Statement of
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It is a great privilege to have the opportunity to appear before you today to discuss the Wassenaar Arrangement and the Future of Multilateral Export Controls.

Other witnesses are more expert than I on the details of the Wassenaar Arrangement and its strengths and weaknesses. I would like, therefore, to focus on the broader question of multilateral export controls and how to improve them.

Although currently engaged in private law practice here in Washington, D.C., I had considerable experience with export control issues while serving as an Assistant Secretary of Defense from 1989 to 1993 during the Bush Administration Since leaving government, I have had further exposure to export control issues in connection with my law practice. My comments today draw on both of these experiences but reflect only my own personal views and opinions.

In brief, I believe that the strategic context in which export controls operate has changed radically since the end of the Cold War some ten years ago, but that the U.S. approach to export controls has not. If the United States is to engage effectively its friends and allies to improve the multilateral export control system, then it needs to take a hard look at its own approach to export controls in light of the new strategic situation. The United States needs to make sure that its own approach to export controls is most effectively serving U.S. national interests. Once that is done, then the United States needs to take a much different approach to engaging its friends and allies in improving the multilateral export control system.

The New Strategic Context for Export Controls

In the 1980s, the multilateral system of export controls was centered on the Coordinating Committee on Multilateral Export Controls (or "COCOM"), which was a critical element of a successful strategy to confront and diminish Soviet military power. Support for this multilateral export control system was fairly strong among both U.S. European and Asian allies because Soviet military power represented a direct threat to the peoples and territories of these nations. While the Soviet military was armed with weapons of mass destruction (including biological, chemical, and nuclear weapons), the core of the Soviet military threat was its overwhelming conventional military forces – tanks, artillery, missiles, ships, and planes.

It was true for both the Soviet and U.S. militaries that the technology that produced their military hardware and capabilities was largely developed and resident in the defense industrial establishments of the two countries and their respective allies. For the Western countries, concentration in the defense industrial sector meant that the relevant

technologies could be effectively protected from falling into the hands of common adversaries by a system of export controls. So export controls became critical to maintaining Western military advantage.

The 1990s presented a very different situation. The Soviet Union had disappeared as a discrete political entity as had its ideologically-driven boast to "bury" the West. First Soviet and then Russian military power declined to the point that it is no longer viewed as representing an offensive military threat to the existence of the United States and its friends and allies despite Russia's continued possession of thousands of nuclear weapons.

The place at the center of U.S. national security concerns once occupied by the Soviet Union has now been taken not by a single country but largely by a single problem – the proliferation of weapons of mass destruction ("WMD") and the means to deliver them. The focus is on perhaps six to twelve potentially hostile states (such as Iran, Iraq, and North Korea) intent on using these weapons to impose their will on their neighbors, as well as subnational groups or terrorist organizations pursuing ideologically-driven agendas against real or imagined enemies.

At the same time, the ability of these potentially hostile states, groups, and organizations to gain access to the basic technology of these weapons and delivery systems has only increased over the past decade. The relevant technology, no-how, and trained personnel, as well as key hardware and components, are increasingly available through the Internet, through a highly mobile technical work force, and through a globalized commercial marketplace.

This is only part of a broader trend that has undermined the technological basis for traditional military capability and has changed the future source of military advantage. This phenomenon is the subject of a recent report issued in December, 1999, by a Defense Science Board Task Force on Globalization and Security (the "DSB Report").

The DSB Report notes that the defense sector is no longer the predominant source of cutting-edge technology, developed first for military purposes and then "trickling down" to the commercial sector. Rather, technological innovation increasingly has its source in the commercial sector, particularly in the areas of information technology, telecommunications, microelectronics, and critical materials. Several of these technologies are of great interest to those defense analysts who say that the world stands on the brink of a "Revolution in Military Affairs." They are also at the heart of the new military capabilities on which "battlefield dominance" is likely to depend in the future. Yet because of "globalization," these commercially-based technologies have spread throughout the world.

The Significance for U.S. National Security

The views expressed in the DSB Report have not been universally accepted. But to the extent that the report's analysis is correct, it has real implications for U.S. national security policy. Let me offer a few quotations from the DSB Report.

