AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

H.R. 1280—THE DEFENSE PRODUCTION ACT REAUTHORIZATION OF 2003

HEARING

BEFORE THE

SUBCOMMITTEE ON
DOMESTIC AND INTERNATIONAL
MONETARY POLICY, TRADE AND TECHNOLOGY

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

MARCH 19, 2003

Printed for the use of the Committee on Financial Services

Serial No. 108–13

U.S. GOVERNMENT PRINTING OFFICE

88–233 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

HOUSE COMMITTEE ON FINANCIAL SERVICES

MICHAEL G. OXLEY, Ohio, *Chairman*

JAMES A. LEACH, Iowa
DOUG BEREUTER, Nebraska
RICHARD H. BAKER, Louisiana
SPENCER BACHUS, Alabama
MICHAEL N. CASTLE, Delaware
PETER T. KING, New York
EDWARD R. ROYCE, California
FRANK D. LUCAS, Oklahoma
ROBERT W. NEY, Ohio
SUE W. KELLY, New York, *Vice Chairman*
RON PAUL, Texas
PAUL E. GILLMOR, Ohio
JIM RYUN, Kansas
STEVEN C. LATOURETTE, Ohio
DONALD A. MANZULLO, Illinois
WALTER B. JONES, JR., North Carolina
DOUG OSE, California
JUDY BIGGERT, Illinois
MARK GREEN, Wisconsin
PATRICK J. TOOMEY, Pennsylvania
CHRISTOPHER SHAYS, Connecticut
JOHN B. SHADEGG, Arizona
VITO FOSELLA, New York
GARY G. MILLER, California
MELISSA A. HART, Pennsylvania
SHELLEY MOORE CAPITO, West Virginia
PATRICK J. TIBERI, Ohio
MARK R. KENNEDY, Minnesota
TOM FEENEY, Florida
JEB HENSARLING, Texas
SCOTT GARRETT, New Jersey
TIM MURPHY, Pennsylvania
GINNY BROWN-WAITE, Florida
J. GRESHAM BARRETT, South Carolina
KATHERINE HARRIS, Florida
RICK RENZI, Arizona

BARNEY FRANK, Massachusetts
PAUL E. KANJORSKI, Pennsylvania
MAXINE WATERS, California
CAROLYN B. MALONEY, New York
LUIS V. GUTIERREZ, Illinois
NYDIA M. VELÁZQUEZ, New York
MELVIN L. WATT, North Carolina
GARY L. ACKERMAN, New York
DARLENE HOOLEY, Oregon
JULIA CARSON, Indiana
BRAD SHERMAN, California
GREGORY W. MEEKS, New York
BARBARA LEE, California
JAY INSLEE, Washington
DENNIS MOORE, Kansas
CHARLES A. GONZALEZ, Texas
MICHAEL E. CAPUANO, Massachusetts
HAROLD E. FORD, JR., Tennessee
RUBÉN HINOJOSA, Texas
KEN LUCAS, Kentucky
JOSEPH CROWLEY, New York
WM. LACY CLAY, Missouri
STEVE ISRAEL, New York
MIKE ROSS, Arkansas
CAROLYN MCCARTHY, New York
JOE BACA, California
JIM MATHESON, Utah
STEPHEN F. LYNCH, Massachusetts
BRAD MILLER, North Carolina
RAHM EMANUEL, Illinois
DAVID SCOTT, Georgia
ARTUR DAVIS, Alabama

BERNARD SANDERS, Vermont

Robert U. Foster, III, Staff Director

Page

SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL MONETARY POLICY, TRADE AND TECHNOLOGY

PETER T. KING, New York, *Chairman*

JUDY BIGGERT, Illinois, *Vice Chair*
JAMES A. LEACH, Iowa
MICHAEL N. CASTLE, Delaware
RON PAUL, Texas
DONALD A. MANZULLO, Illinois
DOUG OSE, California
JOHN B. SHADEGG, Arizona
MARK R. KENNEDY, Minnesota
TOM FEENEY, Florida
JEB HENSARLING, Texas
TIM MURPHY, Pennsylvania
J. GRESHAM BARRETT, South Carolina
KATHERINE HARRIS, Florida

CAROLYN B. MALONEY, New York
BERNARD SANDERS, Vermont
MELVIN L. WATT, North Carolina
MAXINE WATERS, California
BARBARA LEE, California
PAUL E. KANJORSKI, Pennsylvania
BRAD SHERMAN, California
DARLENE HOOLEY, Oregon
LUIS V. GUTIERREZ, Illinois
NYDIA M. VELÁZQUEZ, New York
JOE BACA, California
RAHM EMANUEL, Illinois

CONTENTS

	Page
Hearing held on:	
March 19, 2003	1
Appendix	
March 19, 2003	25

WITNESSES

WEDNESDAY, MARCH 19, 2003

Bhatia, Hon. Karan K., Deputy Under Secretary for Industry and Security, Department of Commerce	7
Patrick, Hon. Suzanne D., Deputy Under Secretary of Defense for Industrial Policy, Department of Homeland Security	5
Paulison, Hon. R. David, Director of the Preparedness Division Emergency and Response Directorate, Department of Homeland Security	9
Sega, Hon. Ronald M., Director, Defense Research and Engineering, Department of Defense	3

APPENDIX

Prepared statements:	
Emanuel, Hon. Rahm	26
Bhatia, Hon. Karan K.	27
Patrick, Hon. Suzanne D.	33
Paulison, Hon. R. David	38
Sega, Hon. Ronald M.	42

H.R. 1280—THE DEFENSE PRODUCTION ACT REAUTHORIZATION OF 2003

Wednesday, March 19, 2003

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC AND INTERNATIONAL
MONETARY POLICY, TRADE AND TECHNOLOGY
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:00 p.m., in Room 2128, Rayburn House Office Building, Hon. Peter T. King [chairman of the subcommittee] presiding.

Present: Representatives King, Biggert, Leach, Paul, Manzullo, Kennedy, Feeney, Hensarling, Murphy, Barrett, Harris, Maloney, Watt, Waters, Lee, Sherman, Baca and Emanuel.

Chairman KING. [Presiding.] The subcommittee will come to order.

First, let me thank the ranking member, Mrs. Maloney for her cooperation putting this hearing together, Vice Chair, Mrs. Biggert for her assistance and the witnesses that will be testifying here today.

As the U.S. faces continued threats from terrorism as well as the prospect of a conflict overseas, the subcommittee convenes today to consider reauthorization of one of the most important pieces of legislation in the Administration's national security arsenal, the Defense Production Act of 1950. As you know, and as our witnesses will describe, the Act, known as the DPA, used economic tools to ensure adequate and timely delivery of materials needed for national security or in cases of national emergency.

The legislation before us today, H.R. 1280, contains the Administration's request for a multi-year reauthorization of this legislation, along with a trio of mostly technical amendments. Original co-sponsors of the bill when I introduced it were the ranking member, Mrs. Maloney, a long-time supporter of the DPA, as well as the full committee chairman, Mr. Oxley.

I would like to commend the administration for its request for a multi-year reauthorization. They requested five years. And by agreement with the minority, we today will amend that to four years. I think this is an appropriate period for reauthorization, both to ensure that it will not expire when it is most needed, as it did temporarily during the Gulf War and just a year and a half ago after the September 11 attacks. But also so that Congress can study the need for modernization of the act outside of the reauthorization framework.

I also want to again commend my ranking member for working with me on this reauthorization in such an expedited, nonpartisan basis.

Besides the four year reauthorization, the bill before us seeks to lift the program cap in DPA Title 3 for a single project involving radiation-hardened electronics, clarifies the President's authority to assess the adequacy of the defense industrial base and seeks to make permanent the section of the act that provides that no person should be held liable for damages or penalties through any act or failure to act resulting directly or indirectly from compliance with the rule, regulation or order issued pursuant to the DPA.

We have a strong panel of witnesses here today to cover the intricacies of this act. Suzanne D. Patrick, Deputy Under Secretary of defense for industrial policy, Dr. Ronald M. Sega, director of Defense Research and Engineering at the Defense Department, Karan K. Bhatia, deputy Under Secretary for industry and security at the Department of Commerce and R. David Paulison, Director of the Preparedness Division, Department of Homeland Security.

I look forward to their testimony and I recognize the ranking member, the gentlelady from New York, Mrs. Maloney, for opening remarks. I would also note that it is the subcommittee's strong preference today to have members submit any opening statements they may have, besides of course, for the ranking member.

Mrs. Maloney?

Mrs. MALONEY OF NEW YORK. Thank you so much. And I would like to thank the gentleman, the Chairman, from the great State of New York for conducting this hearing and this markup.

Today, the subcommittee meets to consider the reauthorization of the Defense Production Act, a critically important tool that facilitates the government's ability to respond to emergencies and protect the defense industrial base. Eighteen months ago, when my city of New York was attacked, the Nation responded as one with aid. Today, while individuals may have divergent rules about war, we are united in hope for the well being of our troops and the innocents in the Gulf.

In the future, our Nation may again have to respond to an earthquake in California, Florida hurricane, or random terrorist strike. In all these cases, it is critical that the President is empowered to invoke the Defense Production Act. In recent years, the Act has been used by the Armed Forces in the first Gulf War, Bosnia, Kuwait and in the present conflict. During peacetime, it has been used to fortify U.S. Embassies.

The use of the Act is not a political issue in the sense of whether or not the U.S. should use force. The importance of the act is to make sure our soldiers have the equipment they need to safely perform their mission once committed. We consider this bill today because the act expires in the end of the fiscal year and failure to reauthorize could have serious consequences given current world events.

The primary sections of the bill are Title I, authorizing the President to require priority performance of contracts or commit materials to promote national defense. Recently this authority was used to assist the newly formed Transportation Security Administration

to deliver explosive detection devices for checked baggage to over 400 airports across America.

Title III provides the President tools to ensure the viability of U.S. industries essential to national security. This authority has been used to maintain domestic production in industries dominated by foreign companies where markets are too small to otherwise sustain an upstart company.

Title VII contains unrelated provisions, including anti-trust protection for companies cooperating with the government under a DPA contract. The requirement that Commerce report to Congress on trade offsets. And the Exon-Florio language prohibiting foreign investment in U.S. companies that could determine national security.

I am pleased to cosponsor this legislation and I appreciate the majority accepting my request to shorten the five-year authorization the administration requested. While I support the bill, there is no doubt this is an extremely powerful tool. Given that we have yet to measure the impact of the new Department of Homeland Security on the DPA and that a five-year extension would put expiration in the middle of the highly-charged political climate of late 2008, I suggested a three-year extension but am satisfied with the middle ground of four.

I thank the Chairman and I yield back the balance of my time.

Chairman KING. If there are no other opening statements, we will go to our witnesses.

And the first witness I would call upon would be the Honorable Ronald M. Sega, Director, Defense Research and Engineering for the Department of Defense.

STATEMENT OF HON. RONALD M. SEGA, DIRECTOR, DEFENSE RESEARCH AND ENGINEERING, DEPARTMENT OF DEFENSE

Mr. SEGA. Good afternoon, Mr. Chairman and members of the committee. I appreciate the opportunity to share with you the Department of Defense views regarding the Defense Production Act and the role it plays in helping to obtain goods and services needed to promote the national defense. With your permission, I would like to summarize the testimony I have submitted for the record.

Although enacted originally in 1950, the Act provides statutory authorities still relevant and necessary for the Nations defense in the 21st century. The DPA provides the department with tools required to maintain a strong base, responsive to the needs of our Armed Forces. I want to express the department's support for reauthorizing the act through September 30, 2008.

The key component of the DPA is Title III, which will be the focus of my testimony. The deputy Under Secretary of defense for industrial policy, Ms. Suzanne Patrick will follow a discussion with Title I and briefly touch on some key components of Title VII.

