to provide training on how to prevent the diversion of items subject to the EAR. In Fiscal Year 2009, BIS conducted 42 domestic export control outreach seminars in 18 states. The BIS seminar program provides information for both new and experienced exporters about the requirements of the EAR and how to comply with those requirements, and includes information on how exporters should act when “Red Flags” suggest that a violation is about to occur in connection with their intended transaction. BIS also works with a wide range of public and private-sector organizations, such as freight forwarders and national forwarding associations, to introduce audiences in specific business and technology sectors to BIS's mission and services. These partnerships provide BIS with additional insights into technology and market developments in key sectors of the economy.

Export Enforcement

Vigorous enforcement is another critical component to addressing transshipment concerns. The BIS Office of Export Enforcement (OEE) conducts end-use checks to confirm the *bona fides* of a foreign entity, and to ensure that sensitive items are not used in ways that threaten the national security interests of the United States. BIS also employs Export Control Officers (ECOs) at U.S. embassies in Beijing, China; Abu Dhabi, the United Arab Emirates; New Delhi, India; Moscow, Russia; and at the U.S Consulate in

Hong Kong. BIS is also stationing an ECO in Singapore this fiscal year who will be responsible for end-use checks in East Asia, including Malaysia and Indonesia.

The ECOs' principal mission is to ensure that items subject to the EAR entering their regions are used in accordance with U.S. export control laws and regulations. The ECOs conduct pre-license checks and post-shipment verification visits to verify that items will be, or are being, properly used and have not been diverted to unauthorized users or uses within the country or illegally transshipped to another country. In countries that are not covered by ECOs, end-use checks are conducted either by OEE Special Agents deployed from the United States through BIS's Sentinel Program or by embassy personnel.

BIS also conducts data analysis and research to combat the illegal transshipment and diversion of items subject to the EAR to uncover possible violations. The Bureau conducts research and analysis of open source, intelligence, financial, and statistical information, including export data from the Automated Export System, to identify trends in controlled trade, including with regard to transshipment, and develop productive end-use checks and actionable law enforcement leads. The Office of Enforcement Analysis coordinates with other federal agencies and counterparts in the intelligence community to uncover illicit procurement networks.

BIS maintains a constructive and cooperative relationship with the U.S. business community on specific diversion threats through targeted industry outreach, which focuses on specific goods and technologies that illicit proliferation networks actively seek to acquire. BIS contacts U.S. manufacturers and exporters of these goods and

technologies to apprise them of acquisition threats and to solicit cooperation in identifying and responding to suspicious foreign purchase requests.

One example of a diversion case conducted by a BIS Special Agent involved controlled items being shipped through the United Arab Emirates. On March 27, 2009, a federal judge in the Eastern District of Virginia ordered the forfeiture of eight vibration test systems and eight humidity chambers that were detained and seized by the Office of Export Enforcement and Customs and Border Protection. These items were seized after a Canadian company attempted to export them to Syria via the United Arab Emirates. A review of the technical specifications for the items contained in this shipment was conducted by the OEE. Technical experts within BIS assessed that the vibration test equipment and the environmental humidity chambers, used in combination, can be used to test ballistic missile components and that an export license was required for these items if destined for Syria. OEE determined that there was a significant risk that U.S. origin items would be shipped to Syria and to an unknown Syrian end-user. OEE intercepted the shipment in the UAE and redirected the items back to the United States.

BIS Support of State Department Efforts

BIS also works with a variety of countries to develop and strengthen those countries' export control systems. As the agency responsible for administering and implementing dual-use controls in the United States, BIS may share first-hand experience and expertise regarding the establishment of a robust and effective export controls regime. Through funding from BIS, as well as the Department of State's Export Control and Related Border Security (EXBS) program, BIS provides legal experts to help countries develop

export control laws and regulations, compliance experts to help countries reach out to domestic industry and foster adherence to their laws and regulations, technical experts to help countries identify and classify dual-use items, develop control lists, and institute licensing review mechanisms, and enforcement experts who provide advice on conducting investigations, including screenings and inspections, and methodology for developing and prosecuting export control violations.

BIS led or participated with the Department of State, in 28 meetings with foreign governments in Fiscal Year 2009. These bilateral exchanges allow U.S. government experts to work with their foreign counterparts in addressing the diversion risk of items to unauthorized destinations or uses.

Conclusion

Thank you for giving BIS the opportunity to discuss this important issue with you.

I would be pleased to answer any questions you have.