

are able to join the families they so desperately need and deserve.

From my home State of Kentucky, Chris Brown is a testament to the importance of adoption. Chris entered foster care at the age of 11, after the death of his mother. He spent more than 2 years in foster care before being adopted. At the age of 13, Chris was adopted by his Big Brothers, Big Sisters mentor, Dave Brown. Chris thrived in his adoptive home, and was presented with opportunities he would not have had otherwise. Through the support of his adopted family, he was able to attend Northern Kentucky University, where he majored in psychology. Now married and with a family of his own, Chris has dedicated his career to social work, using his talents and skills to give back to the community. Chris's story demonstrates how an investment in just one child can pay off for an entire community.

The care provided by foster homes and foster families is of great value. Raising awareness about the number of foster children in America, and making it easier for families to adopt is crucial to guaranteeing that America's foster children have the resources and support they need to succeed. Chris Brown is an excellent example of how a child can thrive and develop in a loving family. National Foster Care Month reminds us of our obligation to America's youth. I commend all those who love and accept into their homes those children needing a home.

Mr. SMITH. Mr. President, I rise in observance of National Foster Care Month. Throughout our Nation, so many families provide loving and caring homes for children who have suffered from abuse and neglect. This month is an important reminder to thank the families who welcome these children into their homes, as well as the State and local officials, social workers, health care workers, and others in our communities who look for signs of abuse and take action to ensure it stops.

Social workers, in particular, have numerous demands placed on them in their efforts to ensure appropriate care of abused and neglected children, those with disabilities and our vulnerable elderly. To help these workers in their important jobs, I recently introduced the Dorothy I. Height and Whitney M. Young Jr. Social Reinvestment Act with Senator MIKULSKI. I look forward to swift passage of this bill so that we can better support our Nation's social workers.

I also want to thank those who help parents who may have a substance abuse problem or who suffer from mental illness. These important professionals help so many parents to overcome their illnesses, which can be a barrier in providing safe and stable homes for their children.

Our justice systems, including our judges, attorneys and local law enforcement, who work every day to ensure the safety of our children, also de-

serve our recognition this month. So many of them take the extra time in their overburdened caseloads to ensure they are doing the right thing for the future of each abused and neglected child. In fact, in my home State of Oregon, Judge Pamela Abernethy runs a program in her courtroom that engages mental health professionals, law enforcement officials, child development specialists and others in a team approach that has produced great outcomes for children and their parents. Her work helps to stop the cycle of abuse that we see too often in families. I look forward to continuing to work with Senator HARKIN to pass our bill, the Safe Babies Act, which will work to replicate successful programs like Judge Abernethy's across the Nation.

However, we know that often children may not be able to return to their birth families. In America we are lucky that many families, including my own, have a great love in their heart for children and are looking to adopt.

Oregonians Tim and Sari Gale, for example, originally were very interested in adopting an infant. However, as they continued to look into adoption, they could not get the images out of their minds of the older children they saw in the brochures. "We started to ask ourselves why we would adopt an infant, when so many children were in need of parents," said Shari. "It started making more and more sense for us to adopt an older child."

Soon, Andrew became a member of the family. "It has been heart-warming and amazing to watch the gradual process whereby this frightened little boy learned to love and to trust," observed a family friend. "Andrew has blossomed under the Gales' loving care." Watching Andrew interact with peers at high school events or serving as a counselor for other children at summer riding camp, one would never guess this likeable and polite young man had spent his early years as an abused and neglected child. The Gales truly are a testament to the healing power of a loving family.

The Federal Adoption Incentive Program, which was first enacted in 1997 as part of the Adoption and Safe Families Act, encourages States to find foster children permanent homes through adoption. The Adoption Incentive Program is due to expire on September 30. Congress must reauthorize this act so that it can continue to serve as a vitally important incentive to States for finalizing adoptions for children in foster care, with an emphasis on finding adoptive homes for special-needs children and foster children over age 9. I am proud of Oregon's success in finalizing more than 12,700 adoptions of children from foster care between 2000 and 2006. This has resulted in Oregon receiving \$3.1 million in Federal adoption incentive payments, which are invested back into the child welfare program.

In 2005, roughly 2,065 children from Oregon's foster care system were

adopted—but nearly 3,500 foster children in Oregon were still waiting for adoptive families, and they waited an average of about 2½ years to join a new family. These vulnerable children have waited long enough.

Again, it is important that we thank foster care and adoptive families in our Nation, as well as frontline workers who protect our children, for the wonderful work that they do and love that they share.

#### EXPORT CONTROL SYSTEM

Mr. AKAKA. Mr. President, I wish today to discuss the U.S. export control system bureaucracy and its impact on our national interests.

Recently I chaired a hearing of the Oversight of Government Management Subcommittee of the Senate Homeland Security and Governmental Affairs Committee entitled "Beyond Control: Reforming Export Licensing Agencies for National Security and Economic Interests." Some of the issues explored in the hearing were: revising the multilateral coordination and enforcement aspects of export controls; addressing weaknesses in the interagency process for coordinating and approving licenses; reviewing alternative bureaucratic structures or processes to eliminate exploitable seams in our export control system; and ensuring that there are enough qualified licensing officers to review efficiently license applications.

Witnesses from the State Department's Bureau of Political-Military Affairs, the Commerce Department's Bureau of Industry and Security, and the Department of Defense's Defense Technology Security Administration responded to almost a decade's worth of analysis, recommendations, reports, and testimony from the Government Accountability Office, GAO. The GAO witness on the panel identified numerous instances of inefficiency and ineffectiveness in the U.S. export control system, including poor strategic management, insufficient interagency coordination, shortages of manpower, short-term fixes for long-term problems, and inadequate information systems.

