Date of Hearing: March 17, 2006
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Before the U.S.-China Economic and Security Review Commission
Title of Hearing: U.S. –China Commission hearing on China's Military Modernization and U.S. Export Controls

The following is the statement to be presented by Mr. Jay Markey.

I appreciate the opportunity to address the Commission on this important topic. Today, I will present a background regarding NABCO, Inc. and an overview of our experiences regarding the effect of export control regulations on exports from NABCO to China. In addition, I will present a summary of the costs to NABCO for implementing these export control regulations for exports to China. Finally, I will offer my recommendations for solutions to problems with the current export control regulations and future proposed export control regulations.

First, I will provide a background regarding NABCO, Inc. and NABCO products. I am the President and CEO of NABCO, Inc. Founded in 1986, NABCO is a manufacturer and marketer of homeland security solutions. These solutions provide protection from biological, chemical, explosive and radiological threats for the world-wide security market. The Company is the world's leading designer, developer and manufacturer of the Total Containment Vessel (TCV). The Total Containment Vessel is used for the containment and transport of Improvised Explosive Devices (IED's) and is used by bomb squads, police, and military. Although NABCO is a small business located in Western Pennsylvania, the NABCO TCV is considered state-of-the-art by many of the leading security agencies and departments world-wide. NABCO offers the most comprehensive line of TCVs in the world along with the most innovative product advancements and upgrades. NABCO's production facility is located in Washington, PA which is 30 miles south of Pittsburgh. NABCO employs 22 individuals.

NABCO's TCV products are universally recognized as the "gold standard" in the U.S. market. We are the leading supplier of TCVs in the U.S., and NABCO has also placed a number of units internationally throughout high-security minded countries. The NABCO brand name is the industry standard, and is synonymous with the highest quality threat mitigation solutions in the world. This level of high quality is consistent with many U.S. products and makes U.S. goods marketable to foreign countries, thus, benefiting the U.S. economy.

Next, I will provide information regarding NABCO's experiences with U.S. export controls for exports to China. In the year 2000, NABCO requested a commodity jurisdiction from the U.S. Department of State as recommended by U.S. Customs. The U.S. Department of State determined the NABCO TCV to be under the jurisdiction of the U.S. Department of State through a commodity jurisdiction letter dated April 10, 2001.

This product jurisdiction resulted in loss of business to China for the following reason: If the product was determined to be under Commerce Department jurisdiction, the controls on exports were related only to embargoed countries, denied persons and proliferation end uses. By placing the jurisdiction under the State Department, however, exports are prohibited to China unless a Presidential Waiver is granted.

The State Department jurisdiction led to the denial of an export license for export to China. The license application was submitted on February 21, 2001. The Chinese end user had stated that the end use was for security for a ministerial meeting in October 2001 that included attendance by the President of the United States. Subsequent to the denial, we were able to obtain a reconsideration of the case. As a result of numerous meetings with the State Department and the diligence of certain individuals there, we were granted a Presidential Waiver on January 9, 2002. The license was granted February 8, 2002. This license took one year to process. Although we applied for the license with more than 6 months lead time, we were still unable to fulfill the customer's delivery requirement for the October 2001 ministerial meeting. From the perspective of the foreign customer, this makes NABCO appear to be an unreliable supplier.

Currently, we have submitted a second application for export of goods to China. We were hopeful that the previously obtained Presidential Waiver could also apply to the current application. Due to the type of end-user, however, the current application has not been approved. It continues to languish in the State Department offices. The application was made on June 14, 2004. We meet and communicate regularly with our contacts at the State Department. Although they are diligently trying to move the case forward to approval, they are unable to do so. Unfortunately, because of these inordinate delays the customer has found another supplier of containment vessels in the Netherlands. Should a license be granted, the customer in China will purchase the NABCO product because it is preferred by him, however, we do not know how long we can continue to maintain his interest. NABCO's reputation is at stake as another potential customer in China is under the impression that NABCO is an unreliable supplier through no fault of our own. Our foreign competitor has capitalized on this situation.

Our sales representative tells us that technology similar to the NABCO TCV is readily sold to China from several world-wide sources. He states that the export control restriction is only hurting U.S. business and restricting the technology from reaching the entities that need it in China. Further, the product is used as a security device to save human life, therefore, we cannot understand the benefit to national security by restricting sales. Our global trading partners are telling us that they are designing out U.S. origin goods even if the inherent quality is better, in order to avoid the burden of U.S. export control regulations. The effect upon foreign direct investment will also be felt when foreign firms choose not to produce goods in the U.S. due to the higher level of burden of U.S. export regulations targeted to one major trading partner.

We understand that NABCO is one of only a limited number of companies to receive a Presidential Waiver for export of goods to China and we appreciate the efforts of those in the U.S. government who assisted us. When export controls are legislated instead of administered within the U.S. government agencies, however, these efforts are not enough for companies to remain competitive.

Now, I will provide a summary of the costs of China export controls to our business.

NABCO's story clearly exemplifies the costs of overly burdensome export controls. The costs include loss of sales, administrative burden, and loss of jobs. We are concerned about losing yesterday's sale, however, due to the perceptions of our foreign customers, the loss of future sales and loss of market share is even more troubling.

Following is a summary of the various issues that negatively impact my company as a result of not being able to ship our products to China:

1) We estimate the potential loss of $4-7 million in sales revenue.
2) The loss of revenue means that we will not be able to hire an additional 4-8 employees to our workforce in Western Pennsylvania.
3) Damage to our relationship with our sales agents and damage to our relationship with potential customers leads to these entities seeking non-U.S. products and eventually creating an indigenous source.

It cannot be underestimated that the damage done is used against us by our competitors, and a vast market for our company is going to be filled by foreign companies, denying employment opportunities for skilled workers in Western Pennsylvania. I can assure you that the next time a Chinese customer interested in our products understands that we need to obtain an export license, the sale will go to a foreign company. In the real world, we cannot sell our products and expect the customer to wait a year, or in this case, indefinitely, for us to obtain a license. It is also difficult because we know the customer prefers our products and we are unable to sell to him.

This type of loss can be expected to affect all U.S. manufacturing sectors if the proposed controls for China are implemented. Foreign trading partners will be required to implement U.S. export controls when they trade U.S. origin goods with China. The proposed controls are global controls affecting sales to all of our trading partners who seek to service their equipment with spare parts of U.S. origin. In addition, the proposed regulation would require that our trading partners implement special inventory systems for U.S. origin goods in order to control the ultimate destination for those goods. These foreign trading partners will not want to be restricted by U.S. export controls, nor absorb the associated costs. Instead, they will design out U.S. product. The effect on the U.S. manufacturing base will be felt for many years into the future.

I will provide NABCO's recommendation for improvement to the current export control system, and recommendations for future proposed regulations.

In order to improve current export controls for exports to China, the U.S. government should remove the requirement for Presidential Waiver for USML goods, and Presidential Certification for MT-controlled goods. The current requirement causes all export license applications to be escalated to the highest levels. The investment in time by both industry and U.S. government personnel makes this process untenable. For U.S. industry to remain competitive and to be reliable suppliers, the Presidential review requirement is not a realistic approach. The U.S. government should follow the normal export license escalation procedure for these licenses. Each license should be reviewed on its own merits, not based upon legislative mandate. Although this revision will require legislative changes, these changes are necessary for U.S. industry to remain competitive. An export license case need not be escalated to the highest levels when all agencies are able to provide approval. In addition, mandatory escalation of all cases is not a good allocation of U.S. government resources.

In NABCO's case, I strongly recommend implementation of a new process to provide relief for jurisdiction decisions. For example, the NABCO TCV is a device used to save human life. Therefore, we believe that NABCO's products are incorrectly designated as defense articles.

Instead of requiring an export licenses for each export of a TCV, I recommend that we collaborate with the U.S. government by reporting the sale and export of these devices. This way, the U.S. government would have full knowledge of each export, without the need to review each and every export license application prior to export. This approach should be considered for items such as the NABCO product that are used to improve international security especially for international events such as the upcoming Olympics to be held in China.

Prior to implementing any new export control regulations for exports to China, we request that the U.S. government analyze the effect of any new regulations on the U.S. manufacturing base and upon the U.S. economy.

For the reasons stated above, extending the same stringent controls on additional U.S. products including basic commodities will cause not only customers in China, but also customers world-wide to consider U.S. manufacturers to be unreliable suppliers. We have seen this to be true for ITAR-controlled goods. For example, we know of a subsidiary of a U.S. firm whose losses are equal to 1% of its annual revenue because foreign trading partners refuse to purchase their products due to ITAR controls. Administrative burden and opportunity costs due to export controls cost this subsidiary an amount equal to 3% of its total annual revenue, resulting in a total cost of 4%. It is clear that the same effect would occur for commercial goods if they are controlled in the same way.

Further, additional controls are not needed as strict knowledge of military end-use is most often derived from a request to customize a commercial product. Such customized commercial products are already controlled by the ITAR, thus, rending additional controls unnecessary.

In conclusion, I have provided an overview of NABCO and its products. I have stated NABCO's negative experiences with export control regulations for exports to China, and provided the costs associated with those controls. I have offered my recommendations for improvement to the current system, and requested caution prior to implementing any new regulations.

I recognize that export controls are necessary to protect the national security, well-being of U.S. persons, well-being of foreign persons, and, especially to protect members of the U.S. armed forces.

I appeal to the U.S. government to consider new ways to accomplish these national security goals while minimizing the harm to U.S. industry and availability of jobs for the U.S. worker. In today's increasingly complex global trading system, we need to consider new approaches and not rely on old methods that are harming the U.S. industrial base.

I request that a new method be considered to meet the goals of export control regulations and allow industry to assist in its development and implementation.

Thank you for providing me with this opportunity to present my views to the Commission.