"The strategic significance of the ongoing leveling of the global-technological playing field cannot be overstated. It presents a direct challenge to *the* fundamental assumption underlying the modern concept of U.S. global miliary leadership: that the United States enjoys disproportionately greater access to advanced technology than its potential adversaries. This assumption underpins the increasingly strained logic holding that technology controls are the *sine qua non* of U.S. military dominance.

"However, such a parochial assumption is simply not consistent with the emerging reality of all nations' militaries sharing essentially the same global commercial-defense industrial base." (DSB Report at 29.)

The DSB Report argues that, in the future, military advantage will come not from developing military-specific technology and denying it to adversaries, but from being able rapidly to integrate commercial technology into military capability that can be promptly delivered to and exploited by a well-trained and well-led military force. The United States will need to rely heavily on this "run faster" strategy.

"Future U.S. military dominance will derive less from the protection of individual defense-related technologies and more from proactive measures taken by DoD to retain and/or acquire essential military capabilities (defined as those capabilities DoD must have to defend U.S. global interests at acceptable costs). Accordingly, DoD's strategy for maintaining military dominance should center on the concept of creating and preserving essential capabilities rather than protecting their constituent technologies. To achieve this objective amidst global technological leveling, DoD will need to rely on, and maintain a robust level of investment in, the United States' strengths." (DSB Report at 32.)

Implications for Export Controls

This analysis suggests that an effort to control or limit the commercially-available technologies from which military capabilities can be derived is the wrong focus for export controls since an effort to control what is globally available will simply fail. A better focus for export controls would be the military capabilities that result from these underlying technologies. Even then, the DSB Report suggests that export controls should be targeted on what is unique, militarily critical, and controllable.

"*Strategies for preserving essential capabilities <u>will not</u> rely heavily on restricting the export of U.S. military goods and services, or the protection of large amounts of military information*. Rather, the Task Force's strategies identified a few, very specific matters that were both worth protecting and actually protectable (i.e., they or their functional equivalent were neither available outside the U.S. nor easily replicable)." (DSB Report at 33.)

"DoD should attempt to protect for purposes of maintaining military advantage *only* those military and dual-use capabilities and technologies of which the United States is the sole possessor (and for which there are no functionally equivalent foreign

counterparts), or which are effectively controlled by like-minded states." (DSB Report at 35.)

"In limited cases, DoD may need to protect aggressively U.S.-unique, cutting-edge knowledge and/or individual military technologies in order to preserve an essential U.S. military capability. In short, DoD should put much higher walls around a much smaller group of essential capabilities and technologies." (DSB Report at 36.)

William Schneider, former Under Secretary of State for Security Assistance, Science and Technology in the Reagan Administration, has suggested that the transition described in the DSB Report is already under way. He cites as evidence the fact that, while dual-use export licenses issued by the Department of Commerce have declined by more than an "order of magnitude" in the last ten years, munitions licenses for military items, issued by the Department of State, have declined by only 20%.

What Is To Be Done?

The seriousness of the potential threat from weapons of mass destruction and the means to deliver them is not in dispute. It is a common assessment shared by people on both sides of the political spectrum that these weapons represent the number one potential national security risk to the United States. Yet there appears to be little consensus on how to deal with this risk – as has recently been in evidence in the debates regarding the Comprehensive Test Ban Treaty ("CTBT"), national missile defense, and export controls.

I am not qualified to say whether the DSB Report is right in all of its analyses and conclusions, but the Task Force was made up of persons with broad experience in the defense field. It seems to represent solid evidence that a lot has changed in the strategic context for export controls and that the United States needs a good hard look at its approach. To the best of my knowledge, this was last done in any comprehensive way in the 1990-1991 time frame, and a lot has changed since then.

The 1990-1991 review was conducted primarily by the military staff of the Joint Chiefs of Staff. The military needs to be involved in any new comprehensive review. But precisely because of the changes identified in the DSB Report, representatives from key defense and commercial sectors need to be involved, as well as key members of Congress. The need is for both a highly professional review and broad participation, so as to build a political consensus behind the result.

