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2 HIF155.020

3 HEARING ON COMMERCIAL SALES OF MILITARY TECHNOLOGIES

4 THURSDAY, JUNE 4, 2009

5 House of Representatives,

6 Subcommittee on Oversight and Investigations

7 Committee on Energy and Commerce

8 Washington, D.C.

9       The subcommittee met, pursuant to call, at 10:00 a.m.,  
10 in Room 2322 of the Rayburn House Office Building, Hon. Bart  
11 Stupak (chairman) presiding.

12       Members present: Representatives Stupak, Braley,  
13 Markey, DeGette, Doyle, Welch, Green, Sutton, Walden,  
14 Burgess, Blackburn, and Gingrey.

15       Staff present: David Rapallo, General Counsel; Theodore  
16 Chuang, Chief Oversight Counsel; Dave Leviss, Deputy Chief  
17 Investigative Counsel; Scott Schloegel, Investigator,  
18 Oversight & Investigations; Stacia Cardille, Counsel;

19 Jennifer Owens, Special Assistant; Earley Green, Chief Clerk;  
20 Caren Auchman, Communicates Associate; Kenneth Marty,  
21 Detailee HHS-IG; Alan Slobodin, Minority Chief Counsel; Karen  
22 Christian, Minority Counsel; Peter Keethy, Minority Legal  
23 Analyst; and Scott Sherrill, Minority Detailee.

|  
24           Mr. {Stupak.} This meeting will come to order. Today  
25 we have a hearing titled, ``Commercial Sales of Military  
26 Technologies.'' The Chairman, Ranking Member, and Chairman  
27 emeritus will be recognized for 5 minutes opening statement.  
28 Other members of the subcommittee will be recognized for 3  
29 minute opening statements. I will begin.

30           Less than 2 weeks ago North Korea detonated a nuclear  
31 weapon during an underground test. North Korea is now  
32 threatening to test fire an intercontinental ballistic  
33 missile capable of striking Alaska.

34           At the same time our Nation remains at war in Iraq and  
35 Afghanistan, and here at home we are faced with the threat of  
36 attack from Al Qaeda and other terrorist groups. In 2009,  
37 the world is a very dangerous place.

38           Today we will examine two specific ways we may be  
39 allowing our national security to be compromised; domestic  
40 sales and illegal export of military and scientific  
41 technology overseas.

42           In 2008, our committee began investigating controls on  
43 the export of military and dual-use technology, technology  
44 that has both military and commercial uses. As part of our  
45 investigation we asked the Government Accountability Office  
46 to conduct undercover testing to determine how vulnerable we

47 are to covert acquisition and export of our sensitive  
48 technology. The results are troubling.

49 We will hear today how GAO established a fictitious  
50 company led by a fictitious individual who acquired 12  
51 different military or dual-use items that are subject to  
52 export control laws. The GAO was able to obtain several  
53 devices used in the nuclear weapons program, including a  
54 triggered spark gap, which is a high-voltage switch that can  
55 be used a nuclear weapon detonator, an accelerator meter, an  
56 instrument used to measure motions generated by nuclear and  
57 chemical explosives, and a GyroChip, a device that can be  
58 used to stabilize and steer guided missiles.

59 The GAO also successfully acquired several pieces of  
60 military equipment that give our troops technological  
61 superiority in battle, including night-vision scope used by  
62 our troops to see and track enemy in the dark, body armor,  
63 the type used by U.S. military in battle, and an F-16 engine-  
64 monitoring system computer.

65 The GAO will explain how 12 out of the 12 of the  
66 companies approached 100 percent agreed to sell these  
67 sensitive items to the fictitious company. None of these  
68 companies discovered that the company was fake. None of the  
69 companies determined that the buyer was a fake person. In  
70 fact, none of the companies ever met the buyer, and most

71 conducted the transactions entirely by e-mail.

72         The company that manufactures the night-vision scope  
73 even signed up GAO's fake company as an authorized  
74 distributor of its product. The only thing more surprising  
75 than the ease at which GAO acquired the sensitive equipment  
76 is the fact that it was apparently entirely legal. When  
77 questioned afterwards, the companies involved explained that  
78 they were not required by current law to apply for an export  
79 license when selling specific military or dual-use products  
80 directly to domestic purchasers. There is no requirement for  
81 them to conduct any background check or due diligence on the  
82 buyers, much less submit the proposed sale to the government  
83 for a license to purchase.

84         The Commerce Department, which testify today, agrees  
85 that no violations occurred. This is obviously not a  
86 satisfactory result. GAO illustrated the weaknesses of this  
87 legal regime when it turned around and successfully exported  
88 some of these items simply by sending them to the Fed Ex and  
89 sending them overseas. GAO sent them to a country known as a  
90 trans-shipment point for military and nuclear technology. So  
91 there is an enormous loophole in our law.

92         We will hear today from GAO, the Department of Commerce,  
93 and three of the companies that sold these products to GAO,  
94 either as a manufacturer or a seller. We will ask them the

95 following questions: Are some military items so sensitive  
96 that they should be banned from commercial sales to the  
97 public entirely? Are some military or dual-use items  
98 sensitive enough to require licenses for domestic sales? Can  
99 additional controls be put in place to make it more difficult  
100 for our enemies to gain access to our sensitive military and  
101 dual-use technologies?

102         The stakes cannot be higher. A 2008, report by the  
103 Strategic Studies Institute reveals that in the past North  
104 Korea has sought to procure from foreign sources at least one  
105 of the products GAO acquired, the accelerator meter to  
106 enhance its guided missile program.

107         I look forward to the testimony today and hope we can  
108 discuss ways in which the government and business can work  
109 together to ensure our technological advantage is not used to  
110 jeopardize the safety of our troops, our allies, and our  
111 communities here at home.

112         [The prepared statement of Mr. Stupak follows:]

113 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
114           Mr. {Stupak.} I next turn to Mr. Walden for his opening  
115 statement.

116           I should just mention, members are going to be coming in  
117 and out. We have another hearing down on the first floor.  
118 In fact, I may have Diana DeGette or someone take the chair  
119 for me as I am going to have to go down to that hearing also.  
120 But Mr. Walden, your opening statement, please, sir.

121           Mr. {Walden.} Thank you very much, Chairman Stupak, for  
122 convening this hearing.

123           Since this country was attacked almost 8 years ago on  
124 September 11, we have become all too aware of the fact that  
125 terrorist groups that are constantly seeking to exploit any  
126 weakness in our national security and to gain any access to  
127 America's advanced technology. Any information they might  
128 gain about United States intelligence or military operations  
129 could potentially be used to attack our men and women in  
130 uniform abroad and here at home. This threatens our national  
131 security.

132           In Iraq we have heard on the news too many times the  
133 cases where terrorists posed as Iraqi soldiers or police in  
134 order to get close to military checkpoints or barracks, only  
135 to detonate improvised explosive devices and suicide bombs,  
136 sometimes killing U.S. soldiers as well as civilians in the

137 process. We cannot ignore the link between illegal exports  
138 and military items and such attacks.

139 For example, in 2008, various individuals and companies  
140 were indicted for purchasing items capable of being used to  
141 make IEDs with Iran being the final destination. For fiscal  
142 year 2008, the Department of Justice reported that 145  
143 defendants were charged for criminal violations of export  
144 control laws. About 43 percent of the defendants charges  
145 were attempting to illegally transport or transfer items to  
146 Iran and China.

147 Since 2007, GAO has included ensuring effective  
148 protection of technologies critical to the U.S. national  
149 security interests as high-risk areas. As troubling as those  
150 weaknesses may be, what is more disturbing is there appears  
151 to be a gigantic loophole in our laws that make it easier for  
152 our enemies to get ahold of our sensitive military technology  
153 and one day use it against us.

154 The loophole the GAO uncovered in this investigation  
155 reveals that the military and sensitive dual-use technology  
156 can be easily and legally bought within the United States.  
157 Then those items can be illegally exported with almost zero  
158 chance of detection. Here is how easy it is to make these  
159 buys.

160 GAO bought a number of sensitive dual-use items from

161 United States companies, including night-vision goggles, body  
162 armor, and F-16 engine computer and technology used in  
163 nuclear weapons and IEDs. Dual use means these items have  
164 both military and commercial use. You can see some of these  
165 items displayed right up here on this table in the front of  
166 the room.

167 The GAO did so by setting up a bogus company, a company  
168 website, a mail drop box. They also used fake military ID to  
169 facilitate the purchase, and the fake military ID from what I  
170 am told was even not very well constructed.

171 When GAO purchased these items, in many cases they  
172 weren't asked a single question by the seller about what they  
173 were doing with the items. There was no face-to-face contact  
174 and sometimes not even contact over the phone. The companies  
175 in most cases did not make an attempt to verify the minimal  
176 information that GAO provided.

177 But here is the rub. The companies did absolutely  
178 nothing illegal. They did not violate the law because no law  
179 or regulation places any meaningful restriction on the  
180 domestic sale of these military items. That is right. You,  
181 Joe Q. Public, can buy a body armor, night-vision goggles,  
182 and F-16 engine computer, and our laws do not require any  
183 kind of verification for your identity or background.

184 However, if you then tried to export the items, you

185 would need to go get a license to do so. Now, how many of  
186 you really thing that an Al Qaeda operative or some other  
187 terrorist is going to be the first in line at the Department  
188 of Commerce or State to get a license to ship these items to  
189 say, oh, China, Syria, or Iran. I don't think so either.

190 This may be one of those rare oversight hearings where  
191 we show not how the law has been broken or evaded by a bad  
192 actor but how the law is simply inadequate. In other words,  
193 the scandal here may be what is legal, not what is illegal.

194 Now that we have identified this gap in our laws, it is  
195 our responsibility to figure out how to close it. Now, to do  
196 it in a way that does not place an undue burden on Commerce.  
197 As I mentioned before, these are dual-use, sensitive items.  
198 These items have legitimate, critical uses sometimes in  
199 medical and aircraft equipment. My understanding is the  
200 companies here today and the other companies who sold dual-  
201 use items to the GAO are very concerned these items might  
202 fall into enemy hands and want to help solve this problem.

203 I look forward to hearing their thoughts about what we  
204 can do about it.

205 Mr. Chairman, our men and women in uniform deserve the  
206 best technology that our country's industry has to offer.  
207 They deserve to know that when they are on the battlefield,  
208 they have every advantage over the enemy, and that includes

209 the best technology our industry can produce.

210           So I look forward to working with you to figure out how  
211 we can make sure that these dual-use items don't fall into  
212 the wrong hands and put our men and women and civilians in  
213 peril.