Title III provides the President unique authorities that are being used to establish, expand, and maintain essential domestic industrial capacity needed to field advanced systems for today and the future.

The primary objective of the Title III program is to work with U.S. industry to establish viable production capacities for items es-

sential to our national security. The Title III Program also is being used to transition emerging technologies.

A success story, I believe, is a good way to highlight the benefits of the program. Gallium arsenide is a semiconducting material used in the fabrication of advanced electronic devices. At the outset of a gallium arsenide Title III project, the long-term viability of the U.S. gallium arsenide wafer supply was in doubt. With the help of Title III, the U.S. producers made a dramatic turnabout.

By 2000 these contractors accounted for sixty-five percent of wafer sales worldwide. Their combined sales of gallium arsenide wafers grew by nearly four hundred percent. In addition, the wafer prices dropped by approximately thirty five percent. The reduction in wafer prices and improvement in wafer quality resulted in significant reductions in defense costs for critical electronics.

The DOD is initiating two new projects this year. One of these projects will be establishing the production capacity of Yttrium Barium Copper Oxide superconducting wire.

Projects initiated in fiscal year 2002 include a project for radiation hardened microelectronics. The project illustrates the key role for Title III that it plays in providing our Armed Forces with the technologies they need to be successful on the battlefield. We were in danger of losing our last remaining suppliers of these critical components needed for strategic missile and space systems.

Because of the small number of components that the Department buys and limited commercial demand, our current suppliers were unable to generate sufficient revenues to purchase the production equipment needed to produce radiation hardened microelectronics at feature size needed to meet future defense requirements. Title III is helping these companies, through equipment purchases and modernization, to remain viable suppliers, capable of supporting future defense requirements. Without Title III, it is likely we would have lost this critical production capability.

Most provisions of the Defense Production Act are not permanent law and must be renewed periodically by Congress. We are requesting a reauthorization of the authorities contained in the Defense Production Act until September 30, 2008. In addition, we are requesting to increase the statutory authorization limit contained in Section 303 to $200 million to correct the industrial research shortfall for the radiation hardened electronics project.

The DPA requires the Department to obtain specific authorization for any Title III project that exceeds $50 million. The expected cost of the radiation hardened electronic project is $167 million. However, we are asking for authority up to $200 million in the event of unexpected cost increases for the project.

In conclusion, the DOD needs the Defense Production Act. It contains authorities that exist nowhere else. Current world events make these authorities more important than ever. The DPA is a proven mechanism. Its array of authorities has helped us meet the challenges of the last fifty years. By judiciously applying its authorities to challenges facing us today, the DPA will see us to a more secure future.

I hope that I have conveyed to you the significant role the Defense Production Act plays in ensuring our Nation's defense. The

Department fully supports the bill before the committee to reauthorize the DPA.

Thank you for the opportunity to discuss the Defense Production Act.

[The prepared statement of Hon. Ronald M. Sega can be found on page 42 in the appendix.]

Chairman KING. Thank you, Dr. Sega.

And in answer to your question, you did make us well aware. And I appreciate your testimony and also the brevity of the testimony. We got it all in. Thank you.

Now the Chair recognizes the Honorable Suzanne D. Patrick, Deputy Under Secretary of Defense for Industrial Policy.

STATEMENT OF HON. SUZANNE D. PATRICK, DEPUTY UNDER SECRETARY OF DEFENSE FOR INDUSTRIAL POLICY, DEPARTMENT OF DEFENSE

Ms. PATRICK. Good afternoon, Mr. Chairman and members of the committee. I appreciate this opportunity to share with you the Department of Defense views regarding the Defense Production Act. As Dr. Sega has indicated, this act provides statutory authorities that are vital for DOD, both in times of contingency or conflict, as well as during peace, in helping to obtain the goods and services needed to promote the national defense.

With your permission, I would like to summarize the testimony I have submitted for the record.

Dr. Sega talked about Title III. My testimony today focuses on Title I of the Defense Production Act and I want to briefly mention Title VII of the Act, which is also very important to the Department of Defense. As you know, Defense Production Act Titles II, IV and VI have been repealed.

I particularly want to describe to you why Title I authority is so important to us and how we are using it today.

Title I, which addresses priorities and allocations, provides the President the authority to require preferential performance on contracts and orders as necessary or appropriate to promote the national defense. These authorities are important in peacetime. They are vital in the event of conflict.

During peacetime, Title I priorities are important in setting priorities among defense programs that are competing for scarce resources and industrial production of parts and assemblies. These priorities are implemented through the Defense Priorities and Allocations System, DPAS, and applied by contract clauses. The clauses are like insurance, present in all defense systems contracts, subcontracts and orders, but actually executed only when absolutely necessary.

In peacetime, delayed industrial supplies increase costs of weapons systems and affect our readiness. DPAS serves as an important tool to prioritize deliveries and to minimize cost and schedule delays for the department's orders.

Forty-one percent of our 120 DPAS cases since 1995 supported peacetime requirements. Such support has included prioritizing deliveries of components for weapons systems, to minimize delayed deliveries and readiness impact, rating the State Department's embassy security protection upgrade program worldwide, and rating

selected friendly national defense contracts with U.S. suppliers that promote U.S. national defense.

Sixty-nine percent of the overall 120 cases since 1995 have supported U.S. and coalition needs during conflicts in Bosnia, Kosovo, Operation Enduring Freedom and the global war on terrorism.

During times of conflict, DPAS is vital, indeed indispensable. DPAS gives the Department of Defense the necessary power and flexibility to address critical war fighter needs involving the industrial base in an effective and expeditious way. The role of DPAS to increase interoperability and to assist our allies is also very important.

Recent DOD and Department of Commerce actions to use DPAS authorities to support Operation Enduring Freedom and the global war on terrorism have included components for precision guided munitions, global positioning system receivers and navigational processors, unmanned aerial vehicle sensors and man pack and search and rescue radios.

Two specific cases illustrate the absolutely necessary power that DPAS provides. Predator UAVs armed with Hellfire missiles were used for the first time in Afghanistan. They include an upgraded sensor package, the Multi-Spectral Targeting System. The contractor's original delivery date for three systems was this month, March 2003.

Using DPAS, we jumped this order to the head of the production queue and the contractor was able to deliver three systems in December 2001, 18 months earlier than originally promised. We all are aware of the dramatic impact unmanned Predators had in waging war in Afghanistan. Since that time, we have used DPAS to accelerate forty additional Multi-Spectral Targeting Systems.

Also in support of Operation Enduring Freedom, the U.K. Ministry of Defense needed ARC 210 satellite communications equipment to ensure secure satellite communication capabilities among U.S. and U.K. aircraft operating in and around Afghanistan. The U.K. requirements were critical to our overall war fighting effort. DPAS was used again to give the U.K. order an industrial priority rating and it was moved ahead of some U.S. orders that were not for deployed or deploying forces. The U.K. received the equipment six months in advance of the initial delivery date quoted by the manufacturer permitting vital secure communication among allied forces in theater.

I would like to conclude my remarks on Title I of the DPA by noting that it is our war fighters who are the real DPAS beneficiaries. Limiting our authority to apply these provisions to our contracts, whether by allowing the basic authorities to lapse, or by enacting an amendment limiting our ability to direct deliveries from any and all U.S. contractors when required to meet critical national defense requirements has the potential to put their lives at risk.

Turning now to Title VII, I want to briefly express support for these authorities, also very important to the Department of Defense. Title VII contains miscellaneous provisions, including enforcement mechanisms, which help protect the national security. For example, section 707 provides that no person shall be held liable for damages or penalties for any act resulting from compliance

with rules, regulations or orders issued under the Defense Production Act.

This provision is necessary to protect suppliers from breach of contract claims when commercial contracts are displaced in the interest of national security. This provision should be permanently authorized in order to protect contractors during periods when the Defense Production Act has lapsed, as has happened temporarily.

As an example, the Civil Reserve Air Fleet, CRAF, was activated in February, 2003 for the second time in its 50-year history. Upon activation, 47 passenger aircraft were brought under the exclusive control of the Department of Defense until released. Both scheduled carriers and charter carriers may have to invoke section 707 to defend against breach of contract actions involving their commercial business.

During Operation Desert Shield/Desert Storm when CRAF was activated previously, the Defense Production Act expired, leaving carriers with no legal protection to defend against breach of commercial contracts. The 102nd Congress retroactively extended it. But DOD believes that section 707 should be permanently authorized in order to remove this kind of uncertainty.

Section 721 represents another example of important Title VII authorities. Section 721 allows the President to suspend or prohibit a foreign acquisition of a U.S. firm when that transaction would present a credible threat to the national security of the United States and allows us to propose remedies that eliminate that threat that are not available under other statutes. This authority is increasingly important in today's globalized industrial environment.

In closing, I would like to reaffirm that DPA authorities are a critical tool in the Department of Defense's arsenal. It would be very difficult for the department to meet its national security responsibilities without this tool. Since it was originally enacted in 1950, we have used the Defense Production Act authorities to promote our national security time and again, particularly during times of conflict.

Given the challenges we face today and the uncertain duration of our global war on terrorism, we support reauthorization of the Defense Production Act through September 30, 2008. This would help to remove the uncertainty associated with short duration authorizations.

Thank you very much.

[The prepared statement of Hon. Suzanne D. Patrick can be found on page 33 in the appendix.]

Chairman KING. Thank you, Ms. Patrick, we appreciate your testimony.

And now we will hear from Karan K. Bhatia, Deputy Under Secretary for Industry and Security from the Department of Commerce.

Mr. Bhatia?

STATEMENT OF HON. KARAN K. BHATIA, DEPUTY UNDER SECRETARY FOR INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE

Mr. BHATIA. Thank you very much, Mr. Chairman.

I appreciate the opportunity to testify before you today on the reauthorization of the Defense Production Act. Let me start by conveying Under Secretary Juster's apologies for not being able to attend today's hearing. He had a long-standing prior commitment that required him to be out of the country.

The Commerce Department fully supports extension of the DPA. We do so because in our experience, the Defense Production Act has been a critically important tool in enabling the government to work effectively with industry to meet contemporary challenges to our security.

I have prepared a written statement, which, with your indulgence, I ask be entered into the record.

Chairman KING. Without objection.

Mr. BHATIA. My written statement discusses in detail the various ways in which the Department of Commerce is involved in the exercise of DPA authorities and provides some relevant examples. In the interest of brevity, I will not duplicate that testimony here. But I would like to briefly identify several authorities under the act that facilitate key Commerce Department activities.

First, under Title I of the DPA, the department administers the Defense Priorities and Allocations System, the DPAS. As Ms. Patrick explained, DPAS seeks to ensure the timely availability of products, materials and services that are needed to meet national defense and emergency preparedness requirements with minimal interference to the conduct of normal business activity.

It does this by creating a system of priority ratings that can be attached to procurement contracts by agencies to which the Commerce Department has delegated ratings authority, including the Departments of Defense and Energy. DPAS also provides an operating structure to support a timely and comprehensive response by U.S. industry in the event of a major national emergency.

Now, in addition to DPAS, the DPA also provides authority to the Commerce Department to collect data, perform analysis and prepare reports on critical defense industrial base issues. It requires the submission to Congress of annual reports analyzing the practice of offsets in defense trade. It is also the source of authority for the reports that Commerce prepares each year, commonly at the request of Congress or the Armed Forces, analyzing the health and viability of various sectors of the defense industrial base.

I would like to pause in this context to note the Commerce Department's support for the minor, but we believe important, amendment in the bill that would clarify that the President's investigative authorities under the DPA include the authority to obtain information necessary to produce such studies.

Finally, the DPA authorizes review of the national security implications of foreign acquisitions of U.S. companies, and if necessary, the prohibition of acquisitions when there is credible evidence that the foreign interest may take action to impair U.S. national security. The Commerce Department is one of the federal agencies that participates in the analysis of such transactions.