Although the agency witnesses acknowledged their progress in addressing these shortcomings, they also articulated a deeper need for greater reform in response to the challenges of globalization in the 21st century. I would go one step further than the administration witnesses. The U.S. export control system is a relic of the Cold War and does not effectively meet our national and economic security needs.

Recent examples demonstrate the challenges of controlling sensitive exports. Dual-use technology has been diverted through Britain and the United Arab Emirates, UAE, to Iran. A recent attempt by two men to smuggle sensitive thermal imaging equipment to China shows that Iran is not alone in

its desire for sensitive technology. However, the effort to control the flow of dual-use technology goes beyond our borders. Working with the international community is critical as technologies which were once only produced in the U.S. are now being produced elsewhere.

The second group of witnesses, representing many decades of government and private sector experience with export controls, identified recommendations that could begin to modernize this system: eliminating the distinction between weapons and dual-use technology; reducing the total number of items on control lists; implementing project licenses that cover a multitude of items instead of relying on an item-by-item licensing process; passing an updated Export Administration Act; focusing on multilateral export controls and harmonizing them with our allies; and reestablishing high-level policy management of both dual-use and munitions exports at the White House. Mr. President, I would like to ask to have printed in the RECORD, following my remarks, a CRS memorandum providing an excellent overview of U.S. export controls.

An opportunity to revise our ineffective and inefficient export control system will accompany the arrival of the new administration in January. I urge my colleagues to consider these recommendations for improving the management and bureaucracy of the export control system as the Congress debates and updates relevant legislation.

Mr. President, I ask unanimous consent to have the two CRS memoranda to which I referred printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,  
Washington, DC, April 21, 2008.

MEMORANDUM

Re: Background for Hearing on U.S. Export Controls.

To: Senate Homeland Security and Government Affairs Committee; Subcommittee on Oversight of Government Management; the Federal Workforce; and the District of Columbia.

From: Ian F. Fergusson, Specialist in International Trade and Finance; Richard F. Grimmertt, Specialist in National Defense, Foreign Affairs, Defense, and Trade Division.

This memorandum responds to your request for background information in support of your upcoming hearing on the U.S. export control system. The memo discusses the legislative authority, structure, and function of U.S. dual-use and defense export controls. It also discusses current issues related to the administration of those controls. If you have any questions concerning the material in this memorandum, please contact Ian Fergusson at 7-4997 or Richard Grimmertt at 7-7675.

OVERVIEW OF THE U.S. EXPORT CONTROL SYSTEM

The United States restricts the export of defense items or munitions, so-called "dual-use" goods and technology, certain nuclear materials and technology, and items that

would assist in the proliferation of nuclear, chemical and biological weapons or the missile technology to deliver them. Defense items are defined by regulation as those "specifically designed, developed, or configured, adapted, or modified for a military application, has neither predominant civilian application nor performance equivalent to an item used for civilian application, or has significant military or intelligence application "such that control is necessary." Dual-use goods are commodities, software, or technologies that have both civilian and military applications.

U.S. export controls are also utilized to restrict exports to certain countries in which the United States imposes economic sanctions. Through the Export Administration Act (EAA), the Arms Export Control Act (AECA), and other authorities, Congress has delegated to the executive branch its express constitutional authority to regulate foreign commerce by controlling exports. In its administration of this authority, the executive branch has created a diffuse system by which exports are controlled by differing agencies under different regulations. This section describes the characteristics of the dual-use, munitions, and nuclear controls. The information contained in the section also appears in chart form in Appendix 1.

Various aspects of this system have long been criticized by exporters, non-proliferation advocates and other stakeholders as being too rigorous, insufficiently rigorous, lax, cumbersome, too stringent, or any combination of these descriptions. In January 2007, the Government Accountability Office (GAO) designated government programs designed to protect critical technologies, including the U.S. export control system, as a "high-risk area" "that warrants a strategic re-examination of existing programs to identify needed changes." The report cited poor coordination among export control agencies, disagreements over commodity jurisdiction between State and Commerce, unnecessary delays and inefficiencies in the license application process, and a lack of systematic evaluative mechanisms to determine the effectiveness of export controls.

THE DUAL-USE SYSTEM

The Export Administration Act (EAA). The EAA of 1979 (P.L. 96-72) is the underlying statutory authority for dual-use export controls. The EAA, which is currently expired, periodically has been reauthorized for short periods of time. The last incremental extension expired in August 2001. At other times and currently, the export licensing system created under the authority of EAA has been continued by the invocation of the International Emergency Economic Powers Act (IEEPA) (P.L. 95-223). EAA confers upon the President the power to control exports for national security, foreign policy or short supply purposes. It also authorizes the President to establish export licensing mechanisms for items detailed on the Commerce Control List (see below), and it provides some guidance and places certain limits on that authority.

Several attempts to rewrite or reauthorize the EAA have occurred over the years. The last comprehensive effort took place during the 107th Congress. The Senate adopted legislation, S. 149, in September 2001, and a competing House version, H.R. 2581, was developed by the then House International Relations Committee, and the House Armed Services Committee. The full House did not act on this legislation. More modest attempts to update the penalty structure and enforcement mechanisms in context of renewing the 1979 Act for a period of 5 years has been introduced in the 110th Congress as the Export Enforcement Act of 2007 (S. 2000).

The EAA, which was written and amended during the Cold War, was based on strategic relationships, threats to U.S. national security, international business practices, and commercial technologies many of which have changed dramatically in the last 25 years. Some Members of Congress and most U.S. business representatives see a need to liberalize U.S. export regulations to allow American companies to engage more fully in international competition for sales of high-technology goods. Other Members and some national security analysts contend that liberalization of export controls over the last decade has contributed to foreign threats to U.S. national security, that some controls should be tightened, and that Congress should weigh further liberalization carefully.

