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Senate Governmental Affairs Committee
“Russia and China - Non-Proliferation Concerns and Export Controls”
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Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify at this hearing. The effectiveness of the export control systems of Russia and China is an important subject made even more important by the events of September 11. The subcommittee is to be commended for its attention to this topic.

My testimony will describe the dual-use export control systems of Russia and China and the status of the U.S. government’s dual-use export control cooperation program with each country. My descriptions of the dual-use export control systems of each country are based on the Department of Commerce’s involvement in export control cooperation programs with these countries.

Russia

Export Control System

Russia’s current dual-use export control system has continued to evolve since its beginnings in the early 1990s. Russia is a member of the Wassenaar Arrangement, the Nuclear Suppliers Group, and the Missile Technology Control Regime. Russia is also a member of the Exporter’s Committee (commonly called the Zangger Committee) under the Nuclear Nonproliferation Treaty. Russia is not a member of the Australia Group. Russia is a State Party to the Chemical Weapons Convention and the Biological Weapons Convention. In summary, Russia has:

- C an export control law for dual-use items;
- C implementing regulations, including control lists and catch-all controls;
- C interagency review of export license applications;
- C an outreach program for exporters;
- C limited enforcement capability.

I will now discuss each of these elements in more detail.

Russia enacted an export control law in 1999. This law authorizes control over the export of all items (commodities, software, and technology) on the lists of the four multilateral export control regimes and chemicals covered by the Chemical Weapons Convention. The law also provides authority to impose catch-all controls – control over items that otherwise would not require an export license if the exporter knows or is informed by the government that the export will go to a weapons of mass destruction purpose.

Other notable provisions of the law cover:

- C Establishment and revision of control lists;
- C License review and issuance process;

- C Recordkeeping and inspection requirements;
- C International cooperation;
- C Public dissemination of export control information;
- C Administrative penalties, including denial of the authority to export for up to three years, for individuals and companies;
- C Mandatory internal control programs for defense enterprises.

Criminal penalties for violations are set forth in the criminal code. Criminal penalties can be up to 12 years in prison with confiscation of assets or penalties pegged to the minimum wage.

Russia has a series of Presidential decrees that implement this law. Generally speaking, there is at least one decree, with a corresponding list of controlled items, for each of the regimes. This system of multiple control lists is different from the system used by the United States and many of the other members of the multilateral export control regimes. The United States and the European Union have one unified control list of dual-use items (items that have civilian and military applications). Russia also has a form of catch-all controls that prohibits exports of uncontrolled items if the exporter knows they will be used for developing or operating weapons of mass destruction or missile delivery systems.

Russia's structure and process for implementing its dual-use export control system is as follows. The Export Control Department of the Ministry of Economic Development and Trade is the lead agency for the promulgation of regulations and the processing of export license applications. Once an application is filed, several ministries, including the Ministries of Foreign Affairs, Defense, and Atomic Energy, can recommend approval or denial. There is an interagency committee that reviews license applications. While there is no formal interagency dispute resolution process, a dissenting ministry can escalate its position to higher political levels.

Russian export control officials have put considerable effort into outreach to defense enterprises. In cooperation with the United States, the Russian government and a Russian nongovernment organization (the Center for Export Controls) have conducted outreach to more than 900 enterprises over the last several years. These outreach programs seek to inform exporters, or potential exporters, of their obligations under Russia's export control law and regulations. These outreach programs also introduce Russian enterprises to the concept of an internal control program. As noted in my November 2001 testimony, the U.S. government developed software for Russian enterprises to use to establish their own internal control programs.

Russia's export control system is enforced by a combination of the Customs Service, the intelligence service, and the federal prosecutors. Russia is in the process of establishing a specialized enforcement unit within the Ministry of Economic Development and Trade based on amendments to Russia's Administrative Code, which now authorizes civil enforcement actions and penalties for export control violations. Regarding Russia's enforcement of its own regulations, while Russia has not yet provided any documentation on the number or substance of enforcement cases, Russian officials have begun providing some information on enforcement cases. It is clear from a variety of sources, however, that there have been a number of exports from Russia that would appear either to constitute violations of Russia's export control system.