Now, 21 months ago when this subcommittee last convened a hearing to consider reauthorization of the DPA, none of us could have then predicted the security challenges that the U.S. would soon encounter at home and abroad, nor the important role that

DPA authorities would play in meeting those challenges. But they have played precisely such a role.

Pursuant to DPA authorities, the DPAS system has worked to secure the delivery of a number of items ranging from guidance system components for smart bomb munitions to search and rescue radios for both U.S. and allied forces in Operation Enduring Freedom.

Here at home, DPA has helped facilitate a number of post-September 11 initiatives to secure the homeland. DPAS support has been provided to the FBI to upgrade its communications and data processing capabilities, and to the Transportation Security Administration to achieve the timely delivery of explosive detection systems equipment for use at commercial airports. And we are currently working with the Department of Homeland Security to review a request to provide DPAS support for the Customs Service's Automated Commercial Environments port security system.

DPA authority has facilitated the completion of a number of in-depth studies of the defense industry, including most recently a comprehensive analysis of the impact of offsets on defense trade over a six-year period. A report that has been well received by Congress and industry.

Finally, and in light of current events, perhaps most critically, DPA authority is providing support today for U.S. and allied nation forces currently deployed in the Middle East. We have worked closely with contractors and suppliers to achieve timely delivery of important supplies and materials to those forces.

In short, thanks to this committee's work in reauthorizing the DPA two years ago, we have had in place critically important statutory authority that has enabled the federal government to meet the new and diverse threats to our security. As it has over the past 50 years, the statute has again demonstrated its utility and its value. We strongly support its reauthorization.

Thank you.

[The prepared statement of Hon. Karan K. Bhatia can be found on page 27 in the appendix.]

Chairman KING. Thank you, Mr. Bhatia, we appreciate your testimony.

And now we will hear from R. David Paulison, Director of Preparedness Division, Emergency Response Directorate in the Department of Homeland Security.

Mr. Paulison?

STATEMENT OF HON. R. DAVID PAULISON, DIRECTOR OF THE PREPAREDNESS DIVISION, EMERGENCY AND RESPONSE DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY

Mr. PAULISON. Thank you, Mr. Chairman and members of the subcommittee. On behalf of Under Secretary Michael Brown, I appreciate the opportunity to appear before you today. I have submitted my written testimony and appreciate it being added for the record. And I would like to just give a very brief overview of our comments and try not to duplicate what has already been said.

The Department of Homeland Security does support a 5-year reauthorization of the Defense Production Act. We feel that this will allow us to continue our preparedness for catastrophic incidents

and also allow us time to explore ways to modernize the Defense Production Act.

If we fail to reauthorize this act, there is no alternative or comparable authority for the Defense Production Act for priorities and allocations for civil emergencies. And we are talking about natural or man made disasters in this country.

The Defense Production Act authorities are critical to supporting the Department of Homeland Security's objectives and missions. We have recently used the Defense Production Act in several incidents and some were pointed out by Mrs. Maloney. And that is particularly the use of priorities and allocation authority to support TSA for acquiring explosive detection devices for over 400 airports.

We have assisted the FBI in updating their critical information systems. And we are currently working with the Bureau of Customs to use the Department of Homeland Security's priority and allocations to buy equipment to track containerized shipping arriving on our borders. An example of this is a tracking of over 9,000 tractor trailer trucks across our borders at Laredo, Texas each day in this country. And that is just one city.

The Department of Homeland Security can use the Defense Protection Act in catastrophic natural disasters and I think that is very important. I was the chief of Miami-Dade County when Hurricane Andrew swept through the southern portion of our county.

We had 90,000 homes destroyed and 250,000 homeless people. If that hurricane had landed just 10 miles further north and had moved a little slower, the catastrophic results that we saw would have been multiplied many times over. This act gives us the tools to effectively respond to these types of disasters.

A major earthquake along the New Madrid fault could cause major loss of life and significant destruction of the infrastructure. Other examples in the use of this Act is personal protection equipment used for weapons of mass destruction for our first responders, vital communications equipment and other information technology support for advanced research projects.

We are currently preparing a priorities and allocations manual that parallels the DOD system, which we will use throughout the Department of Homeland Security.

And lastly, the Secretary of Homeland Security is prepared to carry out his responsibilities under Executive Order 12919, particularly in regard to coordination and program guidance of this act.

Thank you.

[The prepared statement of Hon. R. David Paulison can be found on page 38 in the appendix.]

Chairman KING. Thank you, Mr. Paulison.

I just have several questions. One, I will ask the entire panel on this, as you know, the administration originally requested a five-year reauthorization of the DPA. But in agreement with the ranking member and the other minority members, we intend to—I intend to offer an amendment today to make that a four-year extension. Do any of you have any comments on that? Do any of you have any objection to the amendment bringing it from five years to four years?

Mr. SEGA. From the Department of Defense, we would—we prefer five years as we see the DPA authorities as needed on a continuing basis now and into the future. We would prefer five.

Chairman KING. Anybody else have any comment?

Mr. PAULISON. Like I said earlier, the Department of Homeland Security also prefers five years.

Mr. BHATIA. Let me add the Commerce Department's voice as well. We, too, would prefer a five-year authorization. We consider this an extremely important statute. In our view the longer the reauthorization, the better.

Chairman KING. Thank you.

Ms. PATRICK. And I think the other thing is that given the fact that we have seen the adverse impact at times when this has lapsed. I think it is very important that we, especially given world conditions today, that we have as long a reauthorization as we possibly can just to make sure that we can deal as effectively with contingencies in the future as we have in the past.

Chairman KING. Okay. Thank you for your comments.

Also, and I see that the gentlelady from California is here. And I realize she will be offering an amendment later on, which she will be speaking on. But basically, if I can paraphrase her amendment, and she is—again, I am not speaking for her. But it is going to, as I understand it, preclude any contracting with a company that employed or had as a board member any—certain specified senior U.S. government officials. I would like to ask if you would comment on that to the extent that would impact on your departments as far as implementing the DPA.

Ms. PATRICK. I would like to take this opportunity to reiterate some of the comments that I had in my oral statement. It is very important to remember that these requests come to us based almost exclusively on war fighting requirements. These are for the warfighter to get something in a timely fashion that they need desperately to prosecute an operation or to prevent loss of lives in the battlefield. And as a consequence of that, it would really gut the utility of this Act to us if we in any way had to circumscribe its effectiveness relative to the companies to which we could apply it.

The other thing that I would like to point is that this Act comes in—the DPAS provisions come into force when we have an existing contract that has been duly rated so the provisions of DPAS supply. And it is only when those two provisions are met that DPAS comes into effect at all for us to decide as to whether we had to reallocate production on a production line to serve the interest of a warfighter.

So from our perspective, it is absolutely essential that we be allowed to provide the warfighter equipment regardless of contractor or source in a time of great need. And it would be really discriminatory against the warfighter to limit the production—or the provision of war fighting equipment to them based on other concerns that do not have to do with the urgent need, but have to do with other concerns.

So I hope that is clear.

Chairman KING. It is clear to me. Thank you, Ms. Patrick.

Anybody else have any comment on that?

Mr. PAULISON. We do not know the full impact of the amendment. But we are concerned that it will make the Act ineffective should we experience a catastrophic incident in this country, whether it is man made or natural. And so we do have concerns over it.

Chairman KING. Thank you.

Mr. BHATIA. I would echo the comments made by the other witnesses on this. I would also add that, although we have only had a chance to preliminarily review it, it would appear that the amendment would effectively carve out a category of companies from the requirements of the DPA, including requirements that they be subject to the investigative and report features of the DPA. Obviously, for those reports and investigations that we do to be complete and to be accurate, we would want responses from all companies out there, including this category of companies that would potentially be carved out if the amendment were adopted.

Chairman KING. Mrs. Maloney?

Mrs. MALONEY OF NEW YORK. Thank you, Mr. Chairman and I thank all the panelists.

First, I would like to ask Dr. Paulison, can you explain for the committee what the impact of FEMA coming under the Department of Homeland Security will be in practice? Many people say it is just moving boxes around and it is not going to really have that big an impact. But how will the DPA be used in practice now when reacting to—will you react to a disaster any way differently than prior to the creation of this new Homeland Security Department?

And also, you mentioned in your statement that you would be paying attention to the ports. And as you know, New York City is one of the biggest ports in the country. I represent New York City, a very highly populated area. And can you tell the subcommittee how the DPA might be used in this area? If you could elaborate further on in port protection.

Mr. PAULISON. Thank you for the question. The first answer is, by moving FEMA into the Department of Homeland Security it gives us a tremendous amount of resources that we did not have before. FEMA's response has been primarily natural disasters. We have responded to some man made disasters, but primarily natural.

By moving into the Department of Homeland Security, it gives us the ability to tap into the terrorism part—terrorism protection part of the federal government we did not necessarily have before. So we are excited about the move. We think it is the right move. And we already see a lot of good things happening as far as keeping this country prepared, and also responding to the disasters.

The second part—I come from a big port city, also, of Miami. We have a difficult time sometimes tracking what comes into the country and what are in these containerized cargos. The DPA will allow us to work with Borders and Transportation Security to make sure that we can track each of these cargo containers as they come in. We know what is in the cargo containers and we know where they are going.

It is going to be a tremendous opportunity for us to enhance the tracking systems we already have. If we did not have this authority, we may not have the ability to move quickly enough. As we

know, we have a significant crisis on our hands at this point. And we need to be able to move very quickly to put a tracking mechanism in place to find out—make sure we understand what is in these containers—containerized cargos as they come into the country and how we can track them once they come in.

Mrs. MALONEY OF NEW YORK. Thank you.

Secretary Bhatia, in your testimony you mentioned that the DPA requires Commerce to report to Congress on the issue of defense trade offsets. And I am wondering, is this a two-way street. Could you provide an example of a recent offset sought by a foreign country?

Mr. BHATIA. Ranking Member Maloney, the report that we provided contains a summary of different offsets that get reported to us. I am happy to get back to you with some specific examples if you want. I believe even the most recent sale of F-16 fighters to Poland has an offsets package as part of that. But I would be happy to provide some specific details afterwards if you would like.

Mrs. MALONEY OF NEW YORK. Well, does the United States ever seek offsets for goods bought from foreign countries?

Mr. BHATIA. The policy of the United States is to not participate in the formation of offsets and offset policies. We, the Commerce Department, have been devoting our resources principally monitoring the practice of offsets, the effect that it is having. It obviously is, to some extent, a trade distorting practice and it is one that concerns us. And we have sought to address it both in bilateral and multilateral fora with our allies.

Mrs. MALONEY OF NEW YORK. Is there a potential that foreign countries seeking offsets could lead to jobs moving overseas when they otherwise would have stayed in the United States? Have you studied that?

Mr. BHATIA. Yes, the most recent report does address that issue and it is obviously a concern with respect to offsets. The analysis contained in the report concludes that on balance when you look at the gains in U.S. jobs and to the U.S. economy as a result of offset packages being offered and thus contracts being won, the net is, by a fairly significant margin, a benefit to the U.S. economy and U.S. jobs rather than the loss of jobs.

Mrs. MALONEY OF NEW YORK. And as you know, the DPA contains the Exon-Florio language that authorizes the President to block foreign control of a U.S. business if the foreign business might take action that threatens to impair the national security. Can you please provide an example of how this authority has been used?

Mr. BHATIA. The authority is exercised through the Committee on Foreign Investment in the United States which has been created, I believe, by executive order. It is an interagency committee under the chairmanship of the Treasury Department that will look at filings made by foreign parties seeking to acquire effectively controlling interests in certain U.S. companies.