214           I yield back the balance of my time.

215           [The prepared statement of Mr. Walden follows:]

216 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
217 Mr. {Stupak.} Thank you, Mr. Walden.

218 Mr. Markey for an opening statement, please.

219 Mr. {Markey.} Thank you, Mr. Chairman, and thank you so  
220 much for having this important hearing.

221 Every day the United States superiority in high  
222 technology is on display in our military, our universities,  
223 our computer and software manufacturers, and our healthcare  
224 industry, and every day the United States is under assault by  
225 foreign countries and groups that seek to acquire U.S.  
226 technologies and products that threaten U.S. national  
227 security.

228 Our Export Control System is woefully inadequate to  
229 ensure that high technology U.S. goods are not misused either  
230 for conventional military or WMD purposes. As we will hear  
231 today undercover GAO investigators used fake information to  
232 purchase dangerous dual-use technologies, including some  
233 which could be useful for a nuclear weapons program.  
234 Clearly, our export control program must be strengthened.

235 The particular loophole which GAO exploited in their  
236 investigation is frighteningly simple. While exports of  
237 dual-use technologies require a government license, domestic  
238 sales of the exact same sensitive items are not regulated in  
239 any way whatever. GAO was able to provide false information,

240 mask its identity, and pretend to be a qualified domestic  
241 purchaser. Clearly foreign countries or terrorist groups  
242 could do the same thing. And as GAO proved, a cardboard box  
243 and the U.S. Postal Service is all it takes to move dual-use  
244 items out of the country.

245         We must strengthen our Export Control System, but  
246 private industry must also play a cooperative and  
247 constructive role. Private companies can and must assist the  
248 government by identifying questionable orders and reporting  
249 them to law enforcement for action.

250         In this context I would like to say a word about Perkin  
251 Elmer, one of the companies which will testify today and is  
252 headquartered in my district. GAO was able to purchase a  
253 sensitive item, potentially abused to a nuclear weapons  
254 program from Perkin Elmer, but given the domestic sales  
255 loophole the GAO exploited, Perkin Elmer seems to have  
256 followed the law.

257         An event in 2003 demonstrates how Perkin Elmer has  
258 helped prevent dangerous export control violations. When the  
259 company received an order for 200 triggered spark gaps, alarm  
260 bells sounded at the large quantity requested. Perkin Elmer  
261 reported the order to law enforcement, and at the request of  
262 federal authorities the company played along with the order,  
263 eventually shipping sabotaged products which were then

264 traced. At the end of the day a plot to acquire a key  
265 technology for the Pakistani nuclear weapons program was  
266 thwarted in large part because of Perkin Elmer.

267 That is the kind of cooperation that we need to be  
268 successful. To keep the American people safe, we now have to  
269 make sure that we close this domestic loophole so that we  
270 ensure that we have a uniform policy to protect against this  
271 kind of proliferation of dangerous technology.

272 Thank you, Mr. Chairman, for having this hearing.

273 [The prepared statement of Mr. Markey follows:]

274 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
275 Mr. {Stupak.} Thank you, Mr. Markey.

276 Next we will hear from Ms. DeGette for an opening  
277 statement. Three minutes, please.

278 Ms. {DeGette.} Thank you very much, Mr. Chairman.

279 To say what we are going to hear today from the GAO is  
280 troubling is an understatement. We live in a world where  
281 pirates are seizing U.S. flagged cargo ships off the Somali  
282 coast, a world where North Korea is desperate to get its  
283 hands on any components or weapons that allow its regime to  
284 maintain its position as a long-term, legitimate threat to  
285 international security. Additionally, the United States and  
286 its allies have serious concerns about Iran's nuclear  
287 program.

288 Yet here we are after decades of problems being  
289 identified related to America's export control process, once  
290 again learning about the gaps in our system. It is difficult  
291 enough to make sure our military men and women are equipped  
292 and able to defend themselves against the IEDs made by our  
293 adversaries with the materials they have obtained. The  
294 President's budget demonstrates the magnitude of the issues  
295 being raised by this hearing and includes increased funding,  
296 and I quote, ``to expand operations targeting the illicit  
297 procurement in the U.S. of U.S. origin items for the use in

298 improvised explosive devices, IEDs being employed against  
299 U.S. troops.''

300       Okay. So a system that allows material which can be  
301 used to build an IED or detonate a nuclear device to be  
302 available on the open market and over the internet is just  
303 simply not a functioning system at all. Voluntary industry  
304 compliance and government-issued guidance for businesses is  
305 great when it works. It hasn't worked entirely in the area  
306 of food safety, and in this case it doesn't seem to be  
307 working at all.

308       I have no doubt that our witnesses from the Department  
309 of Commerce share our concerns and that the Bureau of  
310 Industry and Security is making efforts to improve its  
311 system, and I want to emphasize that I am sympathetic to  
312 workforce challenges that might be discussed during this  
313 debate. However, this committee is interested in seeing the  
314 Bureau of Industry and Security address all of the concerns  
315 identified by the GAO and Congress in a systemic and  
316 coordinated fashion and fast.

317       Unfortunately, I am afraid that anything less than 100  
318 percent compliance in this area represents too serious a  
319 threat at a time when we are using vast resources to confront  
320 terrorists and other adversaries overseas.

321       And with that, Mr. Chairman, I yield back.

322 [The prepared statement of Ms. DeGette follows:]

323 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
324 Mr. {Stupak.} Thank you, Ms. DeGette.

325 Mr. Braley for an opening statement, please, sir. Three  
326 minutes.

327 Mr. {Braley.} Thank you, Mr. Chairman and Ranking  
328 Member Walden, for holding this hearing today to examine  
329 commercial sales of technology with military applications and  
330 U.S. export control programs.

331 I have serious concerns about the GAO's findings through  
332 their undercover investigation that sensitive dual-use and  
333 military technology can easily and legally be purchased from  
334 dealers and manufacturers in the United States and exported  
335 without detection. I believe that these disturbing findings  
336 have serious implications for our national security and for  
337 American troops working to keep us safe overseas.

338 I think most Americans would be alarmed to learn that by  
339 using a fake company and fictitious identities GAO  
340 investigators were able to purchase items that could  
341 potentially be used for the development of nuclear and  
342 chemical weapons, guided missiles, and improvised explosive  
343 devices which have been frequently used to attack our troops  
344 in Iraq and Afghanistan.

345 They were also able to purchase military-grade radios,  
346 night-vision goggles, and infrared flags, which could

347 potentially be used against U.S. troops in combat. GAO  
348 investigators were also able to export dummy versions of some  
349 of these items without detection to a country which is a  
350 known transshipment point to terrorist organizations and  
351 foreign governments attempting to acquire sensitive military  
352 technology.

353         These findings are even more disturbing when you  
354 consider the frequency with which terrorists and criminal  
355 organizations and foreign governments attempt to obtain these  
356 types of sensitive technologies from manufacturers and  
357 distributors in the United States. The Department of Justice  
358 recently reported that foreign states and criminal and  
359 terrorist organizations seek arms, technology, and other  
360 materials to advance their technological capacity on a daily  
361 basis.

362         Given this information and the ease with which the GAO  
363 was able to purchase and export sensitive items, you can't  
364 help but worry about how many times these attempts have been  
365 successful and about what that could mean for our national  
366 security. GAO's findings demonstrate a clear lack of  
367 regulation over the domestic sales of military and dual-use  
368 technologies and serious loopholes in our Export Control  
369 System. That is why I look forward to hearing the testimony  
370 of our witnesses today and hearing the witnesses'

371 recommendations on how we in Congress can improve safeguards  
372 for domestic sales and improve our export control programs to  
373 make sure that these potentially dangerous items don't end up  
374 in the wrong hands.

375         As the GAO's investigation clearly demonstrates,  
376 improving these safeguards is essential to protecting our  
377 troops serving overseas and to protecting every American.

378         And with that I yield back.

379         [The prepared statement of Mr. Braley follows:]

380 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
381 Mr. {Stupak.} Thank you, Mr. Braley.

382 Mr. Gingrey, opening statement, please. Three minutes.

383 Mr. {Gingrey.} Mr. Chairman, thank you.

384 Today the subcommittee will have an opportunity to shine  
385 a spotlight on a very, very critical but less visible aspect  
386 of our national defense; preventing the export of sensitive  
387 military technology, particularly to individuals in countries  
388 that wish us harm.

389 Mr. Chairman, we expend a lot of time, effort, and  
390 resources trying to stop dangerous materials from being  
391 brought into this country, however, the failure to properly  
392 oversee what is being taken out of this country may pose an  
393 equal, if not greater, threat to our national security.

394 Mr. Chairman, American manufacturing components and  
395 products should never be allowed to be used against this  
396 Nation or its citizens. Yet it seems that this could be a  
397 very real possibility and a threat that must be addressed.  
398 As we move forward I hope that we can reach a consensus on  
399 the best course of action needed to ensure this threat never  
400 becomes a reality.

401 While national defense should remain our first and  
402 foremost concern, we must also approach this question with a  
403 keen eye and some commonsense. While we need to ensure

404 sufficient safeguards, we should also provide for a  
405 streamline and a safe process to expedite legitimate sales  
406 for commercial and strategic purposes, particularly when  
407 trading with our allies.

408         American businesses and manufacturers are hurting, and  
409 the simple and stark reality is that over 95 percent of the  
410 world's consumers live as we know outside of the United  
411 States. Accordingly, Mr. Chairman, we must commit ourselves  
412 to adopting a sound security policy that also strengthens the  
413 ability of American manufacturers to be successful in the  
414 global marketplace.

415         Mr. Chairman, I look forward to carefully listening to  
416 the testimony from the witnesses today, and with that I will  
417 yield back my time.

418         [The prepared statement of Mr. Gingrey follows:]

419 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
420 Mr. {Stupak.} Thank you, Mr. Gingrey.

421 Ms. Sutton from Ohio, opening statement, please.

422 Ms. {Sutton.} Thank you, Mr. Chairman, and thank you  
423 for holding this important hearing on the commercial sale of  
424 military technology.

425 Comprehensive oversight and complete control of the sale  
426 of sensitive defense and dual-use military technologies is  
427 absolutely essential to our national security. It is  
428 imperative that the responsible federal agencies exert every  
429 available resource to prevent our sensitive technologies from  
430 ending up in the hands of terrorists. And it is more than  
431 disturbing to learn what investigators have brought to light.  
432 The dangerous implications are extraordinarily serious.

433 The Department of State and Department of Commerce have  
434 primary jurisdiction over export controls. It is apparent  
435 that the two agencies do not, however, have clear lines drawn  
436 when it comes down to jurisdiction on an individual product.

