

Written Statement of
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Before the
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS
AND INTERNATIONAL RELATIONS
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Introduction

Mr. Chairman, ranking member, and members of the committee, thank you for the opportunity to appear before you today to discuss the Department of Defense's controls on items that we export to international friends and allies of the United States. Specifically, the subcommittee has indicated it would like to learn what the Department of Defense is doing to ensure compliance with the conditions on cruise missiles, unmanned aerial vehicles, and related technologies it exports to other countries. As requested, I will relate my remarks to the findings discussed in the recent GAO report, "Nonproliferation: Improvements Needed to Better Control Technology Exports for Cruise Missiles and Unmanned Aerial Vehicles." To adequately address this important issue, I will cover the following points:

- First I need to let you know who the Defense Security Cooperation Agency (DSCA) is. This is the Agency that I lead and understand

our mission and focus will help make it clear how we fit into the export process for these types of technologies.

- Second, I will describe the processes that we use to mitigate risks in providing materiel and training to our foreign partners and allies. These processes are fairly robust and involve intensive scrutiny before a transfer is made; during the actual transfer process; and after the equipment has been provided to the foreign customer.
- Finally, I will discuss our response to some of the findings in the GAO report and identify some areas where we are trying to improve our monitoring and compliance processes to give even greater confidence that we maintain control over critical technologies.

Defense Security Cooperation Agency (DSCA)

As Director of the Defense Security Cooperation Agency, I have the privilege of overseeing a community of professional military, civil servants, Foreign Service nationals and contractors that efficiently execute our nation's Security Assistance programs worldwide. Our vision is to foster Security Assistance programs that create trust and influence, while promoting access and interoperability vital to United States' national security. These programs strengthen America's alliances and partnerships through: (1) Transfer of defense capabilities; (2) International military education; and (3) Humanitarian Assistance and Mine Action. Security Assistance programs, as authorized in the Foreign Assistance and the Arms

Export Control Acts, allow the Department of Defense to sell or grant (under specific authorities) articles, services and training to foreign friends and allies around the world in furtherance of this mission. While these laws give the Department of State the approval authority over Security Assistance programs, these programs are executed by the Department of Defense---and DSCA is the focal point within DoD.

By far our largest Security Assistance program is the Foreign Military Sales (FMS) program. In the last 5 years, we have sold approximately \$13 billion of equipment and services annually using FMS procedures. Equipment provided to our international partners under this program range from basic, simple items such as boots and uniforms, to high-technology, high-capability equipment such as high performance aircraft, missiles, etc.

We fully recognize that our responsibility in implementing and executing these programs is not limited to the provision of materiel and training to our international partners and allies. Our responsibility also includes monitoring these transfers to ensure articles and services we provide are being used (1) by the right customer and (2) in the right way. I have no higher priority than to ensure we protect the U.S. war fighter---in DoD, we are very aware that if our foreign partners decide to use equipment we provide them in an unacceptable manner, particularly to transfer them to others without approval, it is our soldiers, sailors, airmen, and Marines that could suffer.

With that goal in mind, I would like to now describe some of the processes that we have in place to ensure that critical technologies – such as unmanned

aerial vehicles and cruise missiles – are protected and proliferation risks are mitigated. While the GAO report highlighted some issues, its limited focus did not recognize or credit the overall effectiveness of the vetting and monitoring processes in-place within the Department of Defense. There are several pieces to our overall export control program that must all be considered in any evaluation of its effectiveness.

DoD Processes Prior to Any Transfer– Pre-checks and Vetting

First: DoD plays a critical role in shaping arms transfer policies and processes and in assuring the appropriate end-use of U.S.-origin defense article transfers. The most important restrictions placed on these exports, indeed the fundamental elements of the U.S. export control regime, involve establishing the trustworthiness of the end-user and the actual “end-use” *before* approval of the defense article’s transfer. I would like to highlight that under Security Assistance procedures, the Department of Defense only provides defense articles, services and training to foreign governments and international organizations that have been approved by the Department of State and determined by the President as supporting our national security and foreign policy objectives. This is done via a “Presidential Determination” that certifies that any proposed provision of defense articles, services and training to these partners must be in the U.S. national interest. So my first point is that the foreign customers we provide goods and services to must in fact be “eligible” – as determined by the Department of State and the President.