Administration. The Bureau of Industry and Security in the Department of Commerce administers the dual-use export control system. The export licensing and enforcement functions that now form the agency mission of BIS were detached from the International Trade Administration in 1980 in order to separate it from the export promotion functions of the Department of Commerce. In FY2006, BIS processed 18,941 licenses with a value of approximately \$36 billion. During the same fiscal year, BIS approved 15,982 applications, denied 189, and returned 2,763 (usually because a license was not necessary), for an approval rate of 98.8%, disregarding the returned licenses. BIS was appropriated \$72.9 million in FY2008 with budget authority for 365 positions. The President's FY2009 request for BIS is \$83.7 million, a 14.8% increase from FY2008, with budget authority for 396 positions. In addition to its export licensing and enforcement functions, BIS also enforces U.S. anti-boycott regulations concerning the Arab League boycott against Israel.

Implementing Regulations. The EAA is implemented by the Export Administration Regulations (EAR) (15 CFR 730 et seq). As noted above, the EAR is continued under the authority of the International Economic Emergency Powers Act (IEEPA) in times when the EAA is expired. The EAR sets forth licensing policy for goods and destinations, the applications process used by exporters, and the Commerce Control List (CCL). The CCL is the list of specific goods, technology, and software that are controlled by the EAR. The CCL is composed of ten categories of items: Nuclear materials, facilities, and equipment; materials, organisms, microorganisms, and toxins; materials processing; electronics; computers; telecommunications and information security; lasers and sensors; navigation and avionics; marine; and propulsion systems, space vehicles, and related equipment. Each of these categories is further divided into functional groups: Equipment, assemblies, and components; test, inspection, and production equipment; materials; software; and technology. Each controlled item has an export control classification number (ECCN) based on the above categories and functional group. Each ECCN is accompanied by a description of the item and the reason for control. In addition to discrete items on the CCL, nearly all U.S. origin commodities are "subject to the EAR." This means that any product "subject to the EAR" may be restricted to a destination based on the end-use or end-user of the product. For example, a commodity that is not on the CCL may be denied if the good is destined for a military end-use, or to an entity known to be engaged in proliferation.

Licensing Policy. The EAR sets out the licensing policy for dual-use commodities. Items are controlled for reasons of national security, foreign policy, or short-supply. National security controls are based on a common multilateral control list, however the

countries to which we apply those controls are based on U.S. policy. Foreign Policy controls may be unilateral or multilateral in nature. Items are controlled unilaterally for anti-terrorism, regional stability, or crime control purposes. Anti-terrorism controls proscribe nearly all exports to the 5 state sponsors of terrorism. Foreign policy-based controls are also based on adherence to multilateral non-proliferation control regimes such as the Nuclear Suppliers' Group, the Australia Group (chemical and biological precursors), and the Missile Technology Control Regime.

The EAR sets out timelines for the consideration of dual-use licenses and the process for resolving interagency disputes. Within 9 days from receipt, Commerce must refer the license to other agencies (State, Defense, or NRC as appropriate), grant the license, deny it, seek additional information, or return it. If the license is referred to other agencies, the agency to which it is referred must recommend the application be approved or denied within thirty days. The EAR provides a dispute resolution process for a dissenting agency to appeal an adverse decision. The interagency dispute resolution process is designed to be completed within 90 days. This process is depicted graphically in Appendix 2.

**Enforcement and Penalties.** Because of the expiration of the EAA, current penalties for export control violations are based on those contained in the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.). For criminal penalties, IEEPA sanctions individuals up to \$1 million or up to 20 years imprisonment, or both, per violation [50 U.S.C. 1705(b)]. Civil penalties under IEEPA are set at \$250,000 per violation. IEEPA penalties were recently raised to the current levels by the International Emergency Economic Powers Enhancement Act (P.L. 110-96), which was signed by President Bush on October 16, 2007.

Enforcement is carried out by the Office of Export Enforcement (OEE) at BIS. OEE has a staff of approximately 164 in Washington and eight domestic field offices. OEE is authorized to carry out investigations domestically and works with Department of Homeland Security (DHS) to conduct investigations overseas. OEE also conducts pre-license and post-shipment verification along with in-country U.S. embassy officials overseas.

The Export Enforcement Act of 2007. One of the persistent concerns about the administration of the dual-use system is that it operates under the emergency authority of the International Emergency Economic Powers Act (IEEPA), the underlying EAA having last expired in 2001. On August 3, 2007, the administration-supported Export Enforcement Act of 2007 (S. 2000) was introduced by Senator Dodd. The draft bill would reauthorize the Export Administration Act for five years and amend the penalty and enforcement provisions of the Act. The proposed legislation would revise the penalty structure and increase penalties for export control violations. The bill would raise criminal penalties for individuals up to \$1 million and raise the term of potential imprisonment to ten years for each violation. For firms, it would raise penalties to the greater of \$5 million or 10 times the value of the export. Under the 1979 FAA, the base penalty was the greater of \$50,000 or 5 times the value of the export, or five years imprisonment. It would expand the list of statutory violations that could result in a denial of export privileges, and it extends the term of such denial from not more than 10 years to not more than 25 years.

The enforcement provisions of the Administration proposal would expand the authority of the Department of Commerce to inves-

tigate potential violations of EAA overseas. It provides for enforcement authority at other places at home and abroad with the concurrence of the Department of Homeland Security. The proposed draft legislation would restate the enforcement provisions of the EAA to account for the current structure of Customs and Border Security and the Immigration and Customs Enforcement in the Department of Homeland Security. It would also direct the Secretary of Commerce to publish and update best practices guidelines for effective export control compliance programs. It also would expand the confidentiality provisions beyond licenses and licensing activity to include classification requests, enforcement activities, or information obtained or supplied concerning U.S. multilateral commitments. The bill included new language governing the use of funds for undercover investigations and operations and establishes audit and reporting requirements for such investigations. It also authorized wiretaps in enforcement of the act.