437 For instance, a development company in Ohio tested an  
438 undersea robot in U.S. and international waters with no  
439 immediate intention of foreign sales. To cover all bases,  
440 they reached out to the agencies to see whose jurisdiction  
441 their product would fall into in the event that they decided  
442 to apply for an export license. Depending on who answered

443 the phone, the company received a different answer. In the  
444 end they were disappointed that they were not able to secure  
445 a concrete answer regarding which agency had jurisdiction  
446 over their product.

447 Now, I am left to believe that this problem exists with  
448 countless products, and I support Ms. Lasowski's call for a  
449 fundamental reexamination of the current programs and  
450 processes within the agencies that have jurisdiction over  
451 export controls. And once that examination is completed, I  
452 look forward to working with my colleagues to ensure agency  
453 procedures are fluent, effective, and that the safety of our  
454 Nation is guaranteed.

455 Today I look forward to hearing from our panel, and I am  
456 especially interested in hearing from GAO on their  
457 investigative report on domestic sales. We will hear that  
458 there are no rules or authorities in place to regulate the  
459 domestic sale of sensitive military technologies. Companies  
460 are able to make domestic sales of sensitive items with  
461 little or no restrictions unless self-imposed, and that is  
462 disturbing. The idea that a U.S. citizen can legally  
463 purchase and then rather easily mail a sensitive item that  
464 would otherwise have to be granted a license for export is  
465 shocking.

466 Mr. Chairman, while our men and women in uniform are

467 bravely serving overseas, the Federal Government has no tool  
468 in place to regulate domestic purchases of sensitive military  
469 technologies that could be used by terrorists and others  
470 against our service members.

471 I look forward to working with my colleagues to ensure  
472 that the proper oversight and regulations are in place for  
473 all commercial sales of sensitive military technologies.

474 Thank you, again, Mr. Chairman, and I yield back.

475 [The prepared statement of Ms. Sutton follows:]

476 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
477 Mr. {Stupak.} Thank you.

478 Ms. Blackburn, opening statement.

479 Ms. {Blackburn.} Thank you, Mr. Chairman, and I will be  
480 brief. I want to welcome our witnesses. Some of you are  
481 returning, and we welcome you back. I am certain you all  
482 have already heard. We have a TELCOM hearing that is taking  
483 place downstairs, so some of us are going to be up and down  
484 and back and forth. So we ask that you please be patient  
485 with us.

486 And I do thank you, Mr. Chairman, for the hearing today,  
487 and I think it is appropriate that our committee today  
488 examine the process that we go through for selling our  
489 military's sensitive technologies to U.S. residents. These  
490 buyers could potentially export them to a country that is  
491 adverse to U.S. national security, and we are aware of that,  
492 and of course we are concerned about that.

493 The apparent gap is the tracking of the item by the  
494 seller and the security background of the buyer. Proper  
495 collection of information on these sales should be placed as  
496 a high priority for this Administration, but it must not  
497 violate privacy rights of U.S. citizens.

498 Even though domestic sales pose a problem, the  
499 regulations of foreign sales should also be reexamined, and I

500 think that is an imperative for us. Over the past 2 decades  
501 we do know that some military technologies and equipment were  
502 exported to China. That could pose national security risks.  
503 That is on our radar as we go through this hearing today. A  
504 few examples are anti-jamming and encryption for military  
505 satellite systems and advanced U.S. computers.

506       The U.S. military, we know, is the strongest in the  
507 world, and a significant part of that strength is due to  
508 innovation into superior military technology. So we must not  
509 allow gaps in our system that will allow this technology to  
510 fall into the wrong hands.

511       We appreciate the information that you are bringing to  
512 us today. Mr. Chairman, I thank you for the time, and I  
513 yield back.

514       [The prepared statement of Ms. Blackburn follows:]

515 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
516 Mr. {Stupak.} Thank you.

517 Mr. Doyle is going to be up here shortly. He is down in  
518 the Health Committee, but he wanted to make an opening  
519 statement for a particular issue that affects his district  
520 directly and what has--with the sales of some items, and when  
521 he comes up without objection we will allow him to make that  
522 opening statement.

523 Hearing no objection we will allow him to do so.

524 We will move forward with our hearing. So of the  
525 members present that concludes our opening statements. Our  
526 first panel of witnesses, we are going to have one panel  
527 today. They are all before us. Let me introduce them before  
528 we swear them in.

529 Mr. Gregory Kutz, who is the Managing Director of the  
530 Forensic Audits and Special Investigations at the Government  
531 Accountability Office. Ms. Anne-Marie Lasowski, who is the  
532 Director of Acquisition and Sourcing Management of the  
533 Government Accountability Office. Mr. Matthew Borman, who is  
534 the Acting Assistant Secretary for Export Administration in  
535 the Bureau of Industry and Security at the U.S. Department of  
536 Commerce. Mr. Thomas Madigan, who is the Acting Deputy  
537 Assistant Secretary for Export Enforcement in the Bureau of  
538 Industry and Security of the U.S. Department of Commerce.

539 Mr. Michael Alvis, who is the Vice President of Business  
540 Development at ITT Industries. Mr. John Roush, who is the  
541 Senior Vice President and President for Environmental Health  
542 at Perkin Elmer. And Mr. Nicholas Fitton, who is the Chief  
543 Executive Officer of the Section 8 Corporation.

544 Gentlemen, Ladies, it is the policy of the subcommittee  
545 to take all testimony under oath. Please be advised that you  
546 have the right under the rules of the House to be advised by  
547 counsel during your testimony.

548 Before I go much further, Mr. Burgess, did you want to  
549 do an opening? We were holding open for Mr. Doyle, and I  
550 knew you had mentioned you wanted--did you want to do an  
551 opening or--

552 Mr. {Burgess.} If it is not out of order.

553 Mr. {Stupak.} It is not out of order. I will swear the  
554 witnesses in in a minute. I just introduced the panel. I  
555 will swear them in after your opening, and then maybe Mr.  
556 Doyle will be here.

557 So if you want to go ahead.

558 Mr. {Burgess.} Well, thank you, Mr. Chairman.

559 The advancements this country has made with regards to  
560 military technology surpasses those of any other nation.  
561 Investment in military ingenuity has led to cutting edge  
562 commercial advancements in avionics and healthcare.

563           Contrary to popular belief, the United States military  
564 actually created the technology that led to the advent of the  
565 internet as opposed to that other guy who said he invented  
566 it. Most importantly, these technological advancements have  
567 contributed to the safety of our citizens, but it has also  
568 placed a high burden on our various federal agencies to  
569 ensure the safe production and sale of these sensitive  
570 technologies.

571           While there are laws that expressly prohibit the direct  
572 sales of our most sensitive military technologies to foreign  
573 countries or entities, the laws which govern the domestic  
574 sales of these items are far weaker than they could be. In  
575 fact, some component parts to manufacture weapons of mass  
576 destruction may be sold domestically and then potentially  
577 resold internationally with little or no accountability under  
578 the law.

579           Currently most of these companies undergo voluntary due  
580 diligence to ensure the sales of items on the Commerce  
581 Control List are then not resold to foreigners, but in this  
582 global world in which we live today controls must be in place  
583 throughout the transaction process to ensure that the  
584 counterparty corporations are legitimate. We cannot ignore  
585 the fact that there are groups trying to reverse engineer our  
586 technology and use them directly against our men and women in

587 uniform.

588           For instance, the Navy's Grumman F-14 Tomcat  
589 immortalized in the movie, ``Top Gun,`` this technology was  
590 considered to be of such strategic importance that only one  
591 foreign purchaser was ever allowed to procure the F-14; the  
592 Imperial Iranian Air Force that existed during the reign of  
593 the Shah. We all know that in 1979, the monarchy fell.  
594 Since then the United States has essentially severed all  
595 relations with Iran, including imposing an embargo on the  
596 sale of any spare parts for the F-14s. Yet shadow companies  
597 have ordered parts for the Iranian Tomcats, and no one seems  
598 to have been paying attention to what parts were being sold  
599 and to whom.

600           We must make certain our standards for export are as  
601 rigorous as our standards for import. We must make certain  
602 that the Department of Commerce, Bureau of Industry and  
603 Security, implements true post-market verifications of sales.  
604 We must make certain that the Department of State, working in  
605 conjunction with the Department of Homeland Security, ensures  
606 that no exports are being made of our sensitive military  
607 technology.

608           We must also work with the Federal Trade Commission to  
609 ensure that Commerce is unimpeded, and for those who would  
610 violate our existing laws, those who would compromise the

611 security of our Nation, but more importantly compromise the  
612 courageous lives of our men and women in uniform, they should  
613 be prosecuted by the Department of Justice to the fullest  
614 extent under the law.

615 Thank you, Mr. Chairman. I will yield back my time.

616 [The prepared statement of Mr. Burgess follows:]

617 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
618 Mr. {Stupak.} Thanks, Mr. Burgess.

619 As I was saying to our panel, under the rules of the  
620 House you have the right to be represented by counsel. Do  
621 any of you wish to be represented by counsel? Anyone?

622 Okay. You are all shaking your head no, so we will take  
623 it as a no.

624 So, therefore, I am going to ask you to please rise,  
625 raise your right hand, and take the oath.

626 [Witnesses sworn.]

627 Mr. {Stupak.} Let the record reflect the witnesses  
628 replied in the affirmative. Each of you are now under oath.

629 We will now hear a 5-minute opening statement from you,  
630 and thank you for being here. We are going to try to do this  
631 one panel, and we will start with you, Mr. Kutz. You are a  
632 veteran. If you want to hit your mike and start with your  
633 opening statement, and we would appreciate it.

|  
634 ^TESTIMONY OF GREGORY KUTZ, MANAGING DIRECTOR, FORENSIC  
635 AUDITS AND SPECIAL INVESTIGATIONS, GOVERNMENT ACCOUNTABILITY  
636 OFFICE; ANNE-MARIE LASOWSKI, DIRECTOR, ACQUISITION AND  
637 SOURCING MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE;  
638 MATTHEW BORMAN, DEPUTY ASSISTANT SECRETARY, BUREAU OF  
639 INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE; THOMAS  
640 MADIGAN, DIRECTOR OF THE OFFICE OF EXPORT ENFORCEMENT, BUREAU  
641 OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE; MICHAEL  
642 ALVIS, VICE PRESIDENT FOR BUSINESS DEVELOPMENT, ITT  
643 INDUSTRIES; JOHN ROUSH, SENIOR VICE PRESIDENT AND PRESIDENT,  
644 ENVIRONMENTAL HEALTH, PERKIN ELMER; AND NICHOLAS FITTON,  
645 CHIEF EXECUTIVE OFFICER, SECTION 8

|  
646 ^TESTIMONY OF GREGORY KUTZ

647 } Mr. {Kutz.} Mr. Chairman and members of the  
648 subcommittee, thank you for the opportunity to discuss the  
649 sale of military and dual-use technology.