Second: Each proposed transfer is thoroughly vetted by many different organizations and offices to ensure releasability, disclosure, and other concerns are addressed. The FMS process is officially activated when a written Letter of Request is received from the foreign government. These requests are evaluated to ensure the customer is eligible and then must go through a more detailed analysis regarding the specific equipment being requested. Foreign customers' requests for significant military equipment are coordinated closely with the Combatant Commands and the U.S. country team. The U.S. country team must assess several aspects of the transfer to include political impacts in the region as well as the ability of the host nation and the security assistance organization in-country to properly perform end-use monitoring. If the proposed transfer is for a first introduction of a weapon system or capability into the country or region, a pre-notification is sent to the Department of State, the Joint Staff, and the OSD staff---giving them extra time to review the request and potentially reject it early in the vetting process. The endorsement of the Combatant Commander and consistency with Theater Security Cooperation strategy and implementation plans are critical. During this "pre-sale" process, determinations are made as to whether a country has the will and the capability to secure, account for, and operate these systems within the requirements established by the United States.

Third: For some systems, approval must be obtained from the National Disclosure Policy Committee for release to each specific country. The Committee evaluates release requests which must satisfy set criteria based on political and military objectives, security and technology transfer

requirements. Committee membership includes the Military Departments, the Joint Staff, the Department of State, and various OSD and intelligence Agencies. Disclosure evaluations adhere to strict practices in accordance with DoD Directive 5230.11, “Disclosure of Classified Military Information to Foreign Governments and International Organizations.” If the capability requested is not within the release authority of the National Disclosure Policy for that country, the Implementing Agency determines whether or not to sponsor a request for an exception to National Disclosure Policy. If any one Agency votes against the disclosure, there is an appeal process that brings the issue to the Secretary or Deputy Secretary of Defense for a decision.

Fourth: An initiative my Agency has worked to enhance our monitoring program is an intensified review of Missile Technology Control Regime (MTCR)-related items prior to a transfer decision. This has been done in close coordination with the Department of State and was in response to a previous GAO audit which recommended additional reviews for these items. The Department of Defense identifies MTCR-controlled items that purchasers have requested via FMS and reviews them for recommended transfer denial or approval. To help ensure our personnel reviewing these items fully understand their role, my Agency has developed a Missile Technology Control Regime course given at our Defense Institute of Security Assistance Management. The purpose of the course is to familiarize personnel within the security assistance community with the requirements of the MTCR guidelines, including the annex of controlled items, and the role of the MTCR in the management of security assistance

programs. These persons then become reviewers within the Military Departments and OSD---they review all proposed FMS transfers looking for MTCR-controlled items that might need greater control and recommend further OSD and State Department review as required.

Fifth: Formal Congressional Notification is required prior to any offer being made to transfer certain levels of military equipment and technology. These notifications, as you are likely aware, are made regularly by our office and mandate specified periods for Congressional review that must elapse before the offer can be extended to the foreign customer. These notifications clearly identify the customer and the capability being proposed for transfer and provide an opportunity for further discussion or rejection of a proposed transfer.

Sixth: When materiel, services, or training are provided under Foreign Military Sales, there is a government-to-government agreement (known in our terminology as a Letter of Offer and Acceptance or “LOA”) between the United States and the foreign government or international organization. Once the decision has been made to allow the offer and any required Congressional Notification period has passed, the LOA may then be finalized and officially offered to the customer. This agreement spells out the type and quantities of items to be sold as well as any unique end-use monitoring requirements that might be necessary based on the complexity or sensitivity of the actual equipment or technologies being provided. These notes or LOA conditions may require the country to secure, account for, and operate the systems in accordance with provisos that normally equal the

requirements of the U.S. Military Departments. The conditions of the LOA may also inform the country that the USG may travel in-country to physically inventory or otherwise monitor the use of specific types of equipment---either as part of routine visits or to verify reports of unauthorized use. The LOA standard terms and conditions, a part of each and every LOA we write and offer, also restrict retransfers of equipment, services or training provided without the prior consent of the U.S. Government. So our foreign customers are well informed on the LOA about what their responsibilities are for using and monitoring the equipment we provide---and by signing the document they agree to these conditions. While we must be sensitive to issues of sovereignty with our foreign friends and allies, they must understand that we always reserve the right to monitor and ensure compliance with the articles and services we provide.

There is no more thorough debate during a sensitive arms transfer than that which takes place within the Pentagon and at State before we come to consensus in support of a transfer. This redundancy in reviews and staffing, combined with the sensitivity to Homeland Security leaves little room for an uninformed transfer approval decision. In view of the serious consequences of the proliferation of dangerous weapons and technologies, we believe by ‘front-loading’ this array of processes and procedures, we mitigate these risks.

DoD Processes During Transfer– Government-to-Government Agreements

In addition to the up-front requirements just discussed, the Department of Defense also has processes in-place to safeguard equipment during the actual physical transfer. Certain levels of security and handling are required when specific types of items are being transported. When we have a signed agreement with an FMS customer, the LOA document, the mode of shipment for items being sold must be clearly identified within that agreement. For many items, the customer may chose to use a Freight Forwarder---a commercial entity that they hire to help move their materiel from the United States into their country. These Freight Forwarders must be registered and licensed with the Department of State and must meet additional standards if they propose to carry or transport classified materiel.

