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Before the U.S.-China Economic and Security Review Commission

China's Military Modernization and Export Controls

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Chairman Bartholomew, Chairman Donnelly, Chairman Reinsch, Chairman Thompson, members of the Commission:

Thank you for the opportunity to speak with you today about the Bureau of Industry and Security's role in the important economic and security issues raised by trade with China. My name is Darryl Jackson, and I am the Assistant Secretary for Export Enforcement in the Commerce Department's Bureau of Industry and Security, or BIS. The mission of BIS is to advance U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership. As the Assistant Secretary for Export Enforcement, it is my responsibility to support this mission by overseeing the enforcement of the laws and regulations governing the export of dual-use items, including commodities, software, and technologies, and of the antiboycott laws.

Today, I will address U.S. policy regarding the export of dual-use items to China. I will also outline BIS's efforts to protect important U.S. national security, foreign policy, and economic interests in the U.S.-China economic relationship.

As you know, dual-use items are those that are designed for civilian uses, but also have the potential for misuse by foreign countries or terrorists as weapons or as weapons components. Because of the possibility of such misuse, BIS regulates the export of these items to ensure that they do not fall into the hands of dangerous parties. The sensitive dual-use items that are regulated in this manner appear on the Commerce Control List, which is a part of the Export Administration Regulations. That list categorizes the controlled items and identifies the reasons why they are export-controlled. Based on how the item being exported is controlled and the destination country, the regulations specify when an export license is required.

BIS is responsible for licensing the export of dual-use items in circumstances where licenses are required. In the licensing process, BIS carefully considers the item involved, who the end-user is, and how that end-user intends to utilize the item. Licenses are granted only where BIS and its interagency partners are satisfied that the export will not pose a threat to U.S. national security or foreign policy. These licenses often contain conditions that regulate or restrict the use of the exported item.

In addition, BIS vigorously investigates possible violations of dual-use export laws and regulations through a network of investigators and field offices throughout the United States and five Export Control Officers stationed abroad. BIS works closely with the Departments of State, Defense, Homeland Security, Energy, and Justice to administer and enforce the export control system.

BIS's goal in performing these licensing and enforcement tasks is to support legitimate commercial exports by U.S. companies, while deterring exports that could threaten U.S. national security or foreign policy interests. We believe that security is the foundation for safe and robust international trade that benefits the U.S. economy.

With that overview of BIS's mission and responsibilities, I would like to turn my attention to the subject that has brought us together today. Regarding China, BIS's mission is the same as its overall mission: to protect important U.S. national security, foreign policy, and economic objectives in the context of the U.S.-China economic relationship.

As China further opens its economy and pursues foreign investment, it is a large and growing market opportunity for American business. China's economy is growing at the extraordinary rate of approximately nine percent a year. China is our fourth-largest export market, behind Canada, Mexico, and Japan, and ahead of the United Kingdom and Germany. It is the fastest growing major U.S. export market.

Last year, U.S. companies exported a total of almost $42 billion worth of goods to China, many of which have technical applications. Aircraft-related industry exports totaled nearly $2 billion. Electronics, information, and communications products accounted for nearly $5 billion in U.S. exports to China. In fact, China is one of the fastest growing markets for U.S. technical goods such as computers and electrical and electronic equipment. China is unquestionably an important market for American industry, and it is growing more important every year.

However, China is also in the midst of an accelerated expansion and modernization of its armed forces, and has a mixed record on nonproliferation of weapons of mass destruction issues. With those concerns in mind, BIS has taken several steps in both its licensing and enforcement efforts to promote legitimate civilian trade of dual-use items with China, while working to prevent the diversion of dual-use items to military or other undesired end-uses or end-users.

From a licensing perspective, BIS, in cooperation with the Departments of State, Defense, and Energy, and the intelligence community, carefully reviews applications to export controlled dual-use items to China. BIS assesses the nature and reliability of the end-user as well as the appropriateness of the item for the stated end-use, to ensure that the item will not be diverted to uses contrary to U.S. national security or foreign policy interests. BIS does not support the export of items that will directly enhance China's military capabilities. In this regard, BIS is currently working with its interagency partners, including the Departments of Defense and State, on a new regulation that will

require a license to export otherwise uncontrolled items to China when the exporter knows at the time of the export that the items are destined for a military end-use. The regulation will be designed to control exports that could make a significant contribution to China's military modernization in a way that minimizes the compliance burden on U.S. industry. At this point, we do not anticipate having a draft rule ready for public comment before late spring.