650 There are widespread reports of the illegal transfer of  
651 U.S. technology to Iran, China, and terrorist organizations.  
652 Today's testimony highlights the results of our investigation  
653 into the credibility of this security threat.

654 My testimony has two parts. First, I will briefly

655 discuss what we did and provide some background, and second,  
656 I will discuss the results of our investigation.

657         First, Justice has reported numerous cases of foreign  
658 governments and terrorist organizations seeking to acquire  
659 U.S. technology. Items identified in criminal cases are  
660 suitable for military, nuclear, guided missile, and  
661 improvised explosive device applications. As you have all  
662 mentioned, these items can legally be sold within the United  
663 States.

664         The objective of our investigation was to make  
665 undercover purchases of technology here in the U.S. If  
666 successful, we plan to ship several of these items overseas.  
667 To set up this operation we established a bogus front company  
668 called Monacasey Tech Consultants. We also used bogus  
669 identities and undercover credit card and a mailbox as our  
670 business address. Most of the items that we targeted for  
671 purchase are identical to items cited in recent criminal  
672 cases.

673         Although we had a limited budget and relatively simply  
674 backstops, our operation could have easily been financed by  
675 foreign governments or terrorists organizations seeking to  
676 acquire U.S. technology.

677         Moving onto the results of our investigation. We were  
678 able to purchase a number of sensitive U.S. military and

679 dual-use items. We then successfully shipped several of  
680 these items by mail undetected to southeastern Asia.

681 The items that we purchased are displayed on the table  
682 before you, and I have a few with me I am going to show you  
683 by hand. It is important to note that for many of these  
684 items our bogus individuals signed a certificate promising  
685 not to export them.

686 Let me discuss several of the more troubling dual-use  
687 items that we purchased, and they will also be shown on the  
688 monitors.

689 First, in my hand I have a triggered spark gap. We  
690 purchased this item for \$700 from the manufacturer. We also  
691 received a price quote for an additional 100 of these items.  
692 In addition to medical applications, these items can be used  
693 to detonate nuclear weapons. In 2005, this item was cited as  
694 part of a criminal case involving illegal export to Pakistan.

695 Second, I have in my hand an accelerometer. We  
696 purchased this item for \$2,800 from the manufacturer. In  
697 addition to having commercial applications, this item can be  
698 used in smart bombs and nuclear and chemical explosive  
699 applications. In 2007, this item was cited as part of a  
700 criminal case involving illegal export to China.

701 And third, I have in my hand this GyroChip. We  
702 purchased this item for \$3,100 from the manufacturer. We

703 also obtained a price quote for an additional ten of these  
704 items. In addition to commercial use, these items can be  
705 used to help steer guided missiles. A large corporation was  
706 recently found to have illegally exported 85 of these items  
707 to China.

708         Examples of the sensitive military items purchased  
709 include, first, the modular tactical vest body armor you see  
710 on my right in front of me and also shown on the monitors.  
711 We purchased this item for \$2,400 from a distributor. We  
712 also received a price quote for an additional 20 of these  
713 vests.

714         Also displayed in front of me are ESAPI plates that we  
715 purchased on eBay as part of a prior investigation and could  
716 have also purchased from this same distributor. These vests  
717 are currently used by the U.S. Marines in Iraq and  
718 Afghanistan.

719         And second, the night-vision monocular I have in my  
720 hand. We purchased this item for \$3,600 for a distributor.  
721 As was mentioned, we also became an authorized distributor of  
722 this item. These items are currently used by the military in  
723 nighttime operations. Recent criminal cases show that these  
724 items are in demand, not only by China and Iran, but by the  
725 terrorist organization, Hezbollah, in Lebanon.

726         In conclusion, our work clearly shows that anybody with

727 a credit card, computer, and a mailbox that is willing to lie  
728 can acquire U.S. military and dual-use technology. For the  
729 dual-use items they are more difficult to address but  
730 additional controls at the point of sale for high-risk items  
731 should be considered. For military items we continue to  
732 believe that the technology used by our soldiers today should  
733 not be available to anybody with a credit card. Our soldiers  
734 deserve better than to have our own technology used against  
735 them on the battlefield.

736 Mr. Chairman, this ends my statement. I look forward to  
737 your questions.

738 [The prepared statement of Mr. Kutz follows:]

739 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
740           Mr. {Stupak.} Thank you, Mr. Kutz, and your  
741 investigation is found in a GAO report which is now released  
742 publicly based on your testimony? Okay. Very good. So it  
743 is available.

744           Ms. Lasowski, did you have an opening statement, please?

|  
745 ^TESTIMONY OF ANNE-MARIE LASOWSKI

746 } Ms. {Lasowski.} Yes. Mr. Chairman and--

747 Mr. {Stupak.} Could you just hold that up a little bit  
748 and make sure that green light is on. Thank you.

749 Ms. {Lasowski.} Mr. Chairman and members of the  
750 subcommittee, I am pleased to be here today to speak about  
751 our work on the U.S. Export Control System, one part of a  
752 complex web of programs intended to protect technologies  
753 critical to U.S. national security, both military and  
754 economic.

755 In the decade since these programs were established, the  
756 world has changed significantly. As you are aware, new  
757 security threats, increased globalization, and evolving  
758 technology creates significant challenges in maintaining a  
759 balance between our military and economic interests. Yet our  
760 work has shown that for the most part these programs have  
761 been neglected or may not be well equipped to deal with these  
762 challenges, prompting GAO to add this area onto our high-risk  
763 report in 2007, and calling for a strategic reexamination of  
764 existing programs.

765 My statement today focuses on three key areas that  
766 should be part of this reexamination. First, interagency

767 coordination and jurisdictional control, second, export  
768 licensing efficiency, and third, system assessments.

769         With regard to the first area, we found that poor  
770 interagency coordination and jurisdictional debates between  
771 State and Commerce have weakened export controls over certain  
772 sensitive items. For example, Commerce claimed jurisdiction  
773 over specialized explosive detection equipment when  
774 jurisdiction for this item belonged to State. Consequently,  
775 the items were subject to Commerce's less-restrictive export  
776 control requirements.

777         Until such disputes are resolved, it is ultimately the  
778 exporter, not the government, who determines the level of  
779 government review and control that will follow. This  
780 weakness also creates considerable challenges for other  
781 players, namely the enforcement community. Without  
782 information as fundamental as what items are controlled by  
783 which agency and which need a license, enforcement officials  
784 are limited in their ability to carry out inspection,  
785 investigation, and prosecution responsibilities.

786         The second area concerns the need for efficiency in the  
787 export licensing process. At State medium processing times  
788 doubled in 4 years, and license applications reached an  
789 overall time--and all-time high of over 10,000 open cases.  
790 Clearly reviews of export license applications require

791 careful deliberation. However, licensing decisions should  
792 not be delayed due to process inefficiencies.

793         Recently State took steps to restructure its workforce  
794 and establish standards to reduce processing times and cases  
795 in the pipeline. We are encouraged by this action and hope  
796 that it will yield needed improvements.

797         The overall efficiency of Commerce's licensing process  
798 is unknown in part due to its limited assessments. While  
799 most Commerce-controlled exports can occur without a license,  
800 it is no less important for Commerce to seek efficiencies  
801 where needed. Most recently Commerce has established new  
802 performance measures in its fiscal year 2010, budget, which  
803 we have not evaluated.

804         The third and final area of concern is a more  
805 fundamental issue; management's due diligence in performance  
806 assessments. State and Commerce have argued that no  
807 fundamental changes are needed due to their Export Control  
808 Systems. We have been somewhat perplexed by this stance,  
809 since neither department has conducted a thorough assessment  
810 to support this conclusion, and our work has repeatedly  
811 demonstrated that the U.S. Export Control System is in need  
812 of repair.

813         Redefined security threats, evolving technology, and  
814 increasing globalization, coupled with the numerous

815 weaknesses we have identified demand that the U.S. government  
816 step back, assess, and rethink the current system's ability  
817 to protect multiple U.S. interest.

818           Mr. Chairman, this concludes my prepared statement. I  
819 would be pleased to respond to any questions that you or  
820 members of the subcommittee may have.

821           [The prepared statement of Ms. Lasowski follows:]

822 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
823 Mr. {Stupak.} Thanks, Ms. Lasowski.

824 Mr. Borman, your opening statement, please.

|  
825 ^TESTIMONY OF MATTHEW BORMAN

826 } Mr. {Borman.} Thank you, Mr. Chairman.

827 Mr. {Stupak.} We are going to need you to turn on a  
828 mike and pull it up there a little bit.

829 Mr. {Borman.} Thank you, Mr. Chairman--

830 Mr. {Stupak.} Thank you.

831 Mr. {Borman.} --and members of the committee. We do  
832 appreciate, Tom Madigan and myself, the opportunity to come  
833 up here and talk to you about this. This is a very important  
834 topic, and we really appreciate your interest, the work of  
835 GAO, and industry interest. From our perspective this is an  
836 issue that really needs significant coordination between the  
837 Legislative Branch, the Executive Branch, and the U.S.  
838 private sector.

839 Just to give you a quick overview of our role in the  
840 system, of course, the U.S. Export Control System there is  
841 several different components. The dual-use system governs  
842 the export of items that have civilian and military  
843 applications and we administer at BIS the dual-use system in  
844 conjunction with a number of other agencies including the  
845 Departments of Defense, Energy, Homeland Security, Justice,  
846 State, and Treasury, as well as the intelligence community.

847           In administering the Dual-Use Export Control System BIS  
848 and other agencies develop control policies based on  
849 technologies, countries, end usages, and end users. While  
850 most items in the U.S. economy are subject to controls, that  
851 is, they are subject to the regulations, only a small  
852 percentage of U.S. exports by dollar value actually need a  
853 specific license from Commerce that goes through an  
854 interagency process.

855           And in administering the system we are very aware of the  
856 challenges of the 21st century, and the way we look at them  
857 is you have diffuse challenges; diffuse security threats  
858 ranging--there are a range of Nation States all the way down  
859 to non-State actors to individuals, but you also have a real  
860 diffusion of markets. When the Export Control System was  
861 first crafted, many of the major markets were not markets  
862 then, China and India being two obvious examples, and you  
863 have a much greater diffusion of technology. The U.S. is no  
864 longer the world leader in a range of technologies as it was  
865 say 20 years ago.