I believe that the regulations the Treasury Department has put out, require that information about specific transactions and investigations be provided confidentially to the committee. I would be more than happy to do that in a confidential forum.

Mrs. MALONEY OF NEW YORK. I would appreciate that.

And Ms. Patrick, finally, and my time is up, how would the DPA be used in the rebuilding of Iraq?

Ms. PATRICK. The Defense Production Act and DPAS specifically is very much used on a case-by-case basis. And so—and I would like to also reiterate the point I made in my remarks, which is that we generally use DPAS authority for things that benefit the warfighter.

I think that the rebuilding of Iraq is something in the future. We—certainly in this administration, we have not tread that ground yet. And so as a consequence, we would have to see what sorts of requests under the DPAS and DPA authority came to us in conjunction with the rebuilding of Iraq. And I would not want to guess in advance how those authorities might be used.

Although I would like to reiterate again, as I have previously, that they are typically used to benefit our warfighters and under existing contracts where the ordering or allocation of defense hardware has to be changed in a matter to meet urgent national security requirements.

Chairman KING. Ms. Biggert?

Mr. Paul?

Mr. PAUL. Thank you, Mr. Chairman.

I was wondering if any member of the panel could cite the article of the Constitution that gives the Congress the authority to grant this amount of authority to the executive branch.

Okay. There's no answer. Maybe I will ask my colleagues. This next question is directed toward Secretary Patrick and it is dealing with Article I of the DPA. Part of Article I prohibits the President from exercising his priorities without first making a report to the Congress; and I understand that this administration has used this authorization. Has it always sent these reports to the Congress before making use of this authority?

Ms. PATRICK. The authority under DPAS, as I understand it, actually is delegated quite deeply into the Defense Department. And just so I might explain how it works. It, to my knowledge—it does not require any sort of additional request of Congress because, of course, the issue here is urgent national security requirements with a warfighter out at the pointed end of the spear needing something desperately; Kevlar shields, additional JDAMs, additional radios.

And so, as a consequence, that authority is delegated to me in the cases where only U.S. requirements and only U.S. production facilities are in question. In the case where it is a foreign requirement or where foreign production facilities are involved, my boss, the Under Secretary of Defense for Acquisition, Technology and Logistics, Mr. Aldridge, signs off on those DPAS requests.

But the Act does not specifically require us to come back to Congress each time we use DPAS in order to expedite something from the warfighters.

Mr. PAUL. Well, I think that would stand to, I guess, a debate because some people could read it otherwise that nothing could be done because it prohibits you doing anything unless these findings are presented to the Congress. It seems like these indirect methods would not suffice.

But on another subject as well, just on this principle of delegating this amount of authority, which to me is a tremendous amount of authority, because literally we are giving the administration power to draft an economy and dictate to economy, which can be very damaging, because it came out of the fact that nationalizing the steel industries by Truman was considered not the best way to go about things. But this is accomplishing the same thing and stands on the books as potentially very dangerous for the gravitation of power in the executive branch.

But it is also based on the assumption that the allocation of resources is best done by authoritarian procedures. We believe in the market. And when there is a shortage, the best allocation of scarce resources is through the market. And yet, as soon as we come up with a crisis, we resort to authoritarian methods which have questionable constitutional grounds for it. So I just have a lot of trouble understanding why there is such determination for all this power to be given to the executive branch, not only for an extension of two years, make sure it is for five years.

I mean, where is our confidence in the market place.

Ms. PATRICK. I think you will probably find few members of the administration who are such fervid and fervent advocates of the market economy as some of the senior members of the leadership in the Defense Department. And I would certainly count myself among them.

I think that the way to best understand the DPAS authorization is that it is used for highly extraordinary circumstances. It is intended to fine-tune the priority of production line assets. It is not in any way comparable or to be discussed in the same vein, I think, with nationalization of a major industry. These are very minor course adjustments that we do very judiciously, very prudently, once again, in order to make sure that the warfighter has what he or she needs when they are engaged in combat on our behalf.

Chairman KING. Ms. Waters?

Ms. WATERS. Thank you very much, Mr. Chairman.

Let me start out by saying that I share Mr. Paul's concerns. This is awesome authority. And I understand that there has already been some planning at the White House or the Pentagon about use of this authority not in the way that it is being described here today, but in relationship to contracts to rebuild roads, bridges and other facilities in Iraq following the war. Do you know anything about that?

Ms. PATRICK. Ma'am, I do not know anything about that other than what you have told me and what I have learned about such initiatives during the course of the day today preparing for this hearing. I can also assure you that we do not have any such request that has come to us under DPAS authority. And so the scenario that you are painting for us today is certainly new to me.

But also, as I said previously, we review very judiciously and carefully these requests under DPAS for relevance to the warfighter, for urgency in prosecution of a conflict and we do consider them on a case-by-case basis. That's very much at the center of this kind of judicious consideration.

Ms. WATERS. May I ask, has Halliburton been involved—Kellogg, Brown and Root or Halliburton been involved in any of the plan-

ning for the use of this authority should they—should you need it? Have you been involved with any planning sessions with representatives of Kellogg, Brown and Root or Halliburton?

Ms. PATRICK. I certainly have not. And just to further elaborate on how the process works, these kinds of requests come to us either, as I said earlier, from the warfighters themselves, from the combatant commanders, from members of the joint staff who see that they need something that they do not have sufficient quantities of or where the sequencing on a production line is not adequate; or, in some cases, from companies who have contracts for critical war fighting equipment who, as part of the functioning of the defense industrial base, advise us that they have a problem in executing a number of contracts that they are doing for us simultaneously.

And that they from time-to-time have advised us when there is a problem in executing a contract that they view important to the warfighter because another item of equipment is on the production line preceding this critical item.

Ms. WATERS. Who would make the final decision about the authority to use this authority? Who would make the final decision—if you have a request, as you would say, from someone out in the field and there was a need to spend $50 million to do something that you say falls within the category of this authority, who would make the final decision on that?

Ms. PATRICK. Let me answer the question in two ways. First of all, in the case where it involves a request from a U.S. entity and impacts a U.S. production line or a U.S. company, U.S. on the both sides, I sign off on those documents myself. In the cases where it involves a foreign company or an ally asking us for that help, the Under Secretary of Defense for Acquisition, Technology and Logistics, my boss, signs off on that. So these are delegated appropriately in the department so that the people who have the subject matter expertise can actually adjudicate the issues of concern.

Let me answer another point that I think was embedded in your question, which is that the DPAS authority is not a contracting authority per se. In most instances, as a matter of fact, it is revenue neutral to the companies in that the companies are not provided additional revenues as a result of the DPAS authority. They are just directed to change the order in which they provide equipment to us based on the authority.

Now under some circumstances, if we have to surge production dramatically and we decide that we do not have time to renegotiate a contract, and I think that's a big exception because we can negotiate contracts quite nimbly to meet warfighter demand. But if all that were the case, then in turn, if the company decided that they needed to be reimbursed for providing things on an accelerated schedule because, for instance, the had to put on additional shifts, they had to procure materials at rates that were not as competitive.

Ms. WATERS. If I may—I understand that.

Ms. PATRICK. Okay.

Ms. WATERS. However, you are not representing that. This authority does not include the ability to increase the original order if it is an emergency. For example, if you have negotiated a contract

and it is a need to speed up the production of an item and to expand the items because there is an additional need, that authority is embedded in this also. Is that right?

Ms. PATRICK. Any sort of financial provisions having to do with the impact of DPAS would generally be negotiated as part of a contract modification or change to the contract. DPAS does not automatically provide funding at the kinds of levels you were talking about. I mean, it is just a reordering and fine-tuning of a production line.

Ms. WATERS. Well, what would happen if——

Chairman KING. Gentlelady's time has expired. Just ask the question and that's it.

Ms. WATERS. I beg your pardon?

Chairman KING. I said your time is expired, but you can ask the one final question.

Ms. WATERS. What would happen—explain what would happen and how it would happen if in the exercising of this authority for any reason, there also was a need for additional dollars to be spent on a particular item? What would happen? How would it happen? And whose authority would that be?

Ms. PATRICK. Right. As I said, that would be a contracting action where the contracting officer would have to negotiate a change order to that contract to accommodate the increase in costs then that your scenario would include.

The renegotiation of the change order or the change in the price of the contract would not be automatic as a result of invoking DPAS. That would be subject to a separate negotiation. DPAS would allow the change in priority. But then whatever the financial arrangements were that would follow would have to be negotiated in a change order to that contract. In other words, a contract negotiation activity.

Chairman KING. Mr. Manzullo?

Mr. MANZULLO. Do you get involved, when you invoke the DPA, with any Berry amendment waivers?

Ms. PATRICK. You know, in the measure that DPAS, once again, is typically pursuant to an existing contract in place, the existing contract in place would have adjudicated the Berry Amendment issue. So that typically is not part of it because it is relative to an already existing contract.

Mr. MANZULLO. Okay. I ask this because President Clinton's Executive Order 12919, I am reading from a CRS report, states "The domestic, industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act", and that's your Act, "shall be used to strengthen this base and to ensure it is capable of responding to all threats to the national security of the United States."

And what we are seeing now, in fact, the Small Business Committee, of which I am the Chairman, is having a hearing on March 26 as to why the Department of Defense is allowing the purchase of titanium from Russia for Pratt and Whitney engines on military aircraft at a time when the titanium industry in this country is in dire straits.

There are literally tens of thousands of jobs, manufacturing jobs, that are being wiped out because of this waiver of the Berry

amendment. But I would think that since President Clinton charged you in this executive order to make sure that the industrial and technology base are the foundation for national defense that you would look into the fact that we still have a strong domestic titanium manufacturing sector. Wouldn't that be correct?

Ms. PATRICK. We monitor the issues with regard to specialty metals of all kinds very carefully. But given that that's a fairly complex issue, let me take your question for the record and look into that in some detail and get back to you.

Mr. MANZULLO. Did anybody else want to comment on that?

I have a question on offsets because it is related to the same thing. Lockheed Martin just entered into a $25 billion agreement to sell F-16s to Poland in exchange for Poland getting $16 billion worth of business from Lockheed Martin.

I would submit to you that Poland will take away thousands, if not tens of thousands of manufacturing jobs in the United States because of the offset and continue to use offshore production to go into our fighting machines to come to just under the 51 percent buy American requirement for the Department of Defense, with the exception of the Berry amendment.

Do you think that based upon President Clinton's executive order that you should be taking a look at the long-term effect of these offsets because Poland is really itching to get into the market of tool and die and machining and manufacturing.

I ask that question because the largest city in my district, Rockford, Illinois, has a 25 percent industrial base. And in 1981 it led the Nation in unemployment at 24.9 percent. And so we see a very dangerous trend to which the United States is a party. Would anybody like to comment on the offsets?

Mr. BHATIA. Congressman, as I mentioned before, offsets is one of the subjects on which, under the DPA, we report to Congress. We do look at them comprehensively, relying on the authorities under the DPA to get the relevant information from companies. And, as our most recent offset report concludes, there is an increase in offset activity. We are also concerned there is an increase in the importance of offsets in being a determining factor in foreign government decisions about what contracts should be——

Mr. BHATIA. ——granted.

Mr. MANZULLO. Well, then do you weigh that against the executive order? I mean, your job is to maintain a strategic and industrial base in the United States.

Mr. BHATIA. The ideal situation, as I mentioned before, is that there would not be any offsets. They are, however, a factor in international defense trade. There is no getting around that. And the analysis that was done in the report, and I think it is a very strong analysis, suggests that the net result to the United States economy and to the labor force is a net positive.

Mr. MANZULLO. At what point does it become not a net resource? After the loss of how many U.S. manufacturing jobs?

Mr. BHATIA. Again, there is no question that to the extent that some of these offset packages require that certain functions be performed offshore that they do result——

Mr. MANZULLO. Certain manufacturing functions. Jobs are lost. So, where is there a net gain in the cities like mine that had the manufacturing base?