Some in the industry community have criticized the legislation for focusing on penalties and enforcement without addressing business concerns such as streamlining the license process. While the Administration favors the 5 year renewal period of the current EAA as a period in which a new export control system may be devised, the length of the extension may also serve to take the pressure off such reform efforts.

#### MILITARY EXPORT CONTROLS

**Arms Export Control Act of 1976 (AECA).** The AECA provides the statutory authority for the control of defense articles and services. It sets out foreign and national policy objectives for international defense cooperation and military export controls. Section 3(a) of the Arms Export Control Act (AECA) sets forth the general criteria for countries or international organizations to be eligible to receive United States defense articles and defense services provided under the act. It also sets express conditions on the uses to which these defense items may be put. Section 4 of the Arms Export Control Act states that U.S. defense articles and defense services shall be sold to friendly countries "solely" for use in "internal security," for use in "legitimate self-defense," to enable the recipient to participate in "regional or collective arrangements or measures consistent with the Charter of the United Nations," to enable the recipient to participate in "collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security," and to enable the foreign military forces "in less developed countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries." The AECA also contains the statutory authority for the Foreign Military Sales program, under which the U.S. government sells U.S. defense equipment, services, and training on a government-to-government basis.

**Licensing Policy.** The International Traffic in Arms Regulations (ITAR) sets out licensing policy for exports (and some temporary imports) of U.S. Munitions List (USML) items. A license is required for the export of nearly all items on the USML. Canada has a limited exemption as it is considered part of the U.S. defense industrial base. In addition, the United States has recently signed treaties with the United Kingdom and Australia to exempt certain defense articles from licensing obligations to approved end-users in those countries. These treaties must be ratified by the Senate. Unlike some Commerce controls, licensing requirements are based on the nature of the article and not the end-use or end-user of the item. The

United States prohibits munitions exports to countries either unilaterally or based on adherence to United Nations arms embargoes. In addition, any firm engaged in manufacturing, exporting, or brokering any item on the USML must register with DDTC and pay a yearly fee, currently \$1,750, whether it seeks to export or not during the year.

**Congressional Requirements.** A prominent feature of the AECA is the requirement of congressional consideration of foreign arms sales proposed by the President. This procedure includes consideration of proposals to sell major defense equipment, defense articles and services, or the re-transfer to other nations of such military items. The procedure is triggered by a formal report to Congress under Sections 36 of the Arms Export Control Act (AECA). In general, the executive branch, after complying with the terms of applicable section of U.S. law, usually those contained in the Arms Export Control Act, is free to proceed with an arms sales proposal unless Congress passes legislation prohibiting or modifying the proposed sale.

The traditional sequence of events for the congressional review of an arms sale proposal has been the submission by the Defense Department (on behalf of the President) of a preliminary or "informal" classified notification of a prospective major arms sale 20 calendar-days before the executive branch takes further formal action. This "informal" notification is submitted to the Speaker of the House (who traditionally has referred it to the House Foreign Affairs Committee), and to the Chairman of the Senate Foreign Relations Committee. This practice stems from a February 18, 1976, letter of the Defense Department making a nonstatutory commitment to give Congress these preliminary classified notifications. It has been the practice for such "informal" notifications to be made for arms sales cases that would have to be formally notified to Congress under the provisions of Section 36(b) of the Arms Export Control Act (AECA). These "informal" notifications always precede the submission of the required statutory notifications, but the time period between the submission of the "informal" notification and the statutory notification is not fixed. It is determined by the President. He has the obligation under the law to submit the arms sale proposal to Congress, but only after he has determined that he is prepared to proceed with any such notifiable arms sales transaction.

Under Section 36(b) of the Arms Export Control Act, Congress must be formally notified 30 calendar-days before the Administration can take the final steps to conclude a government-to-government foreign military sale of major defense equipment valued at \$14 million or more, defense articles or services valued at \$50 million or more, or design and construction services valued at \$200 million or more. In the case of such sales to NATO member states, NATO, Japan, Australia, or New Zealand, Congress must be formally notified 15 calendar-days before the Administration can proceed with the sale. However, the prior notice thresholds are higher for NATO members, Australia, Japan or New Zealand. These higher thresholds are: \$25,000,000 for the sale, enhancement or upgrading of major defense equipment; \$100,000,000 for the sale, enhancement or upgrading of defense articles and defense services; and \$300,000,000 for the sale, enhancement or upgrading of design and construction services, so long as such sales to these countries do not include or involve sales to a country outside of this group of nations.

Commercially licensed arms sales also must be formally notified to Congress 30 calendar-days before the export license is issued if they involve the sale of major defense

equipment valued at \$14 million or more, or defense articles or services valued at \$50 million or more (Section 36(c) AECA). In the case of such sales to NATO member states, NATO, Japan, Australia, or New Zealand, Congress must be formally notified 15 calendar-days before the Administration can proceed with such a sale. However, the prior notice thresholds are higher for sales to NATO members, Australia, Japan or New Zealand specifically: \$25,000,000 for the sale, enhancement or upgrading of major defense equipment; \$100,000,000 for the sale, enhancement or upgrading of defense articles and defense services, and \$300,000,000 for the sale, enhancement or upgrading of design and construction services, so long as such sales to these countries do not include or involve sales to a country outside of this group of nations. It has not been the general practice for the Administration to provide a 20-day “informal” notification to Congress of arms sales proposals that would be made through the granting of commercial licenses.