866           And our authorizing statute, which is the Export  
867 Administration Act of 1979, is a Cold War statute, and if  
868 anyone looks at it, you will see it replete with references  
869 to the Coordinating Committee for Multi-Lateral Export  
870 Controls. That was the trade equivalent to NATO that has

871 ceased to exist in 1994. Not only is it the EAA 1979, it is  
872 in lapse. It is not permanent legislation, and in the years  
873 I have been in Commerce, I have been both in this position  
874 and our legal office for more than 15 years, it has only been  
875 in effect for about a year and a half total. So clearly  
876 there is a statute on the dual-use side that seriously needs  
877 revisions.

878 Pursuant to an executive order, we continue to apply the  
879 provisions of the act to the extent permitted by law and  
880 implement our regulations under another statute called the  
881 International Emergency Economic Powers Act or IEEPA. This  
882 authority provides for a limited control over domestic  
883 transfers of items subject to the EAR that are deemed to be  
884 exports. That is in the technology area, technology to  
885 foreign nationals in the United States.

886 Consistent with our existing authority, we have outreach  
887 compliance and enforcement actions that address exports, re-  
888 exports, and foreign transfers, and these include certain  
889 domestic and third-country transfers of technology deemed to  
890 be exports or re-exports based on the involvement of foreign  
891 nationals.

892 Given the volume of trade from the United States, for  
893 example, it was about \$1.3 trillion dollars worth of exports  
894 for the United States last year, informing U.S. and foreign

895 businesses of the requirements of our regulations is a  
896 critical component to our Export Control System. We have a  
897 robust outreach program which includes seminars, web  
898 information, training, phone counseling, and direct  
899 preventative enforcement visits to companies. In addition to  
900 this outreach program we also have a broad compliance and  
901 enforcement program to help ensure that exports are in accord  
902 with the regulatory requirements.

903       Regarding compliance, we do things like following up  
904 with license reporting requirements, carefully reviewing data  
905 from the automated export system, which is the system  
906 exporters put their data in before trade leaves the country,  
907 and inform U.S. manufacturers, exporters, and shippers how to  
908 avoid becoming involved in potential export violations with  
909 various publications, including red-flag indicators, one of  
910 which specifically speaks to domestic transfers.

911       With that I will turn it over to my colleague who will  
912 address the enforcement aspects of our program. Thank you,  
913 Mr. Chairman.

914       [The prepared statement of Mr. Borman follows:]

915       \*\*\*\*\* INSERT 3 \*\*\*\*\*

|

916 Mr. {Stupak.} Thank you, Mr. Borman.

917 Mr. Madigan.

|  
918 ^TESTIMONY OF THOMAS MADIGAN

919 } Mr. {Madigan.} Thank you, Mr. Chairman.

920 Mr. {Stupak.} Do you want to share that mike there?

921 There we go.

922 Mr. {Madigan.} Excuse me. Thank you, Mr. Chairman,  
923 Ranking Member Walden, and distinguished members of the  
924 subcommittee. As a follow up to Mr. Borman's comments on BIS  
925 outreach efforts, I would only add that BIS's export  
926 enforcement arm conducts additional targeted specialized  
927 outreach visits. These preventive enforcement efforts  
928 involve direct outreach to members of the exporting  
929 committee, community to educate them on export control  
930 requirements, to encourage voluntary compliance, and to  
931 detect potential violations. Over the past year we have  
932 conducted over 3,400 such targeted outreach visits.

933 BIS's mission of keeping U.S. dual-use goods and  
934 technology from being diverted to prescribed end users and  
935 end uses is an important one. Our enforcement priorities  
936 include weapons of mass destruction, proliferation,  
937 terrorism, and State sponsors of terror, and unauthorized  
938 military end use of such items. To further this mission we  
939 have special agents assigned to eight regional field offices

940 across the U.S. and in five foreign locations supported by  
941 administrative staff of analysts and other employees.

942         With respect to AES, which Matt mentioned, BIS special  
943 agents use the automated targeting system of AES to identify  
944 violators in the United States and overseas.  ATS queries can  
945 be conducted to identify unwitting suppliers to foreign  
946 diverters.  Violations can then be prevented by advising  
947 these exporters through this targeted outreach that their  
948 products may ultimately be diverted in violation of the EAR.

949         In addressing the threat of dual-use diversion by  
950 foreign procurement networks, BIS sometimes encounters  
951 circumstances in which foreign parties have attempted to  
952 secure what appears to be a domestic order but which is, in  
953 fact, intended for export.  During its targeted outreach BIS  
954 has identified such attempts in the past and has investigated  
955 and prosecuted the suspects with its partner agencies.

956         A recent example of this included the disruption of the  
957 network attempting to control--to acquire controlled thermal  
958 imaging cameras for export to the PRC.  After receiving an  
959 industry tip and conducting a thorough investigation, the  
960 suspects were arrested while boarding a flight to Beijing  
961 with ten of the controlled cameras concealed in their  
962 luggage.  Due to the successful outreach in this case, agents  
963 were able to interdict the goods, disrupt the domestic

964 procurement attempt, and prosecute the individuals involved.

965           We greatly appreciate the opportunity to testify in  
966 front of the committee today, subcommittee today, regarding  
967 BIS's important national security mission. Our dedicated  
968 staff, with support from many other agencies, is committed to  
969 protecting our national security, foreign policy, and  
970 economic interests by ensuring secure trade in high-  
971 technology items, so we welcome this discussion.

972           We would be pleased to answer any questions you may  
973 have.

974           Mr. {Stupak.} Thank you, Mr. Madigan.

975           Mr. Alvis, your opening statement, please, sir, and pull  
976 that mike up and you got to hit the button there. It should  
977 turn on a green light, and you'll be all set there. Pull  
978 that up there a little bit. Thanks.

|  
979 ^TESTIMONY OF MICHAEL ALVIS

980 } Mr. {Alvis.} Good morning. Chairman Stupak, Ranking  
981 Member Walden, members of the committee. My name is Mike  
982 Alvis, and I am a Vice President at ITT Night Vision, a \$500  
983 million business within the ITT Corporation, Fortune 500  
984 corporation with over 40,000 employees worldwide. Our  
985 products serve a broad range of applications in both military  
986 and commercial markets. They include products like pumps for  
987 residential and commercial water, imagers on weather  
988 satellites, and the ground station network for the next  
989 generation U.S. air traffic control system.

990 I am joined at the hearing today by Mr. Gregg Nivala,  
991 ITT's general counsel and the head of our trade compliance  
992 organization. His organization monitors all--the sale of all  
993 products, military and commercial. Also in attendance today  
994 is Mrs.--Ms. Ann Davidson, Corporate Vice President at our  
995 world headquarters, and she serves as ITT's Vice President  
996 for Corporate Responsibility. Also in attendance is Mr. Doc  
997 Syres, our Vice President for Congressional Relations.

998 ITT has been in the night-vision business for 50 years.  
999 We are pleased to make ourselves available to this committee  
1000 as it investigates the sale of sensitive military technology

1001 into the commercial marketplace. In the interest of full  
1002 disclosure, in early 2007, ITT settled a criminal matter with  
1003 the U.S. Department of Justice by pleading guilty to  
1004 violations of the International Traffic and Arms Control  
1005 Regulations or ITAR. The individuals joining me here today  
1006 hold key positions created as a result of that settlement,  
1007 and they serve at the corporate and business unit level that  
1008 is designed to ensure that all ITT employees know and  
1009 understand the law and operate their business activities  
1010 legally and ethically.

1011 Ms. Davidson is the first ever Vice President for  
1012 Corporate Responsibility and presides over a worldwide  
1013 network of compliance officials that monitor the business  
1014 units to ensure that ITT moves forward with a premiere ethics  
1015 and compliance program.

1016 ITT Night Vision where I work is the world's largest  
1017 developer and manufacturer of night-vision goggles and image-  
1018 intense fire tubes for other systems. We are only one of two  
1019 manufacturers of the Generation 3 image tubes. Both  
1020 companies happen to be U.S. This is the technology of the  
1021 goggle.

1022 We began making these tubes in 1982, and have  
1023 manufactured over a million Gen 3 tubes, and we have ceased  
1024 manufacturing the Generation 2 tubes, which many of you see

1025 in the commercial marketplace and in catalogs. Our key  
1026 domestic business areas are night-vision goggles and spare  
1027 tube sales to U.S. and Federal Government agencies and State  
1028 and local first responders. ITT also sells its Generation 3  
1029 aviation goggles to the civil helicopter community, primarily  
1030 emergency medical services.

1031         Although not a governmental entity, private medical  
1032 evacuation helicopters perform a key first responder role,  
1033 and the use of night-vision goggles in their operations is  
1034 recommended by the Federal Aviation Administration. ITT is  
1035 currently in the process of doubling the number of goggles  
1036 available to the civil aviation community for Medi-Vac.

1037         Less than 1.5 percent of our sales are to commercial end  
1038 users, and 85 percent of those sales are to the civil  
1039 helicopter community I just referred to. The other .04  
1040 percent of our business, the remaining 15 percent, go to the-  
1041 -into the commercial market, but it should be noted that ITT  
1042 does not provide military specification tubes for those  
1043 sales. They go to people like ranchers, nature lovers, and  
1044 other recreational users. We call these fall-out tubes.  
1045 These are the scrap that come out of our process and as--and  
1046 they have some value commercially.

1047         ITT is also the developer and sole provider of the  
1048 enhanced night-vision goggle, the most versatile and multi-

1049 faceted night-vision device ever fielded. The ENVG and its  
1050 special 16 millimeter tube is only sold to the United States  
1051 Army, and this views also in special operations. It will  
1052 continue to ensure that U.S. forces always have the critical  
1053 technological edge or overmatch over potential adversaries.

1054 In closing, ITT is pleased to answer your questions  
1055 today concerning our technology and our experience in  
1056 developing a first-class trade compliance organization,  
1057 consistent with the requirements set forth in the ITAR. We  
1058 will limit our responses to questions concerning night-vision  
1059 technology that are in the public domain. We look forward to  
1060 your questions.

1061 [The prepared statement of Mr. Alvis follows:]

1062 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|

1063 Mr. {Stupak.} Thank you.

1064 Mr. Roush, your opening statement, please.

|  
1065 ^TESTIMONY OF JOHN ROUSH

1066 } Mr. {Roush.} Good morning, Chairman Stupak--

1067 Mr. {Stupak.} You might--you got that mike on?

1068 Mr. {Roush.} --other members of the committee. Thank  
1069 you for the opportunity to participate in today's hearing.  
1070 My name is John Roush, and I am a Senior Vice President at  
1071 Perkin Elmer and President of the company's environmental  
1072 health business segment.

