

Export Control Implementation Issues with respect to High Performance Computers

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Opening Statement

by

Senator Fred Thompson (R-TN)

Good morning. Today, the Governmental Affairs Committee is holding a hearing on Export Control Implementation Issues with respect to High Performance Computers. High-Performance Computers (or HPCs) represent a special challenge for our export control regime, because in many ways they are the King of "dual-use" technologies - that is, technologies that are subject to national security export controls because they are easily usable for important civilian purposes as well as dangerous military ones.

High-speed computing, of course, is vital to today's knowledge-based economy. Unfortunately, however, as the Cox Report reminded us, powerful computers are also vital to such things as nuclear weapons development, the design and testing of ballistic missiles and advanced conventional weapons, intelligence analysis and code-breaking, military command and control, and cutting edge warfare applications such as computer network attack.

This is why HPC export control issues are so important. We have to find an appropriate balance between promoting commerce and protecting our national security through export controls. If we get it wrong, however, we either strangle a crucial sector of our information-age economy, or we help potential adversaries prepare to defeat our military forces in the field, hold our cities hostage to weapons of mass destruction, or cripple our government and economy through Information Warfare.

The debate over HPC export controls is particularly important in the Senate this year because of two pieces of pending legislation that affect this balance between commerce and security. First is the Banking Committee's proposed re-authorization

of the Export Administration Act (EAA), which appeared briefly on the Senate floor in March. Of most direct relevance to computer export controls, this bill would have written categories of "foreign availability" and "mass market" status into U.S. export control law. The law would require that any controlled items meeting these definitions be made available for export, without a license, to essentially anyone in the world.

The second pending piece of legislation is a proposal to shorten the current 180-day period which Congress has in order to review Administration decisions to decontrol computers at certain performance levels - which are usually measured in units called MTOPS, or Millions of Theoretical Operations Per Second. Both pieces of legislation are supported by U.S. computer exporters, but both have also raised serious concerns in the minds of officials concerned with ensuring that our national security export controls really do protect national security.

Our discussions today about HPC export controls will help inform to the Senate's consideration of this and other legislation. I hope our discussions will help illuminate a number of subjects today, but there are a few that I think are particularly important:

- Is it possible clearly and objectively to make the kind of "foreign availability" and "mass market" status determinations that the computer industry wants to make the basis of removing controls on many HPCs?
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- According to what criteria have decisions to decontrol HPCs been made in the past, and how sound has their analysis been?
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- Even if coherent and objective "foreign availability" and "mass market status" determinations are possible, who should make them? Should this be left to the unilateral discretion of the Department of Commerce? Or should our National Security Community - such as the Defense Department - have to agree to decisions to remove export controls on HPCs?
- If "foreign availability" and "mass market" status decisions are inherently subjective - and especially if they are to be left solely in the hands of the Commerce Department - is it wise to reduce the Congressional review

period for such determinations? At what point would a shortened review period effectively *eliminate* Congressional oversight of these decisions?

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- How important are HPC exports to problematic "Tier 3" countries - such as China - to the U.S. computer industry? Does requiring licenses for these sales hurt our industry given that the major industrialized countries are subject to *no* HPC licensing requirements and most other countries are subject to restrictions only at much higher levels of computing power?
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- What effect would institutionalizing "foreign availability" and "mass market" decontrols have upon *other* controlled technologies? What additional technologies would we have to make available without a license if we wrote these criteria into our export control laws?

This Committee has been closely involved with nonproliferation policy and export control issues for many years. Senator Cochran's subcommittee has also done excellent work in this field in recent years. I look forward to hearing testimony from our four distinguished witnesses, who can help shed light on these and related export control issues as we continue our Committee's involvement with these important national security issues in the future.