For classified, sensitive, and arms, ammunition, and explosive items, there are additional requirements. We may, for example, require that specific items be transported using the U.S. Defense Transportation System (DTS). Under this system, the U.S. Government either provides or arranges for transportation of the materiel. This materiel is then transported using the same transportation infrastructure (both organic and commercial) that supports our DoD domestic requirements. Certain defense articles may also require that a U.S. quality assurance team escort the item into the country to conduct a serial number inventory at the time of the physical transfer of the item.

DoD Processes After Transfer – End-Use Monitoring and Compliance

Once an offer has been made to a customer and has been accepted and implemented, we will begin procurement and delivery actions to implement the program. It is at this time that we begin the enforcement portion of the most visible tenant of our export compliance program - the “Golden Sentry” program.

The purpose of the “Golden Sentry” program is to scrutinize the foreign purchaser’s use of defense articles and services (to include training) to ensure their use is in compliance with the agreements under which they were provided. As pointed out in the GAO report, the “Golden Sentry” program is relatively new --- we formally implemented the program in 2001 --- and we are still in the process of fully putting procedures in place throughout the Security Assistance community. The program levies monitoring and compliance requirements not only on the host nation, but also on our Security Assistance Organizations in-country as well as our Military Departments. It also provides for compliance visits where “Tiger Teams” will travel to countries to ensure proper end-use and accountability procedures are being used by our foreign partners and Security Assistance personnel.

Although “Golden Sentry” was implemented in 2001, I don’t want to create the impression that we did not do end-use monitoring prior to that time. Prior to “Golden Sentry” we did include statements in government-to-government agreements regarding specific monitoring and accountability requirements. We also required annual inventories on certain types of

equipment. But in 2001 we recognized the need to give end-use monitoring greater emphasis and implemented “Golden Sentry” to address that need.

Based on reviews of the threat and capabilities of various weapons systems that we have transferred under the FMS process, my Agency, in coordination with the military Services, has prioritized our “Golden Sentry” efforts. The program consists of “Routine” checks (which I will discuss in a moment) as well as “Enhanced” checks on those systems and technologies which have some of the greatest potential for use by terrorists. Our program relies heavily on the Military Departments to determine which technologies should have the most stringent accountability and monitoring requirements. The Military Departments determine what their “crown jewels” are and we include these systems on our Enhanced EUM list.

Thus far, our priority in the Enhanced EUM program has been to monitor man portable air defense systems (MANPADS such as Stinger Missiles); long range, highly capable man portable land attack missiles (such as JAVELIN); and beyond visual range air-to-air missiles (such as AMRAAM). Some of the other items on our Enhanced EUM list include Night Vision Devices, Communications Security Equipment (COMSEC), and Tube-Launched, Optically-Tracked, Wire-Guided (TOW-2B) missiles. During some of our recent “Tiger Team” visits, we have also reviewed inventories of Harpoon AGM-84 and Hellfire Missiles.

I want to emphasize that missiles provided under Security Assistance programs are vetted before the sale, and monitored after the transfer.

Exports of missiles are scrutinized very closely by DoD. This includes special transportation and handling requirements. The Missile Technology Control Regime (MTCR) controls transfers of missiles that meet certain range and payload thresholds. The Harpoon is well under the range requirements of an MTCR-controlled missile. However, as an additional safeguard, for a Harpoon to have land attack capability it must have cryptographic codes that are further controlled by a special Communication Security (COMSEC) regime.

In addition to our “Enhanced” program, I also want to highlight the more “Routine” aspects of our total monitoring program. Many items we transfer do not have any unique notes and/or conditions associated with the specific transfer. The point I want to make is that, while we are focusing our resources and attention on the “Enhanced” items (those that are advanced and sensitive), we do not ignore the rest of the materiel that we provide to these customers. We encourage our personnel to take every opportunity—during routine trips in-country, during meetings and visits for any purpose, etc.—to observe and report on the use of U.S. Government-provided equipment. Many of the items being transferred to our friends and allies already have periodic maintenance checks and service requirements mandated by the U.S. Military Departments and industry. Throughout the life cycle of these items, U.S. Government employees are afforded access for maintenance, training, etc. This access may take place in the host nations, or, in many cases, the item must be returned to the United States for repair. These checks provide many opportunities for monitoring use (or potential mis-use) of U.S.-provided items.

With the implementation of the “Golden Sentry” program, we are confident that end-use monitoring will be emphasized and accomplished as it needs to be throughout our Security Assistance community. As the GAO report pointed out, we have “. . . an interest in encouraging transfers. . . to U.S. allies to support regional security and bilateral relations” in furtherance of our overall mission. We must balance this need with the equally important requirement to ensure compliance with proper end-use and accountability procedures.

