

**The Aerospace States Association (ASA)
Capitol Hill Hearing on Export Controls
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The United States leads the world in technological innovation. Our government has both the right and the responsibility to control the export of our most sensitive technology to those who might harm us or our interests around the world. About this there is no debate. The challenge is to do this while remaining engaged and open to the rest of the world in order to maintain that technological edge.

A recent report by the Deemed Export Advisory Committee (DEAC) stated, “*Leadership in science and technology today is a globally-shared and highly interdependent perishable asset.*” The report also noted that a nation that builds “walls” around technological and scientific knowledge “*denies itself the opportunity to fully benefit from the vast body of knowledge being accumulated elsewhere.*” Effectively protecting our national security while ensuring our continued international leadership and competitiveness therefore requires a thoughtful and flexible export control system. We must of course control technology that is only available from U.S. sources. But the debate over the appropriate level of export controls is usually painted as between those who would basically liberalize controls in order to stimulate U.S. exports and those who see liberalization as compromising national security. I believe this is a false dichotomy.

Our export control system today is too cumbersome and rigid and too often harmful to our international competitiveness. It all too often has the effect of harming U.S. competitiveness as it seeks to control the export of technology that is widely available elsewhere. We need to do things differently, smarter. U.S. manufacturing industry unequivocally supports sensitive technology controls. The right export control system need not harm American exports and competitiveness in order to protect our technology.

An effective system should accurately identify and safeguard sensitive military technologies and support U.S. technological leadership and competitiveness through a flexible regulatory system. It should also facilitate, not hinder, technological and industrial cross-fertilization with trusted partners and allies. Needless to say, it should seek allies' cooperation in controlling sensitive technology. An export control system that does these things will help preserve this country's industrial base and technological leadership. This is particularly important in the general aviation manufacturing industry. U.S. general aviation manufacturers lead the way in bringing to the market technology that makes aviation safer, more efficient and more reliable. This in turn preserves and creates solid, high-paying jobs throughout the United States.

The general aviation industry is one of this country's most successful and globally competitive industries. U.S. exports of general aviation airplanes in 2007 came to \$4.59 billion, representing 38.4% of total U.S. GA manufacturers' billings. Obviously, the global market is important to us. And this more so today than it has ever been. U.S.-based GA manufacturers sent 1,142 planes overseas last year. Compare that with just 333 in 2004. Our 2007 export earnings, \$4.59 billion, are up from just \$1.42 billion in 2004. And each one of these airplanes represents the cutting edge for its class, incorporating the latest advanced avionics, materials and other technology.

When a U.S. general aviation manufacturer discovered that deliveries to its first customers of a new model were suddenly held up inexplicably by U.S. export control rules due to a determination that an infra-red camera incorporated in its avionics package should not be exported without a specific license, we have to ask, why? And so the first few planes were delivered with a license that prohibited them from flying to certain destinations, reducing their usefulness to their owners. In the meantime the manufacturer began the arduous "commodity jurisdiction" process of obtaining a determination that this technology should not be subject to defense trade controls under the U.S. Munitions List but to dual-use controls administered by the Commerce Department. The appeal was ultimately successful, so there's a happy ending. But let's dissect this a little deeper. The

component in question was not even of U.S. origin, was not controlled by the nation where it was produced (a close U.S. ally), and was available on commercial terms to anyone.

This highlights some of the unfortunate consequences of our export control system. Modern avionics clearly incorporate a number of individual technologies with potential military applications. But thankfully our system recognizes that when such technologies are incorporated into a civil-certificated airplane they form part of a larger system (the airplane) that is not, and should not, be controlled. I will come back to this point later. However, inconsistent interpretation and perhaps an overabundance of caution on the part of overworked licensing personnel can lead to situations such as the one described above and imperil U.S. exports.