A congressional recess or adjournment does not stop the 30 calendar-day statutory review period. It should be emphasized that after Congress receives a statutory notification required under Sections 36(b) or 36(c) of the Arms Export Control Act, for example, and 30 calendar-days elapse without Congress having blocked the sale, the executive branch is free to proceed with the sales process. This fact does not mean necessarily that the executive branch and the prospective arms purchaser will sign a sales contract and that the items will be transferred on the 31st day after the statutory notification of the proposal has been made. It would, however, be legal to do so at that time.

Administration. Exports of defense goods and services are administered by the Directorate of Defense Trade Controls (DDTC) at the Department of State. DDTC is a component of the Bureau of Political-Military Affairs and consists of four offices: Management, Policy, Licensing, and Compliance. In FY2008, DDTC was funded at a level of \$12.7 million and had a staff of 78 (\$6.6 million for licensing activities, 44 licensing officers). In the 12 months ending March 2008, DDTC completed action on 83,886 export license applications, and its FY2009 budget request reported that license application volumes have increased by 8% a year. DDTC’s FY2009 budget request, however, did not ask for additional staffing and its budget request called for an

increase of \$0.4 million to \$13.1 million (\$6.9 million for licensing activities). On March 24, 2008, 19 Members of Congress wrote to the Chairwoman and Ranking Member of the House State and Foreign Operations Appropriations Subcommittee to request a funding level of \$26 million, including \$8 million collected yearly from registration fees. Senator Biden, in his Foreign Relations Views and Estimates letter to the Senate Budget Committee also described DDTC as “seriously understaffed” and suggested “a doubling of that figure (\$6.9 million for licensing) is warranted.”

Critics of the defense trade system have long decried the delays and backlogs in processing license applications at DDTC. The new National Security Presidential Directive (NSPD-56), signed by President Bush on January 22, 2008, directed that the review and adjudication of defense trade licenses submitted under ITAR are to be completed within 60 days, except where certain national security exemptions apply. Previously, except for the Congressional notification procedures discussed above, DDTC had no defined time-line for the application process. DDTC’s backlog of open cases, which had reached 10,000 by the end of 2006, has been reduced to 3,458 by March 2008. During this period, average processing time of munitions license applications have also trended downward from 33 days to 15 days. However, GAO reported in November 2007 that DDTC was using “extraordinary measures—such as extending work hours, canceling staff training, meeting, and industry outreach, and pulling available staff from other duties in order to process cases” to reduce the license backlog, measures that it described as unsustainable.

Enforcement and Penalties. The AECA provides for criminal penalties of \$1 million or ten years for each violation, or both. AECA also authorizes civil penalties of up to \$500,000 and debarment from future exports. DDTC has a small enforcement staff (18 in the Office of Defense Trade Compliance) and works with the Defense Security Service and the Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) units at the Department of Homeland Security (DHS). DDTC assists the DHS and the Department of Justice in pursuing criminal investigations and prosecutions. DDTC also coordinates the Blue Lantern end-use monitoring program, in which U.S. embassy officials in-country conduct pre-license

checks and post-shipment verifications. In FY2006, DDTC completed 489 end-use cases, 94 (19%) of which were determined to be unfavorable.

NUCLEAR

A subset of the abovementioned dual-use and military controls are controls on nuclear items and technology. Controls on nuclear goods and technology are derived from the Atomic Energy Act as well as from the EAA and the AECA. Controls on nuclear exports are divided between several agencies based on the product or service being exported. The Nuclear Regulatory Commission regulates exports of nuclear facilities and material, including core reactors. The NRC licensing policy and control list is located at 10 C.F.R. 110. BIS licenses “outside the core” civilian power plant equipment and maintains the Nuclear Referral List as part of the CCL. The Department of Energy controls the export of nuclear technology. DDTC exercises licensing authority over nuclear items in defense articles under the ITAR.

DEFENSE TECHNOLOGY SECURITY ADMINISTRATION (DTSA)

DTSA is located in the Department of Defense, Office of the Under Secretary of Defense for Policy under the Assistant Secretary of Defense for Global Security Affairs. DTSA coordinates the technical and national security review of direct commercial sales export licenses and commodity jurisdiction requests received from the Departments of Commerce and State. It develops the recommendation of the DOD on these referred export licenses or commodity jurisdictions based on input provided by the various DOD departments and agencies and represents DOD in the interagency dispute resolution process. In calendar year 2007, DTSA completed 41,689 license referrals. Not all licenses from DDTC or BIS are referred to DTSA; memorandums of understanding govern the types of licenses referred from each agency. DTSA coordinates the DOD position with regard to proposed changes to the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). It also represents the DOD in interagency fora responsible for compliance with multinational export control regimes. For FY2008, DTSA had a staff of 187 civilian and active duty military employees and received funding of \$23.3 million.

APPENDIX 1: BASIC EXPORT CONTROL CHARACTERISTICS

Characteristic	Dual-Use	Munitions	Nuclear
Legislative Authority	Export Administration Act (EAA) of 1979 (expired); International Emergency Economic Powers Act of 1977 (IEEPA).	Arms Export Control Act of 1976 (AECA)	Atomic Energy Act of 1954.
Agency of Jurisdiction	Bureau of Industry and Security (BIS) (Commerce)	Directorate of Defense Trade Controls (DDTC) (State)	Nuclear Regulatory Commission (NRC) (facilities and material); Department of Energy (DOE) (technology); BIS (“outside the core” civilian power plant equipment); DDTC (nuclear items in defense articles).
Implementing Regulations	Export Administration Regulations (EAR)	International Traffic in Arms Regulations (ITAR)	10 C.F.R. 110—Export and Import of Nuclear Material and Equipment (NRC); 10 C.F.R. 810—Assistance to Foreign Atomic energy Activities (DOE).
Control List	Commerce Control List (CCL)	Munitions List (USML)	List of Nuclear Facilities and Equipment; List of Nuclear Materials (NRC); Nuclear Referral List (CCL); USML; Activities Requiring Specific Authorization (DOE).
Relation to Multilateral Controls.	Wassenaar Arrangement (Dual-Use); Missile Technology Control Regime (MTCR); Australia Group (CBW); Nuclear Suppliers’ Group.	Wassenaar Arrangement (munitions); MTCR	Nuclear Suppliers’ Group; International Atomic Energy Agency.
Licensing Policy	Based on item, country, or both. Anti-terrorism controls proscribe exports to 5 countries for nearly all CCL listings.	Most Munitions; License items require licenses; 21 proscribed countries.	General/Specific Licenses (NRC); General/Specific Authorizations (DOE).
Licensing Application Timeline.	initial referral within 9 days; agency must approve/deny within 30 days; 90 appeal process. (See Appendix 2).	60 days with national security exceptions; Congressional notification period for significant military equipment.	No timeframe for license applications.