1073 Perkin Elmer has a 60-year history of innovation in life  
1074 sciences, analytical instrumentation, and optoelectronics  
1075 products. We are a global leader focused on improving the  
1076 health and safety of people and the environment. We are  
1077 headquartered in Massachusetts and have about 8,500 employees  
1078 serving customers in more than 150 countries. We have  
1079 significant U.S. operations in six different States. In  
1080 2008, we reported revenue of approximately \$2 billion, and we  
1081 are proud to be a component of the S & P 500 index.

1082 As discussed, today's hearing will review the U.S.  
1083 Government's safeguards in place to prevent the unauthorized  
1084 diversion of sensitive products by a domestic purchase. Let  
1085 me say that Perkin Elmer is committed to help solve this  
1086 problem in various ways as discussed by Representatives

1087 Walden, Markey, and other members of the committee.

1088           As you know, the Department of Commerce and the  
1089 Department of State are responsible to export control  
1090 regulations within their respective jurisdiction. Let me  
1091 tell you that Perkin Elmer takes these requirements very  
1092 seriously. As part of our commitment, we have implemented an  
1093 export management system to ensure that we are complying with  
1094 all applicable U.S. export control laws. Our system  
1095 establishes a robust internal compliance capability to  
1096 prevent the transfer of sensitive or controlled products for  
1097 improper end uses or to unauthorized destinations or  
1098 purchasers.

1099           Additionally, our compliance processes incorporate the  
1100 know your customer and red-flag indicators' guidelines issued  
1101 by the U.S. Government. We have a staff of dedicated export  
1102 control compliance personnel who are regularly trained on  
1103 U.S. export control requirements and who play an integral  
1104 role in the sale of these controlled products.

1105           Let me tell you that Perkin Elmer's export compliance  
1106 program is very effective. In fact, we have been viewed a  
1107 model within our industry by various compliance agencies that  
1108 we have dealt with in the past. As mentioned by  
1109 Representative Markey, of particular interest to this  
1110 committee Perkin Elmer has also shown a track record of

1111 cooperating with government agencies in export compliance  
1112 matters.

1113           In 2003, Perkin Elmer alerted representatives of BIS's  
1114 Office of Export Enforcement of a request we had received to  
1115 purchase 200 triggered spark gaps for shipment abroad.  
1116 Perkin Elmer followed its established internal screening  
1117 procedures and identified several red flags. In this  
1118 transaction the number of items in the order quantity was  
1119 inconsistent with the stated medical purpose in that region  
1120 of the world, and the proposed sale lacked appropriate export  
1121 documentation.

1122           In this case Perkin Elmer worked closely with OEE and  
1123 other federal agencies in a sting operation involving a New  
1124 Jersey customer to track the ultimate destination for those  
1125 goods, which was Pakistan. The individual who attempted to  
1126 arrange this transaction was convicted of violating U.S.  
1127 export control laws and received a 3-year prison sentence.  
1128 We are proud that the U.S. authorities publicly acknowledged  
1129 Perkin Elmer for its role in this investigation.

1130           I want to say that Perkin Elmer is fully committed to  
1131 compliance with all applicable U.S. laws. We commend this  
1132 committee and other interested stakeholders for your interest  
1133 in considering possible ways to enhance U.S. Government  
1134 safeguards for domestic sales of certain sensitive products.

1135 We stand ready to support the committee's efforts.

1136 We do hope that such reforms will not disrupt the  
1137 ability of domestic buyers to purchase these products for  
1138 critical and legitimate medical needs. We look forward to  
1139 working with you to ensure that any such proposals are  
1140 effective and can be implemented in a reasonable manner. We  
1141 thank you for the opportunity to make this statement, and I  
1142 will be happy to take your questions at the appropriate time.

1143 [The prepared statement of Mr. Roush follows:]

1144 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|

1145 Mr. {Stupak.} Thank you.

1146 Mr. Fitton, your opening statement, please, sir.

|  
1147 ^TESTIMONY OF NICHOLAS FITTON

1148 } Mr. {Fitton.} Honorable Chairman and members of the  
1149 committee, I am Nicholas Fitton, sole owner and operator of a  
1150 small store located in Georgia Section 8. I am here today  
1151 because of the sale of an F110-GE-129 engine computer. This  
1152 is an item which is restricted from export. Other than that  
1153 there are no restrictions placed on the sale of this item.

1154 When I purchased it in 2006, from Government  
1155 Liquidations, the institute which controls the sale of  
1156 auction surplus, government military items, I filed paperwork  
1157 stating it was for resale. The customer was unknown at that  
1158 time, and that it would not be exported or altered in any  
1159 way.

1160 In December of 2008, I was contacted by a person  
1161 identifying himself as Joseph Fitzpatrick, wished to have  
1162 more information on the item. After several contacts the  
1163 individual placed an order on January 20, 2009. You have in  
1164 your possession copies of all correspondence between the  
1165 purchaser and myself, along with my inter-office file on the  
1166 transaction.

1167 After the order was placed, I had the individual fill  
1168 out an end-use certificate and send a copy of identification

1169 along with the application to my office. Unfortunately as a  
1170 seller I do not actually have access to background checks and  
1171 certificates that I could submit to a government agency such  
1172 as Government Liquidations does. The end-use certificate I  
1173 had the customer fill out is one that I copied and edited  
1174 from their website. After I received the customer's  
1175 information I obtained satellite imagery of the street  
1176 address the buyer's home address was listed as and did the  
1177 same for his place of business. The imagery verified they  
1178 were residential and business districts. I also pulled  
1179 public information on the company the buyer had listed, all  
1180 information include IP addresses of the computer the  
1181 transactions were placed from is maintained both in digital  
1182 and hard-copy formats.

1183 I also called in a favor from a local law enforcement  
1184 officer who just simply ran the buyer's name through a  
1185 computer to see if there were any wants or warrants. Pretty  
1186 much this is all that I can do as a seller.

1187 During the process I had the buyer believe a more  
1188 complex investigation was taking place than there actually  
1189 really was. I also drew the process out over a long period  
1190 of time. My experience in law enforcement military  
1191 operations has shown that the longer transactions take and  
1192 more security measures that are presented to an individual,

1193 if they are committing nefarious or criminal activities, they  
1194 tend to become nervous and back out of the transactions or  
1195 tend to give tells as to something is going wrong. The  
1196 entire process from initial contact until the package was  
1197 shipped on April 23 was over 4 months. A short time after  
1198 the package was delivered, I was contracted by your  
1199 investigators in regards to the matter, and here we are  
1200 today.

1201         What we are really looking at here has several issues  
1202 which need to be addressed. One, formal guidelines need to  
1203 be set for as to what is expected from resellers and end  
1204 users, and this needs to be something other than no exports  
1205 as we have already talked about here.

1206         Two, resources need to be opened up to resellers to  
1207 which they can validate an end user. There are currently no  
1208 such services available to vendors who sell materials deemed  
1209 sensitive. Other industries such as firearms dealers have  
1210 services available to them such as those offered by the  
1211 Bureau of Alcohol, Tobacco, and Firearms, which will allow  
1212 sellers to perform checks and investigations into those  
1213 wishing to purchase these items. Government Liquidations has  
1214 such services available and any vendor or person wishing to  
1215 purchase these items has to be checked prior to them being  
1216 able to pick up these items. Once it falls into the hands of

1217 the vendor or end user, the only requirement is not to export  
1218 the item unless prior approval is granted.

1219 The demilitarization codes is my third issue which needs  
1220 to be addressed. Right now the demilitarization codes are  
1221 fairly broad. For example, a piece of cloth is considered a  
1222 restricted item because it is used as covering for a piece of  
1223 armor or a helmet and thus classified in the same manner as  
1224 body armor. A shirt or jacket which is 40 years old and  
1225 hasn't been issued in years is classified the same way  
1226 current issue items are.

1227 And on that note we need to look at why certain items  
1228 are classified as sensitive and no longer offered for sale.  
1229 Many of these items while being available directly from  
1230 manufacturers without restrictions are sold new across the  
1231 country. Why is that same item being used by the military  
1232 and in many cases, no longer serviceable, classified as  
1233 sensitive?

1234 Also, many items which do have restrictions such as  
1235 armor, more specifically helmets, are now no longer available  
1236 for sale. These items were once available with approval by  
1237 an end-use certificate. While many people don't understand  
1238 why someone would want or need one of these, they fail to  
1239 realize that the primary consumer for such items tend to be  
1240 law enforcement agencies. Many departments only have the

1241 budget to purchase tactical equipment including ballistic  
1242 shields and helmets for their swat or quick reaction teams.  
1243 They cannot afford four or \$500 for a helmet for every patrol  
1244 officer, even realizing the first responder to a hostile  
1245 situation such as an active shooter is not a tactical unit  
1246 but actually patrol officers. These surplus military helmets  
1247 can be normally sold for under \$50.

1248         By restricting items for sale and commercial trade, not  
1249 only are you taking away items from average citizen, but in  
1250 many cases you are also affecting law enforcement as well.  
1251 Even with policies such ammunition and weapons restrictions  
1252 to civilians, law enforcement and even our military are  
1253 adversely affected. This could be seen in the 1994, assault  
1254 weapons ban and its subsequent sunset. After the ban was  
1255 lifted more companies were able to afford research and  
1256 development and quickly improve long-standing, stagnant  
1257 technologies and simultaneously improve quality and lower the  
1258 price of items used by military and law enforcement agencies.

1259         With continued heavy taxation and uncoming restrictions,  
1260 I am afraid it will not take much to make us rely on foreign  
1261 powers for our military and law enforcement needs.

1262         In conclusion, what we are dealing here with is not an  
1263 inability to enforce security measures, but a lack of policy  
1264 and procedures to enforce and lack of using commonsense to

1265 understand what the actual items are that are being sold. I  
1266 currently have a bag with several types of simple cloth items  
1267 which are current regulations considered more sensitive than  
1268 many of the items up there on display. I have no  
1269 restrictions as to what I can do with those items, however, a  
1270 piece of cloth is required for me to be returned to the  
1271 government for destruction.

1272           At this time I open myself up for any questions in  
1273 regards to these matters. Thank you.

1274           [The prepared statement of Mr. Fitton follows:]

1275 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1276           Mr. {Stupak.} Well, thank you and thank you to all of  
1277 our witnesses for your testimony, and I think it is fair to  
1278 emphasize again that the industries are here, the companies  
1279 are here and a representative for Mr. Fitton by himself,  
1280 basically a one-man operation through ITT which a \$500  
1281 million operation, did not violate any laws. Probably--and  
1282 they did cooperate with GAO after we made the purchases, but  
1283 we are going to try to expose some of the problems with the  
1284 laws or the policies that we have and see if we can't correct  
1285 them as the purpose of this hearing as we do in oversight  
1286 investigation.