We need not go into the high tech field to discover examples of the counter-productive and rigid nature of some of our export control rules, however. One component supplier discovered and voluntarily disclosed that the same circuit breaker that it supplied civilian airplane manufacturers had been supplied for decades to the B-52 bomber. Another discovered that an antenna coupler it produced was the same for U.S. fighter jets and some civilian applications. In these cases, violations were committed inadvertently, disclosed voluntarily and resolved satisfactorily. The real question is, why should these low-tech, everyday, widely-available products be controlled at all?

However, this makes small components companies where much of the innovation takes place leery of participating in a program that could put them in a position of inadvertently violating export control rules. Additionally, small companies have neither the expertise nor the resources to implement the expensive and complex export control compliance measures, including physical, process, and other changes that must be implemented. This applies to any item that is produced, designed, modified, or developed for military use, including some decidedly low-tech items.

In a global economy where one can obtain anything but the most advanced of today's technology from multiple sources around the world, it is important that our export controls be targeted with laser precision, and adapted regularly. There are technologies that we must protect, and there are governments, institutions, groups and individuals that should have no access to them. But let us concentrate our efforts on controlling those technologies that truly are cutting edge, and rationalize the system so that we do not harm U.S. competitiveness.

A coalition of industries led by the Aerospace Industries Association and including GAMA, last year proposed a series of measures to improve the functioning of the export control system. These measures were designed to require no legislative action, no change in the law. In January, the President issued an export controls modernization package based on those recommendations. We welcome this initiative and urge the government agencies responsible for defense and dual-use export controls, the State, Commerce and Defense Departments, to implement them and apply the necessary resources to bringing them to fruition as soon as possible.

It is significant that, after years of industry recommendations, the above reforms are, let's face it, relatively innocuous. They are the low-hanging fruit. They should be uncontroversial; they essentially seek to make the system work the way it is supposed to work: transparently, fairly and efficiently. This suggests that real reform remains in the future. Real reform involves a top-to-bottom review of both the defense and dual-use control lists and a mechanism for their future, routine updating.

Let me also note another initiative that has particular applicability to the aviation industry. That is the current effort to ensure a consistent interpretation of Section 17 (c) of the Export Administration Act (EAA) of 1979, which is currently implemented through Executive Order 13222. This provision of the law places FAA certified parts and components under the jurisdiction of the Commerce Department for purposes of dual-use export controls. As a letter co-signed by 34 members of the Congress to the President last September stated, the explicit intent of this provision was to transfer civil training

aircraft below 600 horsepower and larger aircraft with certain integral components from the jurisdiction of the Department of State to that of the Department of Commerce. However, the State Department has not recognized this jurisdiction. Failure to resolve the jurisdictional issue has had negative consequences for small businesses as exports are delayed or foregone due to the need for expensive and long commodity jurisdiction cases to be resolved, often over antiquated aircraft parts. It also disrupts supply chains and introduces great uncertainty. Last, but not least, it places additional demands on the resources of an overburdened export control licensing system to focus on low-risk areas.

I understand that a new Federal Register notice is expected soon that should provide some clarity to industry, allowing it to operate in an environment of stability and predictability. This is welcome, and again I thank AIA and our other industry coalition partners for their leadership in moving this forward.

I alluded earlier to the report from the Deemed Export Advisory Committee (DEAC). A “deemed export” refers to the release of dual use technology to a foreign national within the United States. In other words, knowledge transferred to an individual within the U.S. can essentially be exported if that individual chooses to do so. The United States is the only nation that specifically and separately controls this type of export. This increasingly important issue calls for careful analysis and consultation with industry in order to institute an effective and rational system of control. Foreign nationals are an integral part of the workforce of many U.S. high-tech industries, including the aerospace and general aviation industries. The DEAC has proposed a number of new measures that industry believes would be difficult to translate into regulations, burdensome to comply with, and counterproductive to our national interest. I urge the Department of Commerce to work with industry to rethink its approach.

In the end, I am confident that the United States will continue to lead the world in technological innovation. I am also confident that we will find a way to balance our need to remain open to the rest of the world against our right to ensure that we keep the most sensitive technology out of the hands of those who would harm us. I applaud the

Aerospace States' Association for organizing this valuable opportunity to explore these important issues.