## APPENDIX 1: BASIC EXPORT CONTROL CHARACTERISTICS—Continued

Characteristic	Dual-Use	Munitions	Nuclear
Penalties .....	Criminal: \$1 million or 20 years; Civil: \$250,000/Denial of export privileges. (IEEPA).	Criminal: \$1 million/10 years prison; Civil: \$500,000/forfeiture of goods, conveyance; Denial of Privileges for either.	Criminal: Individual—\$250,000/12 years to life; Firm—\$500,000 (For NRC and DOE); Civil: \$100,000 per violation (For NRC).

CONGRESSIONAL RESEARCH SERVICE;  
Washington, DC, April 21, 2008.  
MEMORANDUM

Re: United Arab Emirates: Political Background and Export Control Issues.  
To: Senate Homeland Security and Government Affairs Committee; Subcommittee on Oversight of Government Management; the Federal Workforce, and the District of Columbia.  
From: Kenneth Katzman; Specialist in Middle Eastern Affairs; Ian F. Fergusson; Specialist in International Trade and Finance Foreign Affairs, Defense, and Trade Division.

This memorandum responds to your request for background on the United Arab Emirates and concerns about that country's export control law and practices. If you have any requests concerning this material, please contact Kenneth Katzman (7-7612) or Ian Fergusson (7-4997).

## POLITICAL AND ECONOMIC BACKGROUND

The UAE is a federation of seven emirates (principalities): Abu Dhabi, the oil-rich capital of the federation; Dubai, its free-trading commercial hub; and the five smaller and less wealthy emirates of Sharjah; Ajman; Fujairah; Umm al-Qawayn; and Ras al-Khaimah. The UAE federation is led by the ruler of Abu Dhabi, Khalifa bin Zayid al-Nahayyan, now about 60 years old. The ruler of Dubai traditionally serves concurrently as Vice President and Prime Minister of the UAE; that position has been held by Mohammad bin Rashid Al Maktum, architect of Dubai's modernization drive, since the death of his elder brother Maktum bin Rashid Al Maktum on January 5, 2006.

In part because of its small size—its population is about 4.4 million, of which only about 900,000 are citizens—the UAE is one of the wealthiest of the Gulf states, with a gross domestic product (GDP) per capita of about \$55,000 per year in terms of purchasing power parity. Islamist movements in UAE, including those linked to the Muslim Brotherhood, are generally non-violent and perform social and relief work. However, the UAE is surrounded by several powers that dwarf it in size and strategic capabilities, including Iran, Iraq, and Saudi Arabia, which has a close relationship with the UAE but views itself as the leader of the Gulf monarchies.

The UAE has long lagged behind the other Persian Gulf states in political reform, but the federation, and several individual emirates, have begun to move forward. The most significant reform, to date, took place in December 2006, when limited elections were held for half of the 40-seat Federal National Council (FNC); the other 20 seats continue to be appointed. Previously, all 40 members of the FNC were appointed by all seven emirates, weighted in favor of Abu Dhabi and Dubai (eight seats each). UAE citizens are able to express their concerns directly to the leadership through traditional consultative mechanisms, such as the open majlis (council) held by many UAE leaders.

The UAE's social problems are likely a result of its open economy, particularly in Dubai. The Trafficking in Persons report for 2007 again placed the UAE on "Tier 2/Watch List" (up from Tier 3 in 2005) because it does not comply with the minimum standards for the elimination of trafficking but is making

significant efforts to do so. The UAE is considered a "destination country" for women trafficked from Asia and the former Soviet Union.

Defense Relations With the United States and Concerns About Iran. Following the 1991 Gulf war to oust Iraqi forces from Kuwait, the UAE, whose armed forces number about 61,000, determined that it wanted a closer relationship with the United States, in part to deter and to counter Iranian naval power. UAE fears escalated in April 1992, when Iran asserted complete control of the largely uninhabited Persian Gulf island of Abu Musa, which it and the UAE shared under a 1971 bilateral agreement. (In 1971, Iran, then ruled by the U.S.-backed Shah, seized two other islands, Greater and Lesser Tunb, from the emirate of Ras al-Khaimah, as well as part of Abu Musa from the emirate of Sharjah.) The UAE wants to refer the dispute to the International Court of Justice (ICJ), but Iran insists on resolving the issue bilaterally. The United States is concerned about Iran's military control over the islands and supports UAE proposals, but the United States takes no position on sovereignty of the islands. The UAE, particularly Abu Dhabi, has long feared that the large Iranian-origin community in Dubai emirate (est. 400,000 persons) could pose a "fifth column" threat to UAE stability. Illustrating the UAE's attempts to avoid antagonizing Iran, in May 2007, Iranian President Mahmoud Ahmadinejad was permitted to hold a rally for Iranian expatriates in Dubai when he made the first high level visit to UAE since UAE independence in 1971.