THE WAY AHEAD

I want to discuss where we are heading with our Department of Defense compliance procedures. We agree with the GAO that there is room for improvement and are planning a greater number of End-Use Monitoring verification visits in the future. This process has already begun and in October 2003 we did assess one country’s Harpoon missile compliance program. Here are some of the things we are doing in terms of resources, guidance to the community, automation support, internal reviews, and outreach.

Resources: We recognize the importance of end-use monitoring programs and are taking additional steps to ensure we can fulfill this important part of our mission. In 2001 I hired a full time civilian employee to manage the “Golden Sentry” program; and, in 2003 I added a full time contractor to assist him with the program. Additionally, in 2003, I designated EUM as a

major business activity for budget submissions in FY05 and beyond. This will assist in identifying the monetary and personnel resources needed to implement the “Golden Sentry” program throughout the security cooperation community – including the Combatant Commands and the Military Departments. Additionally, the Secretary of Defense approved an FY04 Budget Program Decision for four additional civilian EUM employees at DSCA. We believe these additional resources will allow us to maintain our Golden Sentry program momentum.

EUM Guidance: To strengthen this program and ensure compliance throughout the community, DSCA has published policy memoranda in regards to Golden Sentry. The first memorandum delineated the responsibilities of the security cooperation community in support of the Golden Sentry EUM program. The second policy memorandum strengthened the inventory guidelines for foreign STINGER missile stocks. As a result of world events since September 11, 2001, we initiated reviews with the Military Departments, to ensure the adequacy of the physical security and accountability notes included with our Foreign Military Sales cases for such enhanced equipment as STINGER and JAVELIN missiles, and Night Vision Devices. We are currently coordinating guidance for compliance visits to include weapon system checklists and inventory requirements. We are also amplifying an FMS-Only policy which is intended to shape decisions as to whether we sell defense items via a Direct Commercial Contract or under FMS. The intent is in-part to determine the need for the government-to-government control, accountability, and responsibility gained via the FMS process.

Automation Support for EUM: I have directed that an EUM database application be developed to allow the implementing agencies, Security Assistance Organizations and host nations to input deliveries, receipt, inventories and final disposition of Enhanced EUM items via a web-based automation tool. This application, part of our larger “Security Cooperation Information Portal,” will benefit the entire security assistance community and allow “tracking” of all Enhanced EUM items from shipment from the implementing agencies to the customers, receipt, mandatory inventories and final disposal of the Enhanced EUM items. All authorized EUM stakeholders will be able to “read” the Enhanced EUM inputs in a real-time, secure and “compartmentized” environment via the web.

Internal Review: Critical to the future incorporation of EUM into the security assistance organizations’ operations, and formalizing EUM performance requirements, are the mandatory Security Assistance Organization internal review programs by the Combatant Commands. A key objective in 2004 will be the inclusion of EUM into the Combatant Commands’ formal internal review programs, (e.g., Performance Evaluation Group and/or Inspector General visits).

Outreach: “Golden Sentry” continues its outreach program via attendance at conferences hosted by the Combatant Commands; hosting EUM “worldwide” meetings; partaking in bi-lateral and other stakeholders’ meetings in various venues worldwide. This outreach has contributed to a greater understanding of the “Golden Sentry” program, thereby

strengthening awareness of U.S. export controls. Additionally, outreach has proven to be a useful instrument in support of broader U.S. policy goals related to legitimate arms transfer.

Conclusion

The “Golden Sentry” End-Use Program has accomplished a great deal since its inception, but I recognize that there is more left to do. We are confident that the momentum is positive and the end use monitoring direction is clear: to protect key technologies and maintain our qualitative edge over those entities with interests unfriendly to those of our country and allies. Equally important, we want to keep U.S. weapons and technology out of the hands of our enemies – and preventing proliferation is more important than ever when military technologies in the hands of terrorists pose such a major threat to our security.

We agree with GAO on the importance of controlling cruise missiles, UAVs, and related technologies, I am directing that these systems be included on the “Golden Sentry” Enhanced EUM listing of defense articles. We need to assure that our controls are clear and well-defined. To this end, I have directed my staff to join with the Department of State (the executive agency for arms transfers), DoD security experts, Defense Technology Security Administration (DTSA), the Defense Threat Reduction Agency (DTRA), and the Military Departments to review the current physical security and accountability requirements and language for inclusion in future Letters of Offer and Acceptance for the transfer of these systems.

The GAO report did not find any evidence of misuse or diversion of technologies that have been transferred by the Department of Defense. This is a good sign and confirmation that our processes are working. But we agree that we can and should continue to do more in this area to raise the non-proliferation bar even higher.