1287           Let us start with questions. I will begin.

1288           Mr. Fitton, just out of curiosity, so you bought this--  
1289 the F-16 engine monitoring system computer from the  
1290 government. Right? And you are cleared by the government to  
1291 buy this stuff as surplus military?

1292           Mr. {Fitton.} That is correct, and might I add that  
1293 many of the items which I purchased over the last several  
1294 years, they have recalled, such as clothing.

1295           Mr. {Stupak.} Sure.

1296           Mr. {Fitton.} Such as helmet covers and things of that  
1297 nature. However, sensitive items such as the F-16 engine  
1298 computer, they have never asked me to return those items.

1299 Mr. {Stupak.} Okay. So you buy it, and you are  
1300 licensed by the government, you are checked out, you are  
1301 okay. But once you sell it in the United States, as long as  
1302 you sell it in the United States, there is no restriction on  
1303 that. Right?

1304 Mr. {Fitton.} That is correct.

1305 Mr. {Stupak.} What on God's green earth would anyone  
1306 want with an F-16 engine monitoring system computer? Why  
1307 would that have a resale value?

1308 Mr. {Fitton.} Well, typically a lot of items which a  
1309 lot of people wouldn't understand what someone would want  
1310 actually go to museums, collectors, I have sold a great deal  
1311 of items to movie production companies and things of that  
1312 nature--

1313 Mr. {Stupak.} Okay.

1314 Mr. {Fitton.} --out in Hollywood. And things such as  
1315 the infra-red flags there which--

1316 Mr. {Stupak.} Right.

1317 Mr. {Fitton.} --are a restricted item--

1318 Mr. {Stupak.} Right.

1319 Mr. {Fitton.} --honestly a lot of these things I  
1320 purchase from overseas countries such as China. So export  
1321 restrictions are kind of curious to me simply because a lot  
1322 of the things we are restricting from export we actually

1323 import into this country from the countries we are trying not  
1324 to export to.

1325 Mr. {Stupak.} Right.

1326 Mr. Kutz, let me ask you a couple questions. Your  
1327 undercover investigation showed how easy it is to obtain  
1328 military and dual-use items on the State Department's  
1329 Munitions List and the Commerce Department's Commerce Control  
1330 List. Your investigation also illustrated that our laws  
1331 impose few, if any, controls on domestic sales of these  
1332 items. In the post 9/11 world, I don't think it makes any  
1333 sense to assume that all attacks against the United States  
1334 will occur or will occur from overseas.

1335 So in your undercover operation, your investigators  
1336 bought seven items or several items that could be used to  
1337 make IEDs, improvised explosive devices. Is that right?

1338 Mr. {Kutz.} Yes. Several of these have IED  
1339 applications.

1340 Mr. {Stupak.} Which are those? Which items are they?  
1341 I know you have some of them up here.

1342 Mr. {Kutz.} For example, the quadruple differential  
1343 line receiver, you can put that on the monitor, too. It is--

1344 Mr. {Stupak.} Is your mike on?

1345 Mr. {Kutz.} Yes, it is.

1346 Mr. {Stupak.} Okay.

1347 Mr. {Kutz.} It is a little chip, and I think they can--

1348 Mr. {Stupak.} Okay.

1349 Mr. {Kutz.} --put it on the monitor for you. That is  
1350 one of them. The inclinometer, which I believe those are  
1351 both of my left--

1352 Mr. {Stupak.} Right.

1353 Mr. {Kutz.} --there. Those are two, and I believe some  
1354 of the other ones have other applications. We actually look  
1355 for ones that appeared to have been going to Iran as part of  
1356 prior criminal cases that were being built into IEDs and used  
1357 in Iraq. That is the type of things we are talking about.

1358 Mr. {Stupak.} Okay.

1359 Mr. {Kutz.} And this is low-end technology unlike some  
1360 of these others. This is very low end. It is potentially  
1361 available other places. Why they come to the United States  
1362 looking for it I don't know exactly.

1363 Mr. {Stupak.} Well, we have many reports that these  
1364 IEDs when they go off, they find U.S.-made parts in them.

1365 Mr. {Kutz.} Correct.

1366 Mr. {Stupak.} So it is a serious problem that we are  
1367 facing in Iraq, Afghanistan, and elsewhere right now.

1368 Mr. {Kutz.} Yes.

1369 Mr. {Stupak.} All right. Let us take a look at some of  
1370 the items you purchased. Body armor, night-vision scopes,

1371 and secure radios. Are you concerned these could be used by  
1372 not just terrorists but criminals and terrorist organizations  
1373 operating within the United States?

1374 Mr. {Kutz.} Yeah. I do think there is--especially like  
1375 the body armor seems to be more of a domestic. We didn't see  
1376 any criminal cases of export of the body armor, but there is  
1377 many criminal cases of--the Binghamton case recently, the  
1378 shooter there was--

1379 Mr. {Stupak.} That's the one up in Pittsburgh?

1380 Mr. {Kutz.} No. Binghamton, New York.

1381 Mr. {Stupak.} Okay.

1382 Mr. {Kutz.} The one where about 12 or 13 people were  
1383 murdered by someone. They had body armor. We don't know  
1384 what type of body armor, but body armor was used in some of  
1385 the bank robberies from the 1990s you are probably familiar.

1386 Mr. {Stupak.} Oh, yes. There was legislation  
1387 introduced some timeframe to restrict those sales, and we  
1388 never could get anywhere with it.

1389 Mr. {Kutz.} Yes and--

1390 Mr. {Stupak.} And I know Mr. Doyle wanted to come and  
1391 testify because of the recent shooting of three police  
1392 officers in Pittsburgh, that individual was in the body armor  
1393 that we see here today.

1394 Mr. {Kutz.} Right, and we actually have--I have a quote

1395 of actually a Craig's List ad that we had as a prior  
1396 investigation, and it actually said, and I quote, ``a must  
1397 have for any gangster.'' So that is another use of the body  
1398 armor that we understand.

1399 Mr. {Stupak.} Okay. Ms. Lasowski, let me ask you this.  
1400 You testified that GAO placed the lack of control over  
1401 sensitive military targets on your high-risk list. Correct?

1402 Ms. {Lasowski.} Yes. That is correct.

1403 Mr. {Stupak.} Okay. Let me ask you about this. The  
1404 Arms Export Control Act and the Export Administration Act  
1405 date back several decades. Were any of these laws amended or  
1406 updated at any point since 9/11?

1407 Ms. {Lasowski.} There has not been a fundamental change  
1408 in the laws. As Mr. Borman has mentioned the Export  
1409 Administration Act has lapsed--

1410 Mr. {Stupak.} Right.

1411 Ms. {Lasowski.} --and has been kept alive through  
1412 executive order and--

1413 Mr. {Stupak.} Through an emergency executive order.

1414 Ms. {Lasowski.} Exactly, and so there has not been a  
1415 major overhaul of either law.

1416 Mr. {Stupak.} Okay. For committee members, remember we  
1417 had our hearing there in April about the chemical plant in  
1418 West Virginia that blew up, and we mentioned a lot about what

1419 if a terrorist would view this as a target. Everything they  
1420 wanted to do to hit that chemical plant that we had the  
1421 hearing on, the night vision, body armor, IEDs, it is all  
1422 there. So it goes farther than that.

1423 We are going to try to keep the 5 minutes. We will keep  
1424 going back and forth. We have votes soon, so let me go to  
1425 Mr. Walden for his set of questions.

1426 Mr. {Walden.} Thank you very much, Mr. Chairman.

1427 Mr. Kutz, what kind of checks did some of the companies  
1428 run on your GAO undercover company called Monacasey Tech  
1429 Consultants? What kind of background checks, and what did  
1430 the companies think those checks would show?

1431 Mr. {Kutz.} There were a variety of controls we were  
1432 using. I want to start with the end-use certificate that was  
1433 mentioned here. If we could put that up on the monitor, too.  
1434 I actually would like to read to you. It is essentially a  
1435 self-certification that you won't export, et cetera, so it  
1436 says, ``I confirm that the products listed above,' and this  
1437 was the Ka-bank amplifier, ``will be so used for the end use  
1438 stated above and will not be used in or for nuclear,  
1439 biological, chemical weapons, or missiles capable of  
1440 delivering these weapons. I further confirm that the  
1441 products will not be exported.''

1442 So that was considered part of the control system to get

1443 a self-certification from us in several of these key  
1444 products.

1445 Mr. {Walden.} So if I wanted to do something bad with  
1446 what I got, I would just sign this and say I promise not to  
1447 use this to create a nuclear, biological, or chemical weapon.  
1448 Honest.

1449 Mr. {Kutz.} That is what--

1450 Mr. {Walden.} Signed Osama bin Laden. It would be  
1451 believable and enforceable.

1452 Mr. {Kutz.} Well, we signed it in all cases, and I  
1453 don't believe there are any other checks done. Some of the  
1454 other things just real quickly, they had copies of our  
1455 identifications, they checked to see if our credit card  
1456 worked. Some of them actually checked to see that we had a  
1457 website, and so there were some things--one actually claimed  
1458 they did a background check, but I don't know how they do a  
1459 background check of a person that doesn't exist. I am not  
1460 sure what kind of record you would get on that. So that is  
1461 the type of things we understood were happening.

1462 Mr. {Walden.} Is there any information that companies  
1463 could do or require of buyers when making a domestic purchase  
1464 of dual-use items that would identify a possible export  
1465 situation or deter a bad actor who wanted to buy the item in  
1466 order to ship it abroad? I mean, is there--how can you stop

1467 that?

1468           Mr. {Kutz.} I think it is very difficult. I think some  
1469 of the points that were made by the witnesses to my left here  
1470 are valid points. Mr. Fitton, I guess, mentioned some of the  
1471 things that he had said he did, and he maybe exhausted all  
1472 options, and it still wasn't good enough to get us. And he  
1473 appears to have a lot more training than a lot of the other  
1474 people we were probably dealing with here in recognizing a  
1475 kind of a situation like we were.

1476           Mr. {Walden.} You have met with all the manufactures  
1477 and distributors who were the subject of your investigation.  
1478 Correct?

1479           Mr. {Kutz.} We either met with or talked by phone after  
1480 this. There were no contacts with them before the  
1481 transactions.