This comprehensive review needs to address a number of questions, including the following:

-- Is it true that Cold War export controls were based on the premise that the objects of control should be technologies rather than military capabilities or equipment? Is that approach still correct? Or is a new paradigm required focusing, as the DSB Report suggests, more on unique military capabilities than the underlying technologies increasingly found in the commercial marketplace? (Its interesting that this suggestion

comes from sources as diverse as Ashton Carter, former Assistant Secretary of Defense in the Clinton Administration, and William Schneider, former Undersecretary of State in the Reagan Administration.)

-- What military capabilities will be most critical in the first and second decades of the 21st century? What does the United State need to protect from a national security perspective? What does the United States most want to keep out of the hands of potential adversaries?

-- What is the best way to protect critical military capabilities? Are there critical elements or unique "choke points" on the way to acquiring these military capabilities that should properly be the focus of U.S. export control efforts?

-- Does the Cold War paradigm of focusing on suppliers from which potential adversaries could obtain critical technologies or capabilities still make sense now that the sources of this technology or capability have proliferated across virtually the entire globe? Would it be better to concentrate more on the handful of states or groups of concern that are seeking these capabilities and less on the proliferating sources of supply (as Richard Perle, former Assistant Secretary of Defense in the Reagan Administration, has suggested)?

-- What contribution could an improved export control system make to preventing critical military capabilities from falling into the hands of potential adversaries? Is a better approach an aggressive program of interdiction and disruption of the acquisition efforts of potential adversaries, based on better intelligence, vigorous law enforcement, and military action if necessary?

The result of the comprehensive review envisioned here could be a very different approach to export controls than that of the current system. My own guess is that such an approach might be characterized by the following:

-- A modest list of protected military capabilities – not the underlying commercial technologies – that are critical to the ability of the United States to defend its interests at acceptable costs.

-- These would be military capabilities that can be effectively controlled by the United States, in conjunction with those countries joining with the United States in supporting the effort against proliferation, and for which there is no ready substitute in the world market.

-- Adoption of a more "strategic"approach to controlling these capabilities by identifying those critical elements of each capability, or those unique "choke points" through which any potential adversary must pass on the road to acquiring these capabilities, that are most amenable to control.

-- A strengthened multilateral supplier export control regime targeted at those capabilities for which it still makes sense to have supplier-oriented controls.

-- Greater focus on those "bad actors" to whom critical military capabilities should be denied by coordinating improved intelligence-gathering, law enforcement, and military resources in a constant, proactive program of disruption and interdiction of the efforts of these "bad actors" to acquire these critical capabilities.

-- Greater government effort to identify suspect end users and "front companies" through intelligence and other sources and an improved system for promptly notifying U.S. supplier companies so they can readily terminate transfers to these entities.

-- Greater emphasis on the importance of improving the effectiveness of company export control systems through such things as requiring auditors to review and certify the adequacy and effectiveness of a company's system.

-- A more efficient governmental licensing process with more personnel, better training, greater computerization and networking between agencies, and streamlined procedures so that the U.S. can have what Richard Perle has described as a "reliable, expeditious, and non-capricious" system of export controls.

Reflecting the emphasis of the DSB Report, this reinvigorated approach to more effective control of military capabilities needs to be complemented by a program to enhance the U.S. ability to incorporate technology more quickly and effectively into military equipment for its men and women in uniform. It is critical from a national security perspective for the United States to maintain global leadership in those cutting-edge technologies from which future military capabilities will come. Too often, however, the U.S. defense procurement process is very slow to incorporate these technologies into military hardware. The U.S. Department of Defense and other agencies need to learn from industry and acquire its ability rapidly to bring technology into products and to get those products to the user – in this case, the U.S. armed forces.

Improving Multilateral Export Controls

The United States will in some circumstances undoubtedly need to continue to pursue unilateral export controls, both because of the intrinsic importance of an individual case, and because of the need to lead by example. But where the United States is not the exclusive source of a key military capability or technology, any effort to deny the capability or technology to the nation's adversaries is likely to fail if the United States is unable to get cooperation from other potential sources of supply, especially close U.S. friends and allies.