Mr. BHATIA. The report, again, will explain, Congressman, how all told over the period of 1993 to 1999, there has been a net gain from offsets, from the increased sales that would otherwise not have been made absent offset packages, of roughly 36,000 jobs.

Mr. MANZULLO. Well, I lost 10,000 jobs in the past two years just in my district and so has the speaker. There has been a loss of two million industrial jobs in the past three years here in the United States. Do you look at industry sectors——

Chairman KING. Time has expired.

Mr. MANZULLO. I am sorry.

Mr. BHATIA. Could I clarify for the record? I think I misspoke when I said jobs. I am sorry. Export sales facilitated by offsets maintained 38,400 work years annually.

Mr. MANZULLO. No, I understand that. But what that does not show is the hollowing out of the industrial base when the export base includes foreign materials being put into items that are assembled and sold under the American name that are shown as net U.S. exports.

Do I have time for one more question?

Chairman KING. Yes, one more question.

Mr. MANZULLO. My question is, when you approve these offsets, which you have to——

Mr. BHATIA. No. Perhaps there is a misunderstanding. We do not approve offsets at all. We simply, under the DPA, monitor the existence of offsets.

Mr. MANZULLO. You do not pass upon them at all?

Mr. BHATIA. No, sir.

Mr. MANZULLO. When you monitor them, do you get involved in various sectors of industry? Do you call the manufacturers of a like material and see how their business is going?

Mr. BHATIA. There is a requirement that offset packages be reported to us. They get reported to us and then we subsequently investigate the impact of the offset package.

Mr. MANZULLO. Okay. If we could meet sometime later on, I would appreciate a follow up on it.

Chairman KING. The gentleman's time has expired.

Ms. Lee?

Ms. LEE. Thank you, Mr. Chairman.

Just learning—as one who is just learning about the Defense Production Act, it appears and sounds like to me that there is quite a bit of money being made by some companies.

I want to—there's not. Someone is shaking their head.

But let me just ask—it may not be a lot of money. It may be—some money is being made under this authority. So in using the authority of the Defense Production Act, I want to ask you how do the laws regarding the minority business owned community, the purchasing laws and the minority contracting laws apply and how do they work as it relates to the DPA's authority?

Ms. PATRICK. I think that it is a bit of a misconstruction of how the Defense—how the DPAS works to characterize it as a money-making opportunity for companies. Once again, you know, it really

is—it does not—DPAS does not represent authority to negotiate new contracts, to buy new things, to serve the warfighter with new items. It is merely a way to reorder the sequencing and the priorities, the priority of allocation of defense equipment.

Ms. LEE. But in doing that, companies do not make additional profits?

Ms. PATRICK. In fact, in many, many cases, it is revenue neutral to the companies. It is not—it does not provide additional monies. There may be some circumstances were we to use DPAS, as I said, to dramatically surge production, which we generally would prefer to renegotiate contracts. In those cases, then, a separate negotiation action would start with the original contractor.

This would not be a new RFP that would put out new business. This is a very confined authority, really, to operate under existing contracts, on existing production lines and using the existing relationships between the government and that particular contractor that was negotiated probably, you know, years ahead of the time that DPAS comes into instance. It is not new contracts.

Ms. LEE. Okay. Well, I would like to—and if this is public information or information that we can receive, I would like to ask if we could request at least a list or a breakdown of those companies and what actually have the numbers been in terms of the sales. And I would like to see what the minority and women-owned business involvement in that.

Ms. PATRICK. Just one moment, please.

I think the other thing is—I was hoping that our annual report on the industrial base capabilities might have had something on DPAS because we have a lot of charts that are very helpful in this regard that would have shown you over the last 12 months when we invoked DPAS and what the impact was; what the equipment was; who the contractor was and——

Ms. LEE. And how much the contract was and——

Ms. PATRICK. How much the original contract was and the whether or not it was——

Ms. LEE. Versus under DPAS?

Ms. PATRICK. That's right.

Ms. LEE. Okay.

Ms. PATRICK. But the other thing to keep in mind is it really is an insurance policy that's in all contracts. So it certainly is not only in some contracts. So all of our contracts with minority or women-owned businesses would also have a DPAS clause in them. It is an insurance policy that's put into all defense contracts. But it is only invoked very rarely. As I said in my remarks, since 1995, we have invoked DPAS only 120 times.

Ms. LEE. Well, out of the 120 times, is there a way to find out the involvement of the 120 times how many minority and women-owned companies were part of that involvement?

Ms. PATRICK. We certainly could. They would be the contracts where, frankly, coincidentally, you know, those particular DPAS actions involved minority and women-owned companies. It is a very broad spectrum of companies that get involved. Some who are very small, the names of which you might not know because they are components.

But you know, we have very good records on whenever we have invoked DPAS because it is very important to us and it is an authority that we take very seriously. So perhaps what would be very helpful to the committee is if we take the slice, perhaps, over the last year and show you those DPAS initiative so that you can see what they were; see what the equipment was; who the companies were; whether they were revenue-neutral or not.

Ms. LEE. I would like to see that myself. But I would also like to see within that context, the breakdown of the minority and women-owned firms in that listing.

Ms. PATRICK. Yes, well, we will annotate them as to whether they are minority or women-owned firms.

Ms. LEE. Yes. Thank you very much.

Ms. PATRICK. We will be happy to provide that.

Chairman KING. Thank you.

Mr. Murphy?

He has left.

Mr. Barrett?

No?

Mr. Feeney?

Ms. Harris?

Mr. Hensarling?

Okay.

Okay, I am going to thank the witnesses for their testimony. Ordinarily, this is a very routine reauthorization. Obviously, today being on the eve of hostilities, it takes on an added impact. I want to thank you for your testimony. I want to thank you——

Mrs. MALONEY OF NEW YORK. Mr. Chairman, can I ask a point of clarification?

Chairman KING. Sure, absolutely.

Ranking Member?

Mrs. MALONEY OF NEW YORK. I really would like to go back to really the questioning of my colleagues. And I would like it to clarify—it is my understanding that DPA relates to prioritizing existing contracts only. In other words, you cannot initiate a new contract. But what happens if you hear from the field that they need new walkie-talkies immediately?

Ms. PATRICK. That's a separate contracting action. That would not come under DPAS. That would be a contract that would be negotiated on an urgent, priority basis through the commands that are cognizant for the kinds of equipment that's being queried.

Mrs. MALONEY OF NEW YORK. Now, another question that Ms. Waters raised was the question whether this DPA was going to be used for the rebuilding of Iraq? And you stated earlier that it was responded to the requests from the warfighter themselves. Well, obviously, rebuilding is not a war fight. So I would like to be clarified whether DPA will be used just in a war, which is obviously an emergency? Or will it also be used in the rebuilding?

Ms. PATRICK. Well, I was certainly responding based on what the DOD DPAS authority is, which is generally quite strictly related to war fighting and the warfighter. But other departments can exercise their DPAS-type authority for things like rebuilding, which might conceivably come under the authority of USAID. But it prob-

ably would not be a DOD DPAS action. You are absolutely correct in making the distinction.

Mrs. MALONEY OF NEW YORK. So it could be used in that way. And thank you very much.

Mr. SEGA. If I could clarify, in the Title III portion, which are where my responsibilities are, we do have some contracting activities to help with what Mr. Paul had mentioned—Congressman Paul had mentioned earlier, in terms of areas where the private sector is not producing through commercial demand products that we need. And one prime example is the radiation hardened microelectronics facilities.

And so in that case we are running to the point where we could not provide the Department of Defense with the RAD hard components for space and missile systems. At that point we did enter into Title III activities to provide the equipment and also looking at advanced processors to provide a segment of technology that does not have an analog into the commercial sector for the RAD hard parts.

So there is some contracting activity. And in that case, it is consistent with standard acquisition regulations.

Mrs. MALONEY OF NEW YORK. If I could ask another clarification. You testified that often when you use DPA, the private firms do not make a profit, that you, quote, modify their contracts, extend their contracts, procure more of what is needed. But usually in private commerce, many people want to do business with the United States government because they do make a profit. And they are entitled to a profit.

So when you say if they modify and prolong their contract, they are not making a profit, I just—I would like a clarification. I think most companies have to make a profit in order to be in business.

Ms. PATRICK. Let me clarify that. If I said that companies working for the government on government contracts do not make a contract, that certainly was not—that was not the intention of what I said.

Mrs. MALONEY OF NEW YORK. You said for the extension of the contract. You said it often was revenue neutral. I think you used that word.

Ms. PATRICK. Right, it is revenue neutral in terms of any additional profits because of the invocation of DPAS itself.

Mrs. MALONEY OF NEW YORK. Okay. Revenue neutral, in other words, they cannot make more than the contract that they got with the government in the first place.

Ms. PATRICK. Correct, I mean, they are within the confines——

Mrs. MALONEY OF NEW YORK. So you are expanding—I see, I understand.

Ms. PATRICK. That's right. They are within the confines of the original contract. And if they—if there is some additional profit that the contractor would demand, because, as I said, they have to have additional workers brought in, or they cannot negotiate their materials for as competitive a rate because——

Mrs. MALONEY OF NEW YORK. Okay, I understand. Revenue neutral within the context of the original contract.

Ms. PATRICK. That's right. That's exactly right.

Mrs. MALONEY OF NEW YORK. Well, New York,—I was reading the Wall Street Journal yesterday and already the English were

complaining that they were not on the list of the contractors to rebuild Iraq. This was a report in the press. And so I share the sentiment that I believe Ms. Waters was trying to raise. I am totally supportive of DPA. DPA helped us in New York during our emergency and bringing in supplies that we needed.

But the rebuilding is not an emergency. And in my opinion, I do not believe DPA should be extended to the rebuilding of a country. When it is supposed to be a democracy and a peaceful experiment, then we should bring in the good contracting provisions that many of us have worked on and that have been part of the history of our country.

Ms. PATRICK. Well, we really appreciate your concerns. And you know, we really do work DPAS and other prioritization programs very judiciously. As an example, for instance, all contracts have ratings for priorities, DO or DX. And we actually have turned down many of our colleagues' requests that their programs have DX ratings, which would be more urgent than DO just for reasons of priority when it was not urgent.

So you know, there have been a number of instances, not in DPAS, but in other similar authorities that my office and I have where we have actually said no. So we will take aboard what you have said and we will continue to do this as prudently and judiciously as we possibly can but having in mind the warfighter at the end. And they are really most important to all of us now.

Mrs. MALONEY OF NEW YORK. Right, thank you.

Mr. MANZULLO. Mr. Chairman?

Chairman KING. Yes.

Mr. MANZULLO. Would you mind if I asked one further question?

Chairman KING. It is always an experience to listen to your questions, Mr. Manzullo.

Mr. MANZULLO. I appreciate that. Thank you.

I, on Section III—I guess, Mr. Sega, this would be yours. This calls for the purchase of $200 million worth of radiation-hardened electronics. Is that correct?

Mr. SEGA. Not quite. The radiation hardened electronics capital expansion, the CAPEX project, is one that in fiscal 2004, the President's budget is $65.1 million. And that is primarily to establish two lines for RAD hard production. So that's the capital equipment pieces.

Mr. MANZULLO. You mean, for domestic production?

Mr. SEGA. Domestic production, yes, by two companies. So that we will have a supplier for those needed parts. The total from fiscal year 2002, 2003 and 2004 would add up to $167 million. We believe that would be the figure and that we would not anticipate cost growth. We are asking for the authorization of $200 million for the flexibility in the event of cost growth. We do not anticipate it.

Mr. MANZULLO. This is for the purpose of establishing a U.S. manufacturing base for these radiation-hardened electronics. Is that what you are saying?

Mr. SEGA. That's correct.