1482           Mr. {Walden.} While any restrictions they place on  
1483 domestic sales are voluntary, do you think they were  
1484 sufficient to prevent foreign nationals or terrorists from  
1485 obtaining these sensitive items?

1486           Mr. {Kutz.} No, and as I think we had found based on  
1487 discussions with law enforcement, the kind of front company  
1488 we used and the kind of scheme we used is one that is being  
1489 used by real foreign governments and terrorist organizations  
1490 today. This is not a hypothetical. This is a real.

1491 Mr. {Walden.} That is pretty disturbing.

1492 Mr. {Kutz.} Yes, it is, and again, we, again, these  
1493 items we were successful with, and I think it raises  
1494 questions. I mean, I think that the military and the dual-  
1495 use items are different. The military, some of the  
1496 discussions here about what should be done, what possible use  
1497 does anybody have for whatever the U.S.--according to the  
1498 U.S. military this is being used today by our soldiers. Why  
1499 would anyone else need exactly what our soldiers need? That  
1500 is something that has a more easy solution than the dual use.

1501 Mr. {Walden.} Do you have your domestic buyers sign--  
1502 well, I want to go to the companies.

1503 Do you have your domestic buyers sign end-use  
1504 agreements? Could you answer verbally into the microphone  
1505 each of you?

1506 Mr. {Alvis.} Yes, sir. We have instituted as much out  
1507 of our own experience as we learned and instituted a  
1508 compliance, a rigorous compliance system. We have required  
1509 our distributors, dealers, the people that we sell to, which  
1510 is a very, very small part of our business, to sign end-use  
1511 agreements.

1512 Mr. {Walden.} Mr. Roush.

1513 Mr. {Roush.} No, we don't ask for--on domestic sales of  
1514 these items we don't ask for an end-use statement.

1515 Mr. {Walden.} Really? Okay. Mr. Fitton.

1516 Mr. {Fitton.} Yes, I do, and contrary to something that  
1517 was said earlier in the proceedings, I do require the  
1518 customer to actually say what the end use is going to be.  
1519 Granted, it is just what they are stating it is going to be.

1520 Mr. {Walden.} Right.

1521 Mr. {Fitton.} In this case it was for display, but that  
1522 is essentially all I as a buyer from the government am  
1523 required to give as well.

1524 Mr. {Walden.} So do any of you that are selling this  
1525 equipment, I realize you are following the absence of the  
1526 law, it doesn't exist, do you get comfort from these end-use  
1527 agreements? Do you see--do you share our concern that just  
1528 because somebody signs it and says I promise I won't use this  
1529 for nuclear, biological, or chemical weapons or missiles,  
1530 signed Kim John Ill, what do we do here? It doesn't--

1531 Mr. {Fitton.} Personally, if--this is what I am  
1532 required to give to the government. If it is good enough for  
1533 the government to use, shouldn't it be good enough for me to  
1534 use as a reseller? And on that note a lot of the things that  
1535 are considered dual-use technology and no longer authorized  
1536 for the government to release, these are common, off-the-  
1537 shelf items that you could be--purchase at Radio Shack,  
1538 including a oscilloscope, which the government--

1539 Mr. {Walden.} Right.

1540 Mr. {Fitton.} --no longer releases, but I as a buyer  
1541 sometimes get confused as to what I should be--

1542 Mr. {Walden.} Yeah.

1543 Mr. {Fitton.} --concerned with and what I shouldn't be  
1544 concerned with considering some of the items up here the  
1545 government doesn't seem to be very worried about where a lot  
1546 of items they should be worried about they don't care.

1547 Mr. {Walden.} I appreciate that. That is the struggle  
1548 I think we are all having here because we are all under risk,  
1549 at risk here.

1550 Thank you, Mr. Chairman. My time has expired.

1551 Mr. {Stupak.} Is this agreement there is no penalty if  
1552 you lie on it or anything like that? I mean, it is just  
1553 something to give you some comfort. Right?

1554 Mr. {Alvis.} In our case, sir, what we would do is we  
1555 would probably sever our relationship with--

1556 Mr. {Stupak.} With that buyer.

1557 Mr. {Alvis.} --that distributor or dealer.

1558 Mr. {Stupak.} But there is no criminal penalty or  
1559 anything like that?

1560 Mr. {Alvis.} Not that I know of.

1561 Mr. {Kutz.} Could I comment on that real quickly? I  
1562 mean--

1563 Mr. {Stupak.} Yes.

1564 Mr. {Kutz.} --the one value we have seen of the end  
1565 use, it doesn't really prevent anything.

1566 Mr. {Stupak.} Right.

1567 Mr. {Kutz.} Law enforcement has used it in making  
1568 criminal cases to show knowledge and intent.

1569 Mr. {Stupak.} Sure.

1570 Mr. {Kutz.} So it does have value after the fact.

1571 Mr. {Stupak.} But if I don't do it, there is no penalty  
1572 involved in it?

1573 Mr. {Kutz.} No.

1574 Mr. {Stupak.} I just wanted to clear that. Go ahead.

1575 Mr. {Walden.} Mr. Alvis, you said you would sever your  
1576 relationship with the distributor, do you go back, do any of  
1577 your companies go back and do random checks to see if the  
1578 person who signed the agreement is actually following the  
1579 agreement?

1580 Mr. {Alvis.} Our dealer agreements do require, have a  
1581 proviso that allows us to come and audit and--

1582 Mr. {Walden.} So you do audit?

1583 Mr. {Alvis.} --check to see if they do that.

1584 Mr. {Walden.} And you do audits then?

1585 Mr. {Alvis.} We have resource constraints as any other  
1586 organization does, and we have not because--we have not done

1587 that to date.

1588 Mr. {Walden.} Do any of you do audits back on this? I  
1589 realize you are not required to but--

1590 Mr. {Fitton.} Unfortunately, there is not a whole lot I  
1591 as a seller can do. I am at a little bit of a difference  
1592 situation than Mr. Alvis in that I would actually purchase--I  
1593 would be the type of customer he would sell to. Sell--

1594 Mr. {Walden.} Right.

1595 Mr. {Fitton.} --to military and law enforcement  
1596 agencies--

1597 Mr. {Walden.} Right.

1598 Mr. {Fitton.} --who are my primary buyer. But while he  
1599 would essentially come to me and see who I sold it to--

1600 Mr. {Walden.} Right.

1601 Mr. {Fitton.} --I really don't have somebody I can  
1602 report to such as the ATS to get information on my buyers  
1603 from, and this one thing that I would like to have access to.  
1604 As a firearms dealer I have got it, so why wouldn't I have it  
1605 as a sensitive materials dealer?

1606 Mr. {Walden.} Thank you, Mr. Chairman.

1607 Mr. {Stupak.} Ms. Sutton, thanks for letting us step on  
1608 your time. We will give you your 5 minutes back, Ms. Sutton,  
1609 for questions.

1610 Ms. {Sutton.} Thank you very much.

1611 Mr. Kutz, I am sitting here in a bit of astonishment at  
1612 what your undercover investigation was able to buy right here  
1613 in the United States, and if you just look at these tables, a  
1614 detonator for a nuclear bomb, an accelerometer used in a  
1615 nuclear weapons program, a steering instrument for a guided  
1616 missile, components for an IED, bulletproof vests, secure  
1617 radios, and night-vision equipment. It is as if our own  
1618 country has become a terrorist bazaar.

1619 Mr. Kutz, I know you do this for a living, but you were  
1620 surprised at your success--were you surprised at your success  
1621 in obtaining these items?

1622 Mr. {Kutz.} In some cases probably, other cases, no.  
1623 We have done work on eBay and Craig's List. We have bought  
1624 these same types of items there. We have actually bought  
1625 from the Surplus Property System from the Department of  
1626 Defense before when they were selling F-14 parts, and that  
1627 was one of the reasons I believe Congress passed a law--

1628 Ms. {Sutton.} Right.

1629 Mr. {Kutz.} --prohibiting the Department of Defense  
1630 from selling F-14 parts, which had only one customer, Iran.  
1631 And so not really would be my answer.

1632 Ms. {Sutton.} Well, your investigation is just so  
1633 important because it shows the whole picture, you know. You  
1634 found that all of these items can be easily and legally

1635 purchased inside the United States, and I want to thank the  
1636 companies who are represented here today for your cooperation  
1637 with the committee and for your willingness to look at making  
1638 changes to the law.

1639         But you, too, are looking at this issue through your  
1640 more narrow viewpoints and with respect to your products, and  
1641 I think the lesson here is that we need to look at this issue  
1642 holistically, and I think Ms. Lasowski, you would agree. We  
1643 need to see the bigger picture. Each year billions of  
1644 dollars in military and dual-use items are exported from the  
1645 U.S. as has been made clear here today, and for too long we  
1646 have viewed the problem through isolated stovepipes.

1647         And Ms. Lasowski, you are also from GAO, you have  
1648 analyzed this problem from the perspective of a federal  
1649 agency coordination, and I think you are finding support that  
1650 Mr. Kutz's undercover investigators, all that they found, you  
1651 know. Every 2 years GAO issues what is called its high-risk  
1652 report. It has been referenced, and in this report you list  
1653 some of the biggest problems in government. You have placed  
1654 the security of our sensitive military technologies on this  
1655 list.

1656         And I want to just read very quickly a portion of your  
1657 testimony that explains why. You say this, ``Poor  
1658 interagency coordination, inefficiencies in processing

1659 licensing applications, and a lack of systematic assessments  
1660 have created significant vulnerabilities in the Export  
1661 Control System. Now, Ms. Lasowski, the Departments of  
1662 Defense, State, Commerce, Homeland Security, Treasury,  
1663 Energy, and Justice all have a role in regulating exports of  
1664 defense-related technology, yet their coordination is poor.  
1665 Can you tell us why?

1666 Ms. {Lasowski.} Thank you for the opportunity to  
1667 respond to that. What we have found over the years is that  
1668 for various aspects of the Export Control System there has  
1669 not been a good coordination for agreeing upon, for example,  
1670 the jurisdiction of certain items or for enforcement actions.  
1671 Some of the individual agencies have taken some actions  
1672 towards making some improvements, and we certainly applaud  
1673 any individual agencies' attempts to improve inefficiencies  
1674 or an ineffective part of the system.

1675 However, for something as important as this, it really  
1676 is important to get all the stakeholders to look together at  
1677 this particular topic, and what we are calling for is a  
1678 reexamination of the system, and this would entail bringing  
1679 each of those agencies together to represent their particular  
1680 viewpoints and bring their knowledge and expertise to the  
1681 topic. But then in addition what we have done here, too, is  
1682 we have addressed this issue with the Office of Management

1683 and Budget. They