The framework for U.S.-UAE defense cooperation is a July 25, 1994, bilateral defense pact, the text of which is classified, including a "status of forces agreement" (SOFA). Under the pact, during the years of U.S. "containment" of Iraq (1991-2003), the UAE allowed U.S. equipment pre-positioning and U.S. warship visits at its large Jebel Ali port, capable of handling aircraft carriers, and it permitted the upgrading of airfields in the UAE that were used for U.S. combat support flights, during Operation Iraqi Freedom (OIF). About 1,800 U.S. forces, mostly Air Force, are in UAE; they use Al Dhafra air base (mostly KC-10 refueling) and naval facilities at Fujairah to support U.S. operations in Iraq and Afghanistan.

The UAE, a member of the World Trade Organization (WTO), has developed a free market economy. On November 15, 2004, the Administration notified Congress it had begun negotiating a free trade agreement (FTA) with the UAE. Several rounds of talks were held prior to the June 2007 expiration of Administration "trade promotion authority," but progress had been halting, mainly because UAE may feel it does not need the FTA enough to warrant making major labor and other reforms. Despite diversification, oil exports still account for one-third of the UAE's federal budget. Abu Dhabi has 80% of the federation's proven oil reserves of about 100 billion barrels, enough for over 100 years of exports at the current production rate of 2.2 million barrels per day (mbd). Of that amount, about 2.1 mbd are exported, but negligible amounts go to the United States. The UAE does not have ample supplies of natural gas, and it has entered into a deal with neighboring gas exporter Qatar to construct pipeline that will bring Qatari gas to UAE

(Dolphin project). UAE is also taking a leading role among the Gulf states in pressing consideration of alternative energies, including nuclear energy, to maintain Gulf energy dominance.

## EXPORT CONTROL ISSUES

Cooperation Against Terrorism. The relatively open society of the UAE—along with UAE policy to engage rather than confront its powerful neighbors—has also caused differences with the United States on the presence of terrorists and their financial networks. However, the UAE has been consistently credited by U.S. officials with attempting to rectify problems identified by the United States.

The UAE was one of only three countries (Pakistan and Saudi Arabia were the others) to have recognized the Taliban during 1996-2001 as the government of Afghanistan. During Taliban rule, the UAE allowed Ariana Afghan airlines to operate direct service, and Al Qaeda activists reportedly spent time there. Two of the September 11 hijackers were UAE nationals, and they reportedly used UAE-based financial networks in the plot. Since then, the UAE has been credited in U.S. reports (State Department "Country Reports on Terrorism: 2006, released April 30, 2007") and statements with: assisting in the 2002 arrest of senior Al Qaeda operative in the Gulf, Abd al-Rahim al-Nashiri; denouncing terror attacks; improving border security; prescribing guidance for Friday prayer leaders; investigating suspect financial transactions; and strengthening its bureaucracy and legal framework to combat terrorism. In December 2004, the United States and Dubai signed a Container Security Initiative Statement of Principles, aimed at screening U.S.-bound containerized cargo transiting Dubai ports. Under the agreement, U.S. Customs officers are co-located with the Dubai Customs Intelligence Unit at Port Rashid in Dubai. On a "spot check" basis, containers are screened at that and other UAE ports for weaponry, explosives, and other illicit cargo.

The UAE has long been under scrutiny as a transshipment point for exports to Iran and other proliferators. In connection with revelations of illicit sales of nuclear technology to Iran, Libya, and North Korea by Pakistan's nuclear scientist A.Q. Khan, Dubai was named as a key transfer point for Khan's shipments of nuclear components. Two Dubai-based companies were apparently involved in transshipping components: SMB Computers and Gulf Technical Industries. On April 7, 2004, the Administration sanctioned a UAE firm, Elmstone Service and Trading (FZE), for allegedly selling weapons of mass destruction-related technology to Iran, under the Iran-Syria Non-Proliferation Act (P.L. 106-178). More recently, in June 2006, the Bureau of Industry and Security (BIS) released a general order imposing a license requirement on Mayrow General Trading Company and related enterprises in the UAE. This was done after Mayrow was implicated in the transshipment of electronic components and devices capable of being used to construct improvised explosive devices (IED) used in Iraq and Afghanistan.

Current Controls. The UAE is not subject to any blanket prohibitions regarding dual-use Commerce exports. In general, the UAE faces many of the same license requirements

as other non-NATO countries. In the Export Administration Regulations (15 CFR 730 et seq.), the UAE is designated on Country Group D and thus is not eligible for certain license exceptions for items controlled for chemical biological and missile technology reasons. Reexports of U.S. origin goods from one foreign country to another subject to EAR are also controlled, and may require the reexporter regardless to nationality to obtain a license for reexport from BIS.

The Treasury Department's Office of Foreign Assets Control maintains a comprehensive embargo on the export, re-export, sale or supply of any good, service or technology to Iran by persons of U.S. origin, including to persons in third countries with the knowledge that such goods are intended specifically for the supply, transshipment or re-exportation to Iran (Iranian Transaction Regulations, 31 CFR 560.204). Re-exportation of goods, technology and services by non-U.S. persons are also prohibited if undertaken with the knowledge or reason to know that the re-exportation is intended specifically for Iran. (31 CFR 560.205). In addition, BIS also maintains controls on exports and reexports for items on the Commerce Control List (EAR, 15 CFR 746.7).

The lack of an effective export control system in the UAE and the use of the emirates' ports as transshipment centers has been a concern to U.S. policymakers. To that end, BIS released an advanced notice of proposed

rule-making on February 26, 2007 that would have created a new control designation: "Country Group C: Destinations of Diversion Control." This designation would have established license requirements on exports and re-exports to countries that represent a diversion or transshipment risk for goods subject to the Export Administration Regulations. According to BIS, the Country C designation was designed "to strengthen the trade compliance and export control system of countries that are transshipment hubs." Designation on the Country Group C list could lead to tightened licensing requirements for designees. Although no countries were mentioned in the notice, it was widely considered to be directed at the United Arab Emirates.

