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BEFORE THE

HOUSE OF REPRESENTATIVES

COMMITTEE ON SCIENCE AND TECHNOLOGY

ON

THE IMPACTS OF U.S. EXPORT CONTROL POLICIES ON SCIENCE AND TECHNOLOGY ACTIVITIES AND COMPETITIVENESS

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Chairman Gordon, Ranking Member Hall, and other Members of the Committee on Science and Technology, thank you for this opportunity to appear before you this morning to discuss the effects of U.S. export control policies on science and technology activities and competitiveness.

I am President of the Scowcroft Group, an international business advisory firm. I speak before you today as Co-chair of the National Research Council's Committee on Science, Security and Prosperity. I am here to discuss the findings and recommendations of this committee's report, *Beyond "Fortress America": National Security Controls on Science and Technology in a Globalized World*.

The national security controls on science and technology are broken. They were established during the Cold War to help maintain the United States' superiority in military-related science and technology. These controls worked fairly well as long as the following three conditions held: (1) The U.S. S&T establishment had only one significant competitor—and we knew that they had a weak R&D base. This meant that we did not have to look much beyond ourselves to find the most advanced S&T. (2) Military research, development and production took place separately from the commercial sector. Thus denying the transfer of military goods did not affect the commercial economy. (3) A common sense of purpose existed among the United States and its allies regarding the nature of the threat and the means to manage it; thus the West was largely unified about denying weapons-grade materials and technologies to its adversaries.

These three conditions no longer obtain. First, today the United States has competition in most areas of advanced research and development, including military-related S&T. Advances in science and technology now occur throughout Europe, in Russia and Japan, and also in the developing economies of China, India and Brazil. Thus the number of access points to advanced science and technology have grown considerably and perhaps more to the point, outside the control of the United States. Second, most military production in the U.S. is now commercially based, thus

blurring the distinction between commercial grade and weapons grade for thousands of so called "dual-use" goods and technologies. And third, the Western alliance has lost its Cold War consensus; NATO member countries and Japan no longer agree on what countries need to be controlled, what items should be controlled, and what kinds of controls are needed. Together, these changes make it much more difficult for the United States to successfully control the transfer of goods and technologies that have both commercial and military applications. As a result, many national security controls on science and technology no longer work in the ways they were intended. We endanger our own national security in thinking that unilaterally controlling dual-use items here prevents others from obtaining them elsewhere.

Because science and technology research, development and production have become a global enterprise, the "Fortress America" approach of current controls cuts us off from information and technologies that we need for our national security. If we sustain these export control and visa barriers, we will increasingly lose touch with the cutting edge of science and technology, and we risk missing emerging national security threats.

Following are just a few of the unintended consequences that the inappropriate application of export controls have on our national security and our economic competitiveness:

- At a time when battlefield interoperability is increasingly the norm, the licensing process can prevent repair at facilities closest to the theater of operation.
- Export controls constrain both U.S. commercial and military capabilities from expanding into new fields and from applying new scientific developments.
- The government's rules are accelerating the development of technologies in capable research centers outside the United States.

- As foreign companies and governments fill these competitive gaps, valuable technical developments occur outside the U.S. to which the U.S. military and intelligence agencies then have no access.
- U.S. scientists are hobbled by rules that prevent them from working with world-class foreign scientists and laboratories located overseas, making it less likely that valuable discoveries and inventions will occur in the U.S.
- The government's rules are driving jobs abroad—knowledge-intensive jobs that are critical to the U.S. economy.

There is clearly a better way to manage the application of American science and technology abroad that protects our national security and our competitiveness. This report articulates the need for the U.S. S&T sector to "run faster" by anticipating and capitalizing on research breakthroughs more quickly than those who would use these advances to harm us or compete against us economically, and by developing qualitatively better products and services with the best talent available. In policy terms, running faster means having an agile system of national security controls that can adapt quickly to the changing geopolitical and technological landscapes.

The first recommendation proposes the establishment of two administrative entities, possibly within the National Security Council. The first is a coordinating center for export controls that will constitute a "one-stop-shop" for all export-license applications. The chief role of this small coordinating center is to determine whether the Department of Commerce or the Department of State should handle the license application and then dispatch the application to the appropriate place for decision.

The second entity is an appeals panel, possibly composed of retired federal judges, that will hear and decide disputes about whether export licenses are required, and whether particular decisions to grant or deny licenses were made properly. This panel will also hear appeals on whether "sunset" requirements have been carried out properly. The committee proposes that "sunset" requirements be applied to all items on U.S. export control lists, and it would require findings to be made every 12 months that removing controls on an item would present a substantial risk to national security.

The second recommendation proposes that the administration of existing export control statutes—the Arms Export Control Act and the Export Administration Act—should assure the scientific and technological competitiveness of the United States as a prerequisite for both national security and economic prosperity. To assure the conditions for scientific and technological competitiveness, the committee has recommended that the Fundamental Research Exemption (also known as National Security Decision Directive 189), which has been in effect since 1985 and reaffirmed by then National Security Advisor, Condoleezza Rice in November 2001, be maintained and properly implemented.

In addition, the committee proposes the establishment of an economic competitiveness exemption that eliminates export controls on dual-use technologies where they, or their functional equivalents, are available without restriction in open markets outside the United States. Just as NSDD-189 precludes the conduct and reporting of unclassified information from being restricted, the economic competitiveness exemption would preclude the export of so called "dual-use" items that are, or soon will be, legally available in open markets overseas, from being restricted.

The third recommendation addresses the need to maintain and enhance access to the reservoir of human talent from foreign sources to strengthen the U.S. science and technology base. Put simply, this will help ensure that the United States remains the destination of choice for the world's "best and brightest."

These innovations can help to bring transparency, efficiency and consistency to a system that is now lacking all three of these qualities. They will help to protect what needs to be protected without harming the economy or our scientific leadership. The committee recommends that the President sign an Executive Order in early 2009 that will put these provisions into effect ninety days hence.

This Executive Order will be fully consistent with existing legislation. It would not and cannot contravene current law, but rather would govern the exercise of Presidential authorities established under existing law. The Executive Order would not affect anything that is protected by national security classification, which is addressed by a separate Executive Order, nor would it address export controls that the State Department imposes strictly on foreign policy grounds. The Executive Order signifies that the President will bring discipline into a process over which he already has primary authority. As a first step in overhauling the national security controls over science and technology, putting these provisions into effect will create a record and experience base that Congress can evaluate—and modify as it sees fit—at such time as export control legislation can be successfully addressed.

Perhaps the most significant challenge to implementing these recommendations is to help the relevant agencies understand that these reforms will not micromanage their own licensing

procedures or challenge agency expertise. They will, however, bring consistency and efficiency to the application process, and transparency to the agencies' decisions.

If these reforms are not implemented, the system will continue to bog down, with multiplying negative effects to our national security and competitiveness. There will be nothing to prevent the continued erosion of our defense industrial base; the loss of market-share globally in advanced technologies; the off-shoring of knowledge intensive jobs; the bureaucratic wrangling among the agencies to name a few.

In closing, I am grateful for the interest that the Committee on Science and Technology has taken in this report and hope that your members will remain involved in these efforts, particularly in helping to assure the scientific and technological competitiveness of the United States.