Mr. MANZULLO. Okay. Thank you.

Chairman KING. I want to again thank you and also for extending your time without any profit and for putting in the extra time. So again, I thank you for your testimony. It was very significant.

Again, in the past, this was often a routine hearing. But in your view of the importance of the events around us, it took on an added dimension and you certainly measured up to that. So thank you very much.

Now, without objection, the record of today's hearing will remain open for 30 days to receive additional material and supplementary written responses from witnesses to any question posed by a member of the panel. This includes member statements and questions as well.

The hearing portion of the subcommittee's activities is adjourned. And the chair would ask the members if they could stick around for a few minutes as we briefly recess to set up for the markup.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned.]

A P P E N D I X

March 19, 2003

March 19, 2003

Statement of the Honorable Rahm Emanuel
U.S. House of Representatives
Committee on Financial Services
Subcommittee on Domestic and International Monetary Policy, Trade and Technology

Re: Defense Production Act Reauthorization of 2003

I would like to thank Chairman King and Ranking Member Maloney for holding this important hearing on the Defense Production Act Reauthorization of 2003. My thanks also to the witnesses from the Departments of Defense, Commerce and Homeland Security who have taken the time to share their views with us on this matter. The DPA, which was enacted in 1950 to mobilize U.S. productive capacity after the outbreak of the Korean War, uses economic tools to provide timely, adequate and continual supplies of industrial resources to satisfy both national security needs and those arising from civil emergencies. In the civilian context, both the Clinton and G.W. Bush Administrations utilized the emergency authorities of the DPA to address the problem of rolling energy blackouts in California.

In the national security arena, the DPA was heavily employed during Operation Desert Storm and also to ensure the timely delivery of critical items to U.S. and NATO troops during the Bosnian conflict. Against the backdrop of an imminent war with Iraq, we should reauthorize the DPA so that our military forces have quick access to any materials they may need. Moreover, I support the amendment written by Chairman King and Mrs. Maloney providing for a four-year reauthorization of the DPA. I think it is also important to note that this legislation doesn't seek any additional funding for the DPA, nor does it result in any budget impact.

I look forward to working with my Subcommittee colleagues and the Administration to ensure that the DPA remains an effective civil emergency and national security tool.

Statement of Karan K. Bhatia
Deputy Under Secretary for Industry and Security
Department of Commerce
before the
Subcommittee on Domestic and International Monetary Policy,
Trade, and Technology
of the
Committee on Financial Services
U.S. House of Representatives

March 19, 2003

Chairman King, Vice Chair Biggert, Congresswoman Maloney, and Members of the Subcommittee:

I appreciate the opportunity to testify today before the subcommittee on the reauthorization of the Defense Production Act, also known as the DPA. Let me start by conveying Under Secretary Juster's apologies for not being able to attend today's hearing. He had a long-standing prior commitment that required him to be out of the country today.

When this Subcommittee last convened a hearing about the importance of the DPA and its relevance in the post-Cold War era in June 2001, none of us could have then predicted the challenges that the United States would soon encounter. Nor, of course, could we have predicted the important role that DPA authorities would play in meeting those challenges.

What we did know – and what Under Secretary Juster testified to – was that for more than fifty years, the Defense Production Act has enabled the President to be able to ensure our nation's defense, civil preparedness, and military readiness. The use that has been made of DPA over the past two years – to facilitate the country's response to September 11, to strengthen the security of our homeland and our embassies abroad, and to support the deployment of troops in the Middle East – has demonstrated that it continues to be a critically important tool in meeting contemporary threats to our security. During that same period, the DPA has also facilitated important analyses of our defense industrial base, defense trade practices, and of foreign investments in U.S. companies that may pose national security issues.

Accordingly, the Commerce Department strongly supports reauthorizing the DPA for a five-year period. We also urge Congress to adopt a minor clarifying amendment to the Act that I will discuss shortly.

I will focus my comments on the DPA authorities that are relevant to the Department of Commerce and the activities of the Department under those authorities. The Department of Commerce plays several roles in implementing DPA authorities that relate to the defense industrial base. First, under Title I of the DPA, the Department administers the Defense Priorities and Allocations System. Second, under Title III, the Department reports to Congress on defense trade offsets. Third, under Title VII, the Department analyzes the health of U.S.

industrial base sectors. And fourth, also under Title VII, the Department plays a significant role in analyzing the impact of foreign investment on the national security of the United States. I will briefly discuss each of these roles.

I. Defense Priorities and Allocations System

Title I of the DPA authorizes the President (i) to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; (ii) to allocate materials, services, and facilities as necessary or appropriate to promote the national defense; and (iii) to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials, equipment, and services in order to assure domestic energy supplies for national defense needs. These authorities to prioritize contracts and require allocations for industrial resources are delegated to the Secretary of Commerce by Executive Order 12919.

Commerce has implemented these authorities through the Defense Priorities and Allocations System (known as "DPAS"). DPAS has two broad purposes. First, it seeks to ensure the timely availability of products, materials, and services that are needed to meet national defense and emergency preparedness requirements with minimal interference to the conduct of normal business activity. Second, it provides an operating structure to support a timely and comprehensive response by U.S. industry in the event of a national emergency.

Under the DPAS, the Department of Commerce delegates the authority to use the system to obtain critical products, materials, and services as quickly as needed by several federal agencies, including the Departments of Defense and Energy. To implement this authority, these agencies – called Delegate Agencies – place what are known as "rated orders" on essentially all procurement contracts. The prime contractors, in turn, place "rated orders" with their subcontractors for parts and components down through the vendor base. The "rated orders" notify the contractors that they are accepting contracts rated by the U.S. government. The contractors then must give these orders priority over unrated commercial orders to meet the delivery dates of the rated orders.

In the vast majority of these cases, the procuring federal agency and the contractor quickly come to mutually acceptable terms for priority production and delivery. If the company and the Delegate Agency cannot reach agreement, the Department of Commerce provides "Special Priorities Assistance" – essentially, it functions as intermediary – to resolve disputes and ensure that production bottlenecks for many military and national emergency requirements are resolved.

Let me briefly highlight a few examples of the Department's work in this important area.

Operations Desert Shield and Desert Storm. In 1990 and 1991, Commerce worked actively to administer the DPAS in support of U.S. and allied requirements for Operations Desert Shield and Desert Storm. We handled 135 Special Priorities Assistance cases to assure timely delivery of critical items, including avionics components for aircraft, precision guided munitions, communications equipment, and protective gear for chemical weapons. In the majority of cases,

due to the Commerce Department's involvement, delivery schedules were reduced from months to weeks or from weeks to days.

Coalition Action in the Balkans. From 1993 - 2000, Commerce handled 73 Special Priorities Assistance cases in support of U.S. forces, allied forces, and NATO coalition action in the Balkans. Although most of these cases pertained to NATO acquisition in the United States of communication and computer equipment, Special Priorities Assistance under DPAS also was used to expedite the production and delivery of such military items as antennas, positional beacons, and precision guided munitions for both U.S. and allied forces. Priorities authority may be used to support allied defense requirements when such support is deemed by the Department of Defense to be in the interest of U.S. national defense.

Operation Enduring Freedom. The DPAS has been used extensively to secure delivery of a number of items for both U.S. and allied forces in Operation Enduring Freedom. For the U.S. military, these items include guidance system components for "smart bomb" precision guided munitions, targeting and sensor equipment for our Predator and Global Hawk Unmanned Aerial Vehicles, and ballistic material for body armor. For our allies such as the United Kingdom, the Commerce Department has worked to obtain deliveries of such items as search and rescue radios, communication gear and helicopter equipment.

Middle East Deployment. Providing support for U.S. and allied nation forces currently deployed and deploying in the Middle East is currently a top DPAS priority for the Commerce Department. To date, we have worked closely with contractors and suppliers to achieve timely delivery to U.S. forces of urgently required items such as SATCOM radio equipment and body armor. For the United Kingdom, we have worked to achieve timely delivery of equipment vitally needed to support current U.K. deployments in the Middle East. For the Australians, we have secured timely delivery of infra-red laser targeting equipment. I should note that, in the event of military action in Iraq, we would anticipate an increase in requests for Special Priorities Assistance. We have been preparing actively for such an increase in demand, with contingency plans calling for relocating additional personnel to assist and training such personnel.

Homeland Security. In 1994, the DPA priorities and allocations authority under Title I was extended to cover civil emergency preparedness activities by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). This extension of authority has been relied upon to support several post-September 11 homeland security initiatives. For example:

- The Federal Bureau of Investigation was granted DPAS support for the $380 million Trilogy Program to upgrade its communications and data processing capabilities;

- The new Transportation Security Administration was granted DPAS support to achieve the timely delivery of explosive detection systems equipment to screen checked baggage for explosives at more than 400 U.S. commercial airports. This

was followed by a grant of DPAS support for TSA's 7-year, $1 billion aviation security Information Technology Managed Services Program.

- Currently, the Commerce Department is working with the Department of Homeland Security to review a request by the Customs Service for DPAS support of its 5-year, $1.3 billion port security Automated Commercial Environment (ACE) system.

While these examples represent only a small fraction of the total number of exercises of the DPAS, I believe they demonstrate how DPAS remains critically relevant to meeting increasingly complex contemporary national defense, emergency preparedness, and homeland security needs.

II. Defense Trade Offsets

Pursuant to Section 309 of the DPA, the Department of Commerce reports to the Congress on the use of offsets in defense trade. Offsets are industrial compensation practices required by foreign governments as a condition of purchase of defense articles and/or services. For example, a foreign government may agree to purchase fighter aircraft from an American manufacturer, but can require that some of the aircraft components be produced in the foreign country using local suppliers. Foreign governments may also demand technology transfer, local investment, and countertrade as part of the agreement.

In February of this year, Commerce sent its sixth report on offsets to Congress covering the period 1993 through 1999. From the anecdotal reports we have received, the report appears to have been widely read and well-received by Congress and by industry. The report found that, during the covered time period, U.S. defense exports were increasingly affected by the use of offsets as part of defense sales, especially in light of a global retrenchment in military expenditures. Specifically, we found that offsets have become an increasingly important factor in determining contract awards, and have a direct bearing on U.S. defense contractors' access to foreign markets. Offset agreements in excess of 100 percent of the contract value are occurring with increasing frequency, and in some cases have exceeded 300 percent of the contract.

As a matter of policy, the U.S. Government is not involved in the development of offset proposals by U.S. defense firms as they bid on international defense weapons projects. However, as the report expresses, the Department of Commerce is concerned that the level of offsets required by foreign governments appears to be rising and that the offset package is becoming a signal factor in determining a contract award. In the event that U.S. defense firms are prevented from competing on a level playing field in the international marketplace, the U.S. industrial base at both the prime and the subcontractor levels will suffer. Accordingly, the Department of Commerce is committed to working with U.S. industry, the Department of Defense, and foreign governments to analyze the impact of offsets on all parties and to seek ways to mitigate the adverse effects of offsets on competition.

III. Defense Industrial Base Studies

Under Section 705 of the DPA and Executive Order 12656, the Department of Commerce conducts surveys and analyses, and prepares reports on specific sectors of the U.S. defense industrial base. These studies are usually requested by the Armed Services, Congress, or industry. Using these industrial base studies, the Departments of Commerce and Defense can, for example, measure industry capabilities in an area such as high-performance explosives or measure industry dependence on foreign materials in manufacturing U.S. defense systems. The studies provide a competitive benchmark of critical sectors within the U.S. defense industrial base and gauge the capabilities of these sectors to provide defense items to the U.S. military. The studies also provide detailed data that are unavailable from other sources.

Currently, the Department of Commerce has a number of studies underway, including assessments of the Air Delivery (Parachute) Industry, the Munitions Power Sources (Batteries) Industry, and Shipbuilder's Subcontractor Base. When completed, these assessments will provide the Department of Defense with information needed to understand the health and viability of each sector.