Obtaining this cooperation will be much more difficult in the post-Cold War world. While the Soviet Union posed a direct and overwhelming military threat to the territory of many U.S. friends and allies, the risks presented by weapons of mass destruction seem to many to be remote and to present a problem primarily for the United States, as a nation with global interests and global responsibilities. European and Asian friends and allies are often too focused on domestic issues or on narrow regional concerns. It is hard, therefore, to get these nations to take seriously the need for effective multilateral export

controls, to give them a high priority, and to join with the U.S. in a concerted effort against proliferation.

In many instances the fault lies with these countries and their failure adequately to appreciate the new security context and to step up to their responsibilities. They have in many instances failed to take their own national security seriously.

But the United States also shares some of the blame for this situation. In too many instances, the United States has not invested the time required to convince even its closest friends and allies of the risks associated with the proliferation of weapons of mass destruction and the means to deliver them -- and what is required to discourage or prevent this proliferation, including effective multilateral export controls. In my judgment, the difficulty that the United States has traditionally had with its European allies over Iran, for example, results in large part from a difference in view as to the security risks posed by an Iran armed with weapons of mass destruction. This gap can only be remedied by working quietly, intensively, and systematically with the relevant intelligence and policy communities of these countries in order to:

– come to a common assessment of the seriousness of the risks posed by proliferation of weapons of mass destruction and the means to deliver them;

– reach a consensus on the countries and groups of concern;

– develop a common strategy for dealing with each of these countries and groups in a tailored, coordinated way, using all available instruments – political, economic, diplomatic, and military;

– strength cooperation in the areas of intelligence gathering, law enforcement, and potential military activity; and

– develop a common conception of how to revitalize multilateral export controls as one aspect of the overall effort.

Export controls had such a prominent role in the Cold War era that many U.S. friends and allies see them as a relic of that era and the apotheosis of "old think." The United States has in some measure contributed to this view by not having done the kind of major comprehensive review of the role of export controls in the new strategic context that is required. Once the United States has completed such a review, it will be much more credible in seeking support from friends and allies for a new, more effective approach to multilateral export controls and other measures to deal with proliferation.

It would be useful for U.S. friends and allies to conduct similar comprehensive reviews themselves. Members of the United States Congress in meetings with U.S. friends and allies could encourage their governmental officials to undertake such a review and their parliamentarians to demand it. It might even be appropriate and useful to try to involve representatives of some of the United States' closest friends and allies directly in the U.S. comprehensive review.

The Dual Role of U.S. Friends and Allies

The United States needs to recognize that many of its closest friends and allies are not only necessary partners in any multilateral approach to export controls but are also the objects of U.S. export control restrictions. In this context, U.S. export controls present a barrier to the sharing of technology and cooperation with these countries to develop common military capabilities and interoperable military equipment. To the extent export control restrictions stand in the way of such cooperation, they exact a real national security cost in terms of U.S. and allied military forces unable to operate together in wartime. They also impair the ability of European and Asian allies to assume a greater share of the burden of the common defense.

This consideration adds to the urgency of getting agreement with friends and allies on the most effective multilateral export control system to prevent, discourage, or delay the transfer of key military capabilities to potentially hostile countries, subnational groups, and terrorist organizations. Such a system will allow the United States to ease export control restrictions on its friends and allies with confidence that such loosening will not contribute to the proliferation of significant military capability to countries or groups of concern. The prospect of such U.S. action could be an important incentive for U.S. friends and allies to cooperate with the United States in achieving a more effective multilateral export control system. In the interim, there are a variety of measures that the United States government could and should adopt to ease export control barriers to U.S. and allied defense industrial cooperation, including: up-front licensing of full-product export (rather than licensing each component); advance approval of re-export of a product to certain pre-approved friends and allies; and authorization to develop and market "blended" products with inputs from both U.S. and allied companies.

At the same time, the United States needs to recognize that to craft an effective strategy against proliferation of weapons of mass destruction and the means to deliver them is an enormously demanding challenge that will require bringing to bear in a coordinated way the full range of political, economic, diplomatic, and military tools available. A more effective system of multilateral export controls can be one of these tools but only one. The United States needs the effective cooperation of its friends and allies in wielding the other tools as well.