

Statement of Michael B. Enzi

U.S.-China Commission Hearing on China's Military Modernization and U.S. Export Controls March 17, 2006

I would like to thank the U.S.-China Economic and Security Review Commission for taking the time to hold this hearing on China's military modernization and U.S. export controls. As someone who has worked on export control issues for many years, I appreciate the opportunity to testify before you today.

I noted on the Commission's press release that one of the goals of this hearing is to examine the "effectiveness of U.S. export controls aimed at preventing the transfer of sensitive technologies to China and how those controls affect American industries." This is an important issue that could take up far more than two days of discussion. The title of this hearing certainly infers that export controls can be used to control China's military modernization. One question that I would like to raise with the hope of fostering discussion is how should the United States work with our international allies on the issue of China's military modernization? As many of you already know, the Export Administration Act of 1979 was written with the concerns of the Cold War in mind. If we think back to the 1970s, the United States and our allies were pretty much in agreement that our one main enemy was the former Soviet Union. In regards to China, we are not operating under the same belief of a common enemy. If the United States remains committed to stopping China's military modernization, we have a long way to go to convince our allies to stop trading with China. As I will discuss in further detail below, in order to make our nation safer, we must work with other countries to stop the individuals and organizations who wish to inflict harm upon our nation. It is clear that China creates a unique challenge for our diplomats as well as our export control guidelines. On one hand, China presents us with a major trading partner. On the other hand, China's current attempts to modernize its military raise many serious security concerns. While I could discuss the many export control issues surrounding China alone, I would like to concentrate my remarks on the overall reauthorization of the Export Administration Act.

As most of the Commissioners know, I have been working to reauthorize the Export Administration Act of 1979 (EAA) for over seven years now. I have worked through dozens of drafts over the years with many of the same people involved in this hearing yesterday and today. We were even successful in passing a bill out of the Senate in September 2001. Unfortunately, the events of 9/11 and subsequent actions in the House derailed the bill. However, I am still committed to seeing the Export Administration Act reauthorized.

In 2004, I wrote an article discussing the four ingredients necessary to revise the Export Administration Act – knowledge, commitment, leadership and

cooperation. I still believe that these four attributes will lead to the reauthorization of the EAA.

Knowledge: When I discuss the importance of knowledge, one crucial aspect of this ingredient is the education of members of Congress and the public as a whole on how our export control system operates. The U.S. export control system is a highly complex assemblage of regulations and agencies. The Departments of State, Commerce, Energy, Treasury, Defense and Homeland Security and the intelligence community all carry out key functions with respect to administering and enforcing controls on the export of items that are defense, commercial, or dual-use in nature.

As an example, the Bureau of Industry and Security (BIS) within the Department of Commerce administers the Export Administration Regulations (EAR), which provide the regulatory framework for controlling dual-use items listed on the Commerce Control List (CCL). Other departments like the Departments of Defense and Homeland Security play critical, decision-making roles at both the interagency licensing level as well as the operations and enforcement level.

As Congress works to reauthorize EAA, it is essential that members understand the importance of EAA and how the Act balances our national security interests with our economic security interests.

Part of the process in educating members of Congress is to stress the problems with the current system of operation. As you know, without the ability to operate under the EAA, the President is currently using his authority under the International Emergency Economic Powers Act (IEEPA) to control the export of dual-use items. However, IEEPA is a poor instrument for controlling exports indefinitely. One example is that IEEPA applies minimal penalties to exporters of unlicensed technologies. Under IEEPA, fines for export control violations are seen by many as simply another cost of doing business. These ineffective penalties do not adequately deter bad actors from engaging in criminal behavior.

Commitment: EAA was first drafted and passed by Congress in 1949, the same year that the Soviet Union tested its first atomic bomb and the People's Republic of China was formally established. Thirty years later, Congress revised EAA to reflect the political and economic realities of 1979, namely the Cold War and inflation. Twenty years later, in 1999, Congress again recognized the need to reform the Cold War relic known as the Export Administration Act of 1979.

The Senate Committee on Banking and its Subcommittee on International Trade and Finance held seven different hearings on export controls in 1999 and 2000. As Chairman of the Subcommittee during that time, I worked with my colleagues, industry, and the Administration to produce a comprehensive collection of thoughts and ideas on how best to modernize our antiquated export control system. We developed a set of principles based on transparency, accountability,

deterrence, enforcement, and multilateral cooperation that helped guide the drafting of S. 149, the Export Administration Act of 2001.

The tragic events of September 11th underscore the need for a strong and responsive export control system that keeps dangerous items out of the hands of terrorists and terrorist countries. S. 149, which passed just five days before the United States was attacked, identified deterring acts of international terrorism as a key theme. The bill also contained an ultimate terrorism trump, a provision that would have authorized the U.S. government to impose export controls, under any circumstance, on the sale of items contributing to the proliferation of weapons of mass destruction. Unfortunately, progress on S. 149 was brought to a screeching halt in 2001 and 2002.