The current Section 705 of the DPA provides the Department of Commerce investigative authority regarding the defense industrial base. However, Section 705 does not reference studies conducted under Executive Order 12656 which specifically authorizes the Secretary of Commerce to conduct industrial base assessments to support the national defense under the DPA. Commerce would support a change to Section 705 that makes clear the linkage between DPA Section 705 and Executive Order 12656.

IV. Foreign Investments in the United States

Finally, Commerce is involved in the exercise of authority under Section 721 of the DPA, known as the "Exon-Florio provision" (which unlike the other provisions described above, would not expire without reauthorization, but I describe for the sake of completeness). Section 721 authorizes the President to prohibit foreign investments in U.S. companies when there is credible evidence that it will result in foreign control of the U.S. business and the foreign interest exercising the control "might take action that threatens to impair the national security." Pursuant to Executive Order 12661, the President has designated an interagency Committee on Foreign Investment in the United States ("CFIUS") to assist in the exercise of this authority. The Department of Commerce's contribution to the CFIUS process includes providing a defense industrial base and export control perspective to the CFIUS reviews. While the United States remains generally very much open to foreign investment – and the Exon-Florio authority has been used quite rarely – in this period of rapid globalization, the existence of this authority and the interagency review process are important.

Summary

In sum, the DPA provides authority for a variety of programs at the Department of Commerce of

substantial importance to our nation's security. Through DPAS, it facilitates the timely and effective provision of necessary supplies to our military, to our close allies, and increasingly, to meet Homeland Security requirements. The DPA also facilitates valuable assessments of the impact of offsets in defense trade and the health of key sectors of the defense industrial base. Finally, it affords the U.S. Government the opportunity to assess – and if necessary, take steps to limit – foreign investments in U.S. companies that could threaten U.S. national security.

Most provisions of the Defense Production Act are not permanent law and must be renewed by Congress. For all these reasons, the Department of Commerce fully supports extending the Defense Production Act for a five year period.

Thank you.

Statement of
Suzanne D. Patrick
on the
Reauthorization of the Defense Production Act
before the
Subcommittee on Domestic and International Monetary Policy,
Trade and Technology
of the
House Committee on Financial Services
March 19, 2003

Good afternoon, Mr. Chairman and members of the committee. I appreciate the opportunity to share with you Department of Defense (DoD) views regarding the Defense Production Act (DPA). This Act is critical to DoD, both in time of contingency or conflict as well as during peace in helping to obtain the goods and services needed to promote the national defense. Although enacted originally in 1950, the Act provides statutory authorities still relevant and necessary for the national defense in the 21st century. I also want to express the Department's support for reauthorizing the Act through September 30, 2008.

Let me start by saying a few words on why the Defense Production Act is important to the Department of Defense. A strong domestic industrial and technology base is one of the cornerstones of our national security. The Act provides the Department of Defense tools required to maintain a strong base that will be responsive to the needs of our armed forces. Specifically, it provides the President the authority to (1) direct priority performance of defense contracts and allocate scarce materials, services, and industrial facilities; and (2) establish, expand, or maintain essential domestic industrial capacity. The authorities in this Act continue to be of vital importance to our national security.

My testimony today focuses on one specific provision of the Defense Production Act, Title I. I particularly want to describe for you why Title I authority is important and how we are using it today.

Title I

Title I (Priorities and Allocations) of the DPA provides the President the authority to:

1. require preferential performance on contracts and orders, as necessary or appropriate to promote the national defense; and

2. allocate materials, services, and facilities as necessary or appropriate to promote the national defense.

Executive Order 12919 delegates these authorities to the Federal Departments and Agencies. The Department of Commerce (DoC) is delegated responsibility for managing industrial resources. To implement this authority, the Department of Commerce administers the

Defense Priorities and Allocations System (DPAS). The DPAS:

1. establishes priority ratings for contracts;

2. defines industry's responsibilities and sets forth rules to ensure timely delivery of industrial products, materials and services to meet approved national defense program requirements; and

3. sets forth compliance procedures.

The Department of Commerce has delegated to the Department of Defense authority under the DPAS to:

1. apply priority ratings to contracts and orders supporting approved national defense programs. (However, the Department of Defense is precluded from rating orders for end items that are commonly available in commercial markets and for items to be used primarily for administrative purposes, i.e., office computers); and

2. request the Department of Commerce to provide Special Priorities Assistance (SPA) to resolve conflicts for industrial resources among both rated and unrated (i.e., non-defense) contracts and orders; and to authorize priority ratings for allied nation defense orders in the United States when such authorization furthers U.S. national defense interests.

Except as noted above, all Department of Defense contracts are authorized an industrial priority rating. The authorities are like insurance, always present but only used when absolutely necessary. The Department of Defense uses two levels of rating priority, identified by the rating symbols "DO" or "DX." All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. If a contractor cannot meet the required delivery date because of scheduling conflicts, DO rated orders must be given production preference over unrated orders and DX rated orders must be given preference over DO rated orders and unrated orders. Such preferential performance is necessary even if this requires the diversion of items being processed for delivery against lower rated or unrated orders. Although the DPAS is largely self-executing, if problems occur, the contractor or the Department of Defense can request the Department of Commerce provide Special Priorities Assistance (SPA) to resolve the problem.

Although, important in peace, the DPAS is indispensable in the event of conflict or contingency. DPAS gives the Department of Defense the necessary power and flexibility to address critical warfighter needs involving the industrial base effectively and expeditiously. While the Department of Defense has used Title I since the 1950s, recent history, including that associated with Operation Desert Shield/Storm, Bosnia, Kosovo, ongoing activity today with Operation Enduring Freedom and preparation for possible military action in Iraq, illustrates its continued importance. Title I authorities proved invaluable during Operation Desert Shield/Storm and ensured that industry provided priority production and shipment of essential items urgently needed by the coalition forces. At the request of the Department of Defense, the

Department of Commerce formally took action to provide Special Priorities Assistance in 135 cases during Operation Desert Shield/Desert Storm from August 1990 to February 1991.

Even more recently, since 1995, DoD/DoC have used Special Priorities Assistance on more than 120 occasions to resolve industrial conflicts among competing U.S. defense orders and to permit NATO and specific allied nations to obtain priority defense contract performance from U.S. suppliers. These SPA cases can be categorized in two ways:

1. Wartime vs. Peacetime Support: Sixty-nine percent of the cases supported contingency/conflict needs (forty-two percent Bosnia, fifteen percent Kosovo, and twelve percent Operation Enduring Freedom) for items such as components for precision guided munitions, Global Positioning System receivers and navigational processors, Unmanned Aerial Vehicle sensors, and manpack and search and rescue radios. Thirty-one percent of the cases supported "peacetime" requirements.

2. U.S. vs. non-U.S. Support: forty percent of the cases supported U.S. defense requirements (thirty-five percent for DoD and five percent for defense-related activities of the State Department, NASA, NSA, and several other government agencies with defense programs), forty-one percent for NATO (NATO monies used), twelve percent for the United Kingdom, two percent for Canada. In addition, there were two cases each for Israel, Japan, and Germany.

Recent DoD/DoC actions to use DPAS authorities to support Operation Enduring Freedom illustrate the flexibility and responsiveness that DPAS provides:

Predator Unmanned Aerial Vehicles (UAVs) armed with Hellfire missiles were used for the first time in Afghanistan. They include an upgraded sensor package, the Multi-Spectral Targeting System (MTS). The contractor's original delivery date for three systems was this month, March 2003. Using DPAS, we jumped this order to the head of the production queue and the contractor was able to deliver three systems in December 2001, 18 months earlier than originally promised. We all are aware of the dramatic impact armed Predators had in waging war in Afghanistan. Since that time, we've used DPAS to accelerate forty additional Multi-Spectral Targeting Systems.

The United Kingdom Ministry of Defense needed ARC 210 Satellite Communications Equipment to ensure secure satellite communications capabilities among United States and United Kingdom aircraft operating in and around Afghanistan. The United Kingdom requirements were critical to the warfighting effort. DPAS was used to give the United Kingdom order an industrial priority rating and it was moved ahead of some U.S. orders that were not for deployed/deploying forces. The United Kingdom received the equipment six months in advance of the initial delivery date quoted by the manufacturer – permitting vital secure communications among allied forces in theater.

The authority to provide preferential treatment for foreign defense orders in the United States when such treatment promotes national defense interests is increasingly important. Among the consequences of globalization and industrial restructuring are the creation of

multinational defense companies and an increasing degree of mutual defense interdependence. Reciprocal industrial priorities systems agreements with our allies encourage them to acquire defense goods from U.S. suppliers, promote interoperability, and simultaneously provide increased assurance that the DoD's non-U.S. defense suppliers will be in a position to provide timely supplies to DoD during both conflict/contingency situations and peacetime.

NATO has in place a NATO-wide agreement to encourage reciprocal priorities support within the alliance.

In addition to a NATO-wide agreement we are establishing formal *bilateral* agreements with key allies and trading partners. These provide an opportunity to establish stronger government-to-government agreements for reciprocal priority support, more quickly. The United States has a longstanding bilateral priorities support agreement with Canada. Within the past three years, DoD representatives have had discussions about such bilateral agreements with several allies and friends. The Department of Defense and United Kingdom Ministry of Defence representatives have now negotiated a formal bilateral agreement that commits each nation to establish and maintain a reciprocal priorities system and to provide the other nation reciprocal access to that system. Similar agreements are being formalized with Australia, Spain, Norway, the Netherlands, and Sweden.

During peacetime, the DPAS is important in setting priorities among defense programs that are competing for scarce resources and industrial output. Delayed deliveries of production parts and subassemblies to producers of weapon systems have consequences in terms of system cost and ultimately on the readiness of operational forces. DPAS gives the Department of Defense an opportunity to prioritize deliveries and minimize cost and schedule delays among DoD orders and for allied nation defense procurements in the United States. For example:

1. U.S. State Department: DPAS was employed to accelerate deliveries on multiple programs as part of the embassy security protection upgrade program worldwide.

2. United Kingdom: The UK contractor experienced delays in receiving Integrated Helmet Units needed for U.K. WAH-64 Apache Longbow helicopters. DoD/DoC authorized the use of a DO rating priority that permitted the manufacturer to ship the Integrated Helmet Units sooner than would have been possible without the rating authority, which allowed the contractor to meet its production delivery requirements to the U.K. Ministry of Defence.

DPA Title I provisions are a critical tool in DoD's arsenal. It would be very difficult for the Department of Defense to meet its national security responsibilities without that tool.

Extension of the DPA

As you know, most provisions of the Defense Production Act are not permanent law and must be renewed periodically by Congress. The Act has been renewed many times since it was first enacted. The current law will expire September 30, 2003. We fully support reauthorizing the Defense Production Act through September 30, 2008.

Conclusion

In summary, the Department of Defense needs the Defense Production Act. It contains authorities that exist no where else and I hope that I have conveyed to you the significant role those authorities play in ensuring our nation's defense.

Thank you for the opportunity to discuss the DPA with you today. We look forward to working with you to ensure a timely reauthorization of the DPA.

STATEMENT OF

R. DAVID PAULISON

DIRECTOR OF THE PREPAREDNESS DIVISION

EMERGENCY PREPAREDNESS AND RESPONSE DIRECTORATE

DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

SUBCOMMITTEE ON DOMESTIC AND

INTERNATIONAL MONETARY POLICY, TRADE AND

TECHNOLOGY

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

MARCH 19, 2003

Good afternoon, Mr. Chairman and Members of the Subcommittee, I am David Paulison, Director of the Preparedness Division within the Emergency Preparedness and Response Directorate of the Department of Homeland Security (DHS). On behalf of Secretary Ridge, I appreciate the opportunity to appear before you today to support the 5-year reauthorization of the nonpermanent provisions of the Defense Production Act (DPA).