BIS also actively enforces the export control laws to prevent illicit exports to China and to prevent the diversion of controlled dual-use items to military or other unlicensed end-uses. Of particular interest to BIS investigations are Chinese efforts to obtain U.S. technology to further its command, control, communications, computers, intelligence, surveillance and radar systems and Maritime programs. BIS has investigated and prosecuted violations of U.S. export controls involving satellite/missile insulation blankets, microwave amplifiers, industrial furnaces, and other controlled items that are useful in defense weapons systems, including radar, electronic warfare and communications systems. In Fiscal Year 2005, BIS investigations led to 14 criminal convictions and 13 civil penalties for export control violations related to China. BIS had 136 open investigations involving China as of March 3 of this year.

During the licensing process, Commerce personnel will sometimes perform what are called "Pre-License Checks," or PLCs, before BIS issues an export license. In a PLC, Commerce personnel visit the entity seeking controlled U.S.-origin items prior to license approval. This is done in order to verify the identity of the end-user and the proposed end-use of the items, and to ensure that the end-user is appropriate for the transaction. In some cases, after a licensed export has occurred, Commerce personnel may carry out what are called Post-Shipment Verifications, or "PSVs." In a PSV, Commerce personnel visit end-users to determine whether the licensed items are actually in the possession of the licensed end-user and whether they are being used for the licensed, authorized end-uses, including compliance with any license conditions.

PLCs and PSVs, which BIS collectively refers to as "end-use checks," are an important part of our efforts in China. Together, they give us added confidence that dual-use items are being used by the licensed end-users for the licensed end-use. Because of the importance of PLCs and PSVs, the Commerce Department posts an Export Control Officer at the U.S. Embassy in Beijing who is specifically responsible for conducting end-use checks in China. That officer is also responsible for engaging the Chinese Ministry of Commerce on the full range of issues involving export of dual-use items.

We have worked with the Chinese government to strengthen our coordination and cooperation in performing end-use checks. At the 2004 meeting of the Joint Commission on Commerce and Trade, the U.S. Department of Commerce and China's Ministry of Commerce agreed to procedures to strengthen our end-use checks in China. As a result of that understanding, a previously existing backlog of end-use checks was cleared. We continue to work with the Chinese Ministry of Commerce to conduct end-use checks in a timely manner.

The transshipment of controlled U.S.-origin items from third-party countries into China in violation of U.S. and multilateral export controls is another area of concern to BIS. We work aggressively to investigate and prevent such transshipments from occurring. The Commerce Department partners with the customs and law enforcement officials of other nations to investigate and interdict transshipments of controlled U.S.-origin dual-use items to China that violate export controls. We continue to work to enlist new international partners into this effort.

Another emerging policy issue regarding China is the battle to ensure global access to information through the Internet. The U.S. Government has been on the forefront of this battle, and BIS, as part of the Commerce Department, is engaged with other U.S. Government agencies in the developing issue of the role of U.S. companies in the Chinese Government's efforts to restrict information on the Internet. The Secretary of State recently created the Global Internet Freedom Task Force to consider the foreign policy aspects of Internet freedom and the impact of such censorship on U.S. companies. The Department of Commerce will work closely with the Department of State in considering the foreign policy aspects of Internet freedom. This effort will make recommendations as to appropriate policies and diplomatic initiatives to minimize government efforts to block information and ensure that citizens of all countries have the freedom to use the Internet to express themselves and access the wealth of information available online. The issue of whether it is necessary or appropriate to control export of Internet technologies will be considered in this multidisciplinary context.

In conclusion, I would like to reaffirm BIS's commitment to foster U.S.-China trade ties while preventing sensitive, dual-use items from being used or diverted in a way that is antithetical to U.S. national security and foreign policy interests.

Once again, I thank the U.S.-China Commission for the opportunity to testify today, and I would be happy to respond to any questions you might have.