Perhaps as a response to the possibility of becoming a 'Country C' designee, the UAE Federal Council passed the emirate's first ever export control statute in March 2007. That law, also created a control body known as the National Commission for Commodities Subject to Import, Export, and Re-export Controls and that law was signed on August 31, 2007 by Emirates President H.H. Sheikh Khalifa bin Zayed Al Nahyan. Reportedly, the law's structure and control lists were modeled after the export control regime of Singapore, another prominent transshipment hub. It remains unclear, however, the extent to which the law is being en-

forced or whether resources are being devoted to preventing the diversion or illegal transshipment of controlled U.S. goods and technologies.

The United States has one export control officer (ECO) on the ground in the UAE to investigate violations of U.S. dual-use export control laws. This officer may be augmented by U.S. Foreign Commercial Officers in conducting end-use check and post-shipment verifications. A recent GAO report mentioned a "high-rate of unfavorable end-use checks for U.S. items exported to the UAE," but the report did not elaborate further.

The United States also has engaged in technical cooperation to assist the UAE in developing its export control regime. Officials from BIS and other agencies reportedly traveled to the UAE in June 2007 to discuss the proposed statute. In addition, the Department of State has also provided training through its Export Control and Related Border Security (EXBS) program. This program provides participating countries with licensing and legal regulatory workshops, detection equipment, on-site program and training advisers, and automated licensing programs. Since FY2001, UAE has received between \$172-\$350 thousand annually in this assistance. For FY2009, State has requested \$200 thousand for the UAE under this program.

RECENT U.S. AID TO UAE

	FY2007 and FY2006 (Combined)	FY2007	FY2008 (est.)	FY2009 (req)
NADR (Non-Proliferation, Anti-Terrorism, De-Mining, and Related) — Anti-Terrorism Programs (ATA)	\$1.094 million	\$1.581 million	\$300,000	\$925,000
NADR — Counter-Terrorism Financing	\$300,000 (FY2006 only)	\$580,000		\$725,000
NADR — Export Control and Related Border Security Assistance	\$250,000	\$172,000	\$300,000	\$200,000
International Military Education and Training (IMET)			\$14,000	\$15,000
International Narcotics and Law Enforcement (INCLE)			\$300,000	

Source: Department of State, FY2009 Budget Justification.

TRIBUTE TO RABBI STEPHEN BAARS

● Mr. LIEBERMAN. Mr. President, I wish to pay tribute to my friend Rabbi Stephen Baars, of Bethesda, MD, whom I had the honor of sponsoring as our guest Chaplain for this morning. Given all that Rabbi Baars has done to help others, it was fitting that he was picked to lead the Senate in prayer. No tribute would be complete, however, without giving Senators a greater understanding of his outstanding and unique accomplishments.

Born and raised in London, Rabbi Baars originally envisioned himself working in business or sales until, at age 19, he went on vacation to Israel and became enamored with Judaism. When he finally returned to London 6 months later, he had made up his mind to become a rabbi. Shortly thereafter, he moved back to Jerusalem, where he attended rabbinical school for 9 years through Aish HaTorah, a nonprofit network of Jewish educational centers.

After completing his studies, Rabbi Baars moved to Los Angeles to work for Aish HaTorah. It was in L.A. that he tried a second career as a stand-up comedian. On the advice of a friend, Rabbi Baars began taking comedy classes at UCLA and performing stand-up in clubs. In fact, he is the only rabbi to have performed at the famous L.A. Improv. Eventually, he would stop per-

forming because he found his spiritual work more rewarding. His comedic skills, however, would play a role in his future work, serving as means for him to get his message across to audiences.

In 1990, Rabbi Baars moved to the Washington, DC, region and began teaching Jewish studies classes throughout the DC area. Some of his students included Senators, Representatives, and top business leaders. In 1998, he established a Washington, DC, chapter of Aish HaTorah, and served as its executive director. It was there that he established his most ambitious and creative project yet. In 2002, troubled by America's high divorce rate, Rabbi Baars created BLISS, an innovative, nondenominational marriage seminar that mixes humor with advice taken from the Torah and Talmud. Always an optimist who sees the best in people, Rabbi Baars conducts these seminars and prepares his provocative "Think Again" e-mail newsletter with the belief that human beings all contain the skills and attributes they need to be good spouses and parents and that they just need to learn how to reach deep into themselves to utilize these abilities.

Rabbi Baars continues to operate BLISS, which has won rave reviews from many of its participants. Not too long ago, he was kind enough to demonstrate a sample presentation to my staff, who very much enjoyed it. He has

stated that his goal for BLISS is to help reduce the divorce rate in America to the single digits. Some may mock this goal as naive, but as Rabbi Baars says, "If you pick a goal that's reasonable to achieve, you didn't look high enough."

Of course, it should come as no surprise that someone as dedicated to helping families as Rabbi Baars is happily married. He and his wife Ruth have been together for 16 years and have been blessed with seven wonderful children. His wife and family are a constant source of strength and support for Rabbi Baars as he pursues his life's work.

Thank you, Rabbi Baars, for all you have done to bring families together. It was truly an honor to have you pray with us today.●

ENDANGERED SPECIES DAY

Mrs. FEINSTEIN. Mr. President, 2 years ago I sponsored a resolution designating the third Friday in May as Endangered Species Day. This resolution passed by unanimous consent. There were no objections. The resolution was nonpartisan and non-controversial.

The goal of Endangered Species Day was simple: to give students an opportunity to learn about the threats facing endangered and threatened species and the work being done to save them.