Here we are in 2006 and the answer on how to reauthorize EAA remains the same today. We must effectively control the flow of dual-use goods and technology. We must provide the President with the legal authority necessary to focus U.S. export controls on dangerous technologies going to countries and actors of concern. The focus of the controls needs to be on the end-users. My personal commitment to the reauthorization of EAA remains strong and I hope to see its reauthorization in the near future.

Leadership: Passing legislation that renews the Export Administration Act is an ongoing goal of mine. I am pleased that the Bureau of Industry and Security within the Department of Commerce is also committed to this goal. I am also hopeful that members of the House of Representatives will also support reauthorization. The overarching concept of any new bill should be to build higher fences around the most sensitive of items and hold those accountable who break the law. I am pleased that Chairman Hyde took the initiative to introduce H.R. 4572 during this Congress. While I prefer a more comprehensive reform of EAA, I am also supportive of Chairman Hyde's current effort.

I also wanted to take this opportunity to discuss the importance of multilateral export control regimes. If the aftermath of 9/11 has taught us one thing, it is that the United States cannot win the war on terror alone. We must work with our allies in the international community in order to stop those individuals and organizations that threaten our country and other nations around the world. Our export control system must also reflect the urgent need to work with our allies in the protection of our homeland.

Multilateral export control regimes play a vital role in our efforts to control the exports of sensitive dual-use goods and technology. As I have stated for many years, I will continue to push for improvements to U.S. law that will help carry out the recommendations made by the Study Group on Enhancing Multilateral Export Controls for U.S. National Security. In 2000, I co-chaired this Study Group with Senator Bingaman and Representatives Cox and Berman. Its mission was to

develop practical recommendations for more effective multilateral controls of militarily relevant technologies.

We should draft legislation that will provide clear statements of policy regarding U.S. and foreign participation in any export control regime and outline the standards we expect our partners within the regimes to uphold. This effort will enable the President to approach our international partners and allies with a solid understanding of what Congress expects out of America's participation in each of the multilateral export control regimes. It will also provide awareness about what we, as a country, expect out of the international community. Any legislation passed by Congress should acknowledge the value of multilateral cooperation and encourage the United States to provide leadership in training, information sharing, and enforcement assistance to members and non-member countries within the regimes. The United States must take a leadership role in encouraging other nations to develop comprehensive export control regimes.

Cooperation: The last issue I wish to discuss is cooperation. It will take real cooperation to draft and pass a comprehensive bill reauthorizing the 1979 Act. This cooperation needs to begin with my fellow colleagues here in Congress. If we hope to see real reform in the near future, my colleagues in both chambers will need to work together to develop strong bipartisan, bicameral legislation.

Passing EAA reauthorization will also take the cooperation of the many agencies and departments that carry out the licensing process or the enforcement and administrative procedures. As I have stated in the past, the Departments of Commerce, State, Homeland Security and Defense must continue to improve their information sharing capabilities and the interoperability of networks and databases. Export controls are a frontline defense in fighting terrorism. However, without up-to-date and precise information on license applicants and end-users, the entire system will be far less effective.

It will also take the cooperation of industry. As the system currently stands, our nation relies on the efforts of the export community to obtain information on international transactions. A vast majority of the export community has been responsive, helpful and thorough in their efforts to abide by the law. In order for export controls to be as effective as possible, we must have the cooperation and the support of industry.

Since 2001, when the Congress came close to passing EAA reauthorization, the Administration and specifically the Department of Commerce, has made a great deal of progress on regulations that assist in streamlining the licensing process for technology and other goods. I am pleased that the Administration took the initiative to address many of the obvious concerns through the administrative process. However, there is still a great deal of work to be done and I know that the Department of Commerce and the rest of the agencies need statutory

authority to improve law enforcement procedures, assist in making enforcement tools more effective, and increase the penalties.

As I have stated time and time again, I believe that without reauthorization of Export Administration Act that we jeopardize our capability to control dangerous dual-use items as well as our ability to work with the international community to deter acts of international terrorism and the proliferation of weapons of mass destruction. We need to put into place a strong system that will keep sensitive items out of the hands of the terrorists. We cannot continue to operate under IEEPA. IEEPA was not designed to allow the President to maintain export controls indefinitely without Congressional approval. However, this is exactly what is happening since Congress continues to fail to reauthorize EAA.

I am still eager to work with my colleagues to reauthorize the Export Administration Act of 1979. Later this year, I hope to begin working on a comprehensive reauthorization bill, similar to my earlier efforts, that can be introduced into the 110th session of Congress. As we work through this process, we must focus efforts and resources on the people who are going to use our dual-use technology against us. We also need to use a multilateral approach to stop the sale of dangerous items to bad actors.

Thank you again for taking the time to hold this hearing today. I will continue to work with my colleagues in Congress, the Administration and industry to see EAA reauthorized.