The DPA is the President's primary authority to ensure the timely availability of industrial resources for both military and civil emergency preparedness and response. Expiration of these provisions would severely undermine our Nation's ability to prevent, as well as to respond to a disaster that is truly catastrophic -- whether natural or man-made.

The Department of Homeland Security combines many government functions that focus on protecting our Nation's borders and airports, among other activities, and ensuring that we are prepared for and able to respond to terrorist attacks and natural disasters. The Defense Production Act authorities are critical to the Department's strategic objectives to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, minimize the damage and hasten the recovery from attacks that may occur.

Since 9/11, we have seen the effectiveness of the Defense Production Act in reducing the Nation's vulnerability to terrorism. Specifically, the Defense Priorities and Allocation System authorized under Title I of the DPA was used by the Transportation Security Administration to expedite the production of explosive detection and communication systems for our major airports. Without the use of these priority orders, the manufacturers could not have delivered these systems in a timely fashion. The DPA may also soon support the Homeland Security Department's Bureau of Customs and Border Protection in its efforts to ensure that that containerized shipping arriving at our borders is tracked more effectively than it is now.

The Defense Production Act can also be used for preparedness, response, and recovery activities in a catastrophic disaster such as an earthquake or a hurricane. This use is being integrated into planning for such catastrophic occurrences.

Other DPA authorities are important to the DHS mission. These authorities include the:

- use of financial incentives to establish industrial capacity for products and services, such as vaccines to protect against biological agents (under Title III);

- use of industry agreements to enhance preparedness and response capabilities—for example, critical infrastructure protection (under section 708); and

- use of an executive reserve to provide expertise from the private sector during an emergency (under section 710).

Within the new department, DPA authorities reside with the DHS Undersecretary for Emergency Preparedness and Response. DHS is preparing departmental guidance on the use of DPA authorities. One such guidance document is a Defense Priorities and Allocations Manual that will help with the priority procurement of homeland security-related products and services.

DHS is implementing its DPA responsibilities by:

- Serving as an advisor to the National Security Council (NSC) on DPA authorities and national security resource preparedness issues and reporting on activities under Executive Order 12919;

- Providing central interagency coordination of the plans and programs incident to the authorities under Executive Order 12919;

- Developing guidance and procedures under the DPA for approval by the President;

- Resolving issues on resource priorities and allocation;

- Making determinations on use of priorities and allocations for essential civilian needs supporting the national defense; and

- Coordinating the National Defense Executive Reserve (NDER) program activities of departments and agencies in establishing NDER units and providing guidance for recruitment, training and activation.

We will work with the NSC and appropriate Federal departments and agencies to ensure that DHS issues proper guidance and procedures for DPA implementation. We view DHS responsibilities under the DPA seriously and recognize the potential of the Act to support the efforts of other departments and agencies to prevent, prepare for, respond to and recover from potential terrorist incidents and other emergencies.

In summary, the Department of Homeland Security is committed to fulfilling its responsibilities under the DPA and recognizes the Act's potential to enhance significantly the Nation's ability to respond to a homeland security threat.

Thank you for the opportunity to appear today. I would be pleased to answer any questions that you may have.

Statement of
Honorable Ronald M. Sega
on the
Reauthorization of the Defense Production Act
before the
Subcommittee on Domestic and International Monetary Policy,
Trade and Technology
of the
House Committee on Financial Services
March 19, 2003

Good afternoon, Mr. Chairman and members of the committee. I appreciate the opportunity to share with you the Department of Defense (DoD) views regarding the Defense Production Act (DPA) and the role it plays in helping to obtain the goods and services needed to promote the national defense. Although enacted originally in 1950, the Act provides statutory authorities still relevant and necessary for the national defense in the 21st century.

Let me start by saying a few words on why the Defense Production Act (DPA) is important to the Department of Defense. A strong domestic industrial and technology base is one of the cornerstones of our national security. The DPA provides the Department the tools required to maintain a strong base, responsive to the needs of our armed forces. A key component of the DPA is Title III which will be the focus of my testimony. The authorities contained in the DPA continue to be of vital importance to our national security and I want to express the Department's support for reauthorizing the Act through September 30, 2008. The Deputy Under Secretary of Defense for Industrial Policy, Miss Suzanne Patrick, will follow with a discussion of Title I and Title VII.

Title III provides the President unique authorities that are being used to establish, expand, and maintain essential domestic industrial capacity needed to field advanced systems for today and the future. The primary objective of the Title III Program is to work with U.S. industry to establish economically viable production capabilities for items essential to our national security. The Title III Program meets this objective through the use of incentives to stimulate private investment in key industrial capabilities. The incentives most used by the Department include sharing in the costs of capital investments, process improvements, material qualification, and providing when necessary, a purchase commitment that will ensure a market for their product. Through these incentives, domestic industry is encouraged to take on the business and technical risks associated with establishing or maintaining a commercially viable production capacity.

The Title III Program is also being used to transition emerging technologies. Title III can facilitate the transition of new technologies by first eliminating market uncertainties and reducing risks that discourage potential producers from creating new capacity. Second, Title III incentives can create more efficient, lower cost, production capabilities, which reduce prices and increase demand. Third, Title III projects can generate information about the performance characteristics of new materials and support testing and qualification to promote the incorporation of these materials into defense systems. Without a program like Title III, the insertion of these new technologies, at best, could be delayed for many years.

As a means of assuring Congressional oversight, Title III projects may not be initiated until a presidential determination has been made and the project has been identified in the Budget of the United States. The presidential determination verifies that:

1. the shortfall being addressed by the Title III project is essential for national defense;
2. industry cannot or will not on their own establish the needed capacity in a timely manner;
3. Title III is the most cost effective or expedient method for meeting the need; and
4. defense and commercial demand exceed current domestic supply.

A success story is the best way to highlights the benefits of the program. Gallium arsenide is a semiconducting material used in the fabrication of advanced electronic devices. It can provide advantages in terms of speed, power consumption, performance, and reliability over more commonly used semiconductor materials, such as silicon. Electronic devices built on gallium arsenide semiconductors are enabling technologies for a wide variety of defense weapon systems including radars, smart weapons, electronic warfare systems, and communications. These semiconductors can be found in such systems as the Airborne Early Warning/Ground Integration System, the B-2 Bomber, the Longbow Apache helicopter, fighter aircraft (including F-15, F-16, and F-18), missiles (including Patriot, Sparrow, and Standard), and various radar systems.

At the outset of this Title III project, the long-term viability of U.S. gallium arsenide wafer supplier base was in doubt. Foreign firms dominated the industry with a seventy-five percent world market share. U.S. firms were discouraged from competing more vigorously by the relatively small market for these wafers, by the dominant market position of the foreign suppliers, and by the high capital investment required to remain competitive. Foreign firms led the way on pricing, availability, and the pace of technological advancement.

With the help of Title III, the U.S. producers made a dramatic turnabout. By 2000 these contractors accounted for sixty-five percent of wafer sales worldwide. Their combined sales of gallium arsenide wafers grew by nearly four hundred percent. In addition, wafer prices dropped by approximately thirty five percent. This reduction in wafer prices and improvement in wafer quality resulted in significant reductions in defense costs for critical electronics.

Title III Projects

There are currently eight active Title III projects and DoD is initiating two new projects this year, one of which is to establish production capacity for Yttrium Barium Copper Oxide (YBCO) superconductor wire. This initiative will establish a domestic production capacity for YBCO, a high temperature superconductor material, which could significantly enhance the development of future directed energy weapons and electric power generation. Title III projects address a variety of advanced materials and technologies and generally fall into the following two categories:

Electronic Materials and Devices – Projects in this category include recently completed projects in gallium arsenide, and indium phosphide wafers and ongoing projects for silicon carbide wafers, and radiation hardened electronics. These are enabling technologies, without

which potential advances in microelectronics would be far more limited. These materials offer advantages in terms of faster device performance, greater resistance to radiation and temperature, reduced power requirements, reduced circuit size, increased circuit density, and the capability to operate at higher frequency levels. Advances in electronic materials can enable new capabilities for defense systems and improvements in old capabilities.

Advanced Structural Materials – Recently concluded projects established production capabilities for discontinuous reinforced aluminum, aluminum metal matrix, and titanium metal matrix composites. These new structural materials offer improvements in terms of strength, weight, durability, and resistance to extreme temperatures. These benefits are particularly important in aerospace applications.

Projects initiated in Fiscal Year 2002 include:

Radiation Hardened Microelectronics – This project illustrates the key role Title III plays in providing our armed forces with the technologies they need to be successful on the battlefield. We were in danger of losing our last remaining suppliers of these critical components needed for our strategic missile and space systems. Because of the small number of components that the Department buys and limited commercial demand, our current suppliers were unable to generate sufficient revenues to purchase the production equipment needed to produce radiation hardened microelectronics at the feature size needed to meet future defense requirements. Title III is helping these companies through equipment purchases and modernization to remain viable suppliers, capable of supporting future defense requirements. Without Title III, it is likely we would have lost this critical production capability.

Radiation Hardened Microprocessors – Complimentary of the radiation hardened project for microelectronics is a project for radiation hardened microprocessors. Current radiation hardened microprocessors are several generations behind commercial microprocessors. Defense space systems require high performance and protection against high radiation environments. This project will enable the production of an advanced commercial microprocessor capable of meeting the processing and radiation hardened requirements for military applications. Radiation hardened microprocessors will be based on current commercial microprocessors. Benefiting most from this project will be advanced defense satellite systems.

Rigid Rod Polymers – The goal of this project is to establish a domestic production capacity for Rigid-Rod Ultra-High Strength Polymeric Materials. Rigid-rod polymeric materials can be used as metal substitutes for critical electronic, weapon, and personnel protection systems. The focus of the project is to transition the technology from a small scale R&D process and establish an initial production capacity of approximately 100,000 pounds annually. Potential applications include replacement for brass shell casing in small arms ammunition, foam core to replace honeycomb core in aircraft, replacement for metal castings, and lightweight thermal barriers and doors.

Wireless Vibration Sensors – The goal of this project is to establish an affordable domestic production capacity for high quality wireless vibration sensors. The project could improve the timely production and fielding of affordable smart sensors for Condition-Based Maintenance.

Condition-Based Maintenance is a key enabling tool to lower asset lifecycle cost by providing online measurement and quantification of the condition and maintenance needs of mechanical systems such as engines and power trains on aircraft, vehicles and ships.

Reauthorization of the DPA

Most provisions of the Defense Production Act are not permanent law and must be renewed periodically by Congress. We are requesting a reauthorization of the authorities contained in the Defense Production Act until September 30, 2008. In addition, we are requesting to increase the statutory authorization limit contained in Section 303 (a)(6)(C) to $200 million to correct the industrial resource shortfall for the radiation hardened electronics project. The DPA requires the Department to obtain specific authorization for any Title III project that exceeds $50 million. The expected cost of the radiation hardened electronic project is $167 million. However, we are asking for authority up to $200 million in the event of unexpected cost increases for the project.

We are also requesting to make Section 707 permanent law to provide continued liability protection to contractors executing priority contracts in compliance with the DPA.

Conclusion

In conclusion, the DoD needs the Defense Production Act. It contains authorities that exist no where else. Current world events make these authorities more important than ever. The DPA is a proven mechanism. Its array of authorities has helped us meet the challenges of the last fifty years. By judiciously applying its authorities to the challenges facing us today, the DPA will see us to a more secure future. I hope that I have conveyed to you the significant role the Defense Production Act plays in ensuring our nation's defense. The Department fully supports the proposed Bill to reauthorize the DPA.

Thank you for the opportunity to discuss the Defense Production Act.

O