Cooperation

The United States has had an ongoing export control cooperation program with Russia since 1996. The initial stages of this program entailed the exchange of basic information about each country's dual-use export control system. In these exchanges, the U.S. had to overcome a view of some Russian officials and exporters that the U.S. was encouraging Russia to adopt effective export controls merely to preserve market advantages for U.S. companies.

Since 1996, the U.S. has held several dozen technical export control exchanges with Russia. These exchanges covered the legal basis and regulatory framework for export controls, control lists and licensing procedures, enforcement, and industry outreach. As noted above, the most extensive part of the program to date has

been support of Russia's industry outreach program including dissemination of the internal control program software to several hundred enterprises since 1998.

Overall, this cooperation has achieved concrete results. Russia has a legal basis for its dual-use export control system. Russia has promulgated a basic set of implementing regulations. A significant number of enterprises have received training in Russia's export control requirements and have established their own internal control programs.

A recent study of the industry outreach program by the University of Georgia's Center for International Trade and Security indicated that the program has been successful. For example, the study indicated Russian defense enterprises generally often lacked basic information about Russia's dual-use export control system prior to participating in the outreach workshops. Only 5 percent of those surveyed said they already had the export control information provided during the workshops while 80 percent said that they only had access to the control lists because of the material distributed during these activities. Over 90 percent of those surveyed found the internal control program software distributed at the workshops to be useful in complying with export control requirements and about 70 percent stated that their enterprise had assigned a person responsibility for export control compliance. Notwithstanding the achievements of this program, more enterprise training needs to be done. Even after the workshops, only 20 percent of those surveyed characterized their knowledge of Russia's export control requirements as good. We continue to work with Russia and the Center for Export Controls to conduct follow-up workshops to enhance knowledge of export controls in the defense enterprises. In addition, the Department of Energy, in coordination with the Department of Commerce and the Center for Export Controls, conducts workshops with nuclear industry enterprises.

Our attache in Moscow also plays an important role. In addition to conducting end-use visits to ensure U.S.-origin items are being properly used, he serves as a resource for Russian export control officials and industry representatives with questions about how the U.S. export control system works. The Department of Energy also has an attache in Moscow. That attache focuses on export controls on nuclear technology working with the Center for Export Controls and the Ministry of Atomic Energy.

It appears that Russia is now ready to focus more on enforcement of its export control system. The Export Control Department has requested programs in the prosecution and enforcement of administrative violations. We have begun planning for such programs. We anticipate working with Russia on a range of enforcement issues, including review of preventive and administrative enforcement activities and training for prosecutors and judges. Establishment of an effective administrative enforcement program would be an important accomplishment. In our experience, administrative enforcement is essential to obtain a high degree of compliance by exporters.

China

Export Control System

The U.S. government in general, and the Department of Commerce in particular, have had no comparable export control cooperation program with China. Thus, there is less I can testify to regarding China's export control system.

China is a member of the Zangger Committee but not of any of any of the other multilateral export control regimes. China is a State Party to the Chemical Weapons Convention and the Biological Weapons Convention.

China does have a general foreign trade law but does not have a separate export control law. Over the past few years, China has promulgated regulations governing the export of nuclear related dual-use items and chemical weapons precursors. China has also indicated in 2000 that it would issue regulations governing the export of missile technology but has yet to do so.

Cooperation

Technical discussions between the United States and China have been extremely limited. In 1999, a Chinese delegation came to Washington, D.C. for a general overview of the U.S. export control system. No subsequent meetings have been held.

The Department of Commerce did put on a seminar on U.S. export controls for businesses operating in China in the fall of 2000. This seminar focused on educating importers in China on the requirements of the U.S. export control system. It was not conducted as a government to government meeting. We hope to put on a similar seminar early in 2003.

Conclusion

In summary, Russia has an export control system based on a comprehensive law, control lists covering all the multilateral regime items, a basic regulatory structure, an interagency review process, and an extensive industry outreach program. Russia's most significant weakness is its ability to enforce its export control system.

China's export control system is much less transparent. While there are some export control regulations, we have not had any extended cooperation program that would allow me to discuss the structure or functioning of China's export control system.