Testimony of Nicholas Fitton
Section 8

Honorable Chairman and members of the Committee…

I am here today because of the sale of an F110-GE-129 engine computer. This is an item which is restricted from export. Other than that, there are no restrictions placed on the sale of this item. When I purchased this item in 2006 from Government Liquidations, the entity which is used to auction surplus government and military items, I filed paperwork stating that it was for resale, the customer was unknown at that time and that it would not be exported or altered in any way. In December of 2008, I was contacted by a person identifying himself as Joseph Fitzpatrick. He wished to have more information on this item. After several contacts, the individual placed an order on January 20th, 2009. You have in your possession copies of all correspondence between the purchaser and myself, along with my interoffice file of the transaction. After the order was placed, I had the individual fill out an end use certificate and send a copy of identification along with the application to my office. Unfortunately, as a seller, I do not actually have access to background checks and certificates that I can submit to a government agency such as Government Liquidations does. The end use certificate I had the customer fill out is one that I copied and edited from Government Liquidations' website. After I received the customer's information, I obtained satellite imagery of the street address the buyer's home address was listed as and did the same for his place of business. This imagery verified that they were residential and business districts. I also pulled public information on the company the buyer had listed. All information, including IP addresses of the computer the transaction is placed from, is maintained in both digital and hardcopy formats. I also called in a favor from a local law enforcement officer who ran the buyer's name through the computer system to see if there were any wants or warrants. During this process, I had the buyer believe that a more complex investigation was taking place than actually was. I also drew the process out over a period of time. My experience in military and law enforcement has shown that the longer transactions take and the more security measures that are presented cause individuals who are conducting nefarious and criminal activities to become nervous and either back out of transactions or begin to give "tells" that something is wrong. The entire process from initial contact (December 17th, 2008) until the package was shipped on April 23, 2009 was over 4 months. A short time after the package was delivered, I was contacted by your investigators in regards to this matter. And here we are today…

What we are looking at has several issues which need to be addressed:

1. Formal guidelines need to be set as to what is expected from resellers and end-users. This needs to be something other than "no exports".
2. Resources need to be opened up to resellers through which they can validate an end-user. There are currently no services available to venders who sell materials deemed "sensitive". Other industries, such as firearms dealers, have services available such as those offered by the Bureau of Alcohol, Tobacco, and Firearms, which will allow sellers to perform checks and investigations into those wishing

to purchase these items. Government Liquidations has such services available and any vendor or person wishing to purchase these items must be checked prior to being able to pick up the items. Once it falls into the hands of the vendor or end-user, the only requirement is to not export the item unless prior approval is granted.

3. The demilitarization codes of items need to be re-addressed and not as broad. For example, a piece of cloth is considered a restricted item because it is used as a covering for a piece of armor or a helmet and thus is classified in the same manner as armor. A shirt or jacket which is 40 years old and hasn't been issued in years is classified the same way current issue items are. And on that note, we need to look at why certain items are classified as sensitive and no longer offered for sale. Many of these items are available directly from the manufacturers without restriction and are sold as new across the country. Why is that same item, if having been used by the military and in many cases no longer serviceable, classified as sensitive? Also, many items which do have restrictions, such as armor, more specifically, helmets, now are no longer available for sale. These items were once available, after approval, by an end use certificate. While many people don't understand why someone would want or need one of these, they fail to realize that the primary consumer for items such as these tend to be law enforcement agencies. Many departments only have the budget to purchase tactical equipment including ballistic shields and helmets for their swat or quick reaction teams. They cannot afford $400-$500 for a helmet for every patrol officer, even after realizing that the first responder to a hostile situation such as an active shooter is not a tactical unit, but actually are patrol officers. These surplus military helmets can be sold normally for under $50. By restricting items for commercial trade, not only are you taking items away from average citizen, but in many cases you are also affecting law enforcement as well. Even with policies such as ammunition and weapon restrictions to civilians, law enforcement and even our military are adversely affected. This can be seen in the 1994 assault weapons ban and its subsequent sunset. After the ban was lifted, more companies were able to afford research and development and quickly improve long standing stagnant technologies and simultaneously improve quality and lower the price of items used by military and law enforcement agencies. With continued heavy taxation and upcoming restrictions, I am afraid that it will not take much to make us reliant on foreign powers for our military and law enforcement needs.
4. In order to have dealers cooperate with the government and Government Liquidations, these agencies must also live up to what they agree to in their policies. In the past couple of years, many of the items buyer's have purchase, have been reclassified and buyers are now required to return the items back to Government Liquidations. We are told that our shipping expenses and our purchase prices will be refunded. This is not taking place, however. The purchase prices and fees nor the shipping expenses are being reimbursed. I personally ended up flying out to the West Coast just to talk to Government Liquidations and fight for reimbursement. I did after 7 months, finally receive partial reimbursement. I have heard about other vendors who are owed hundreds of thousands of dollars. Because of this, many vendors simply refuse to return the

materials. I personally, have put the requested merchandise into storage, but cannot afford the shipping expenses to ship the materials back without reimbursement of my shipping or purchase expenses.

In conclusion, what we are dealing with is not an inability to enforce security measures, but a lack of policies and procedures to enforce. We don't need tighter restrictions and more limits on what can be sold, but to use common sense and understand what the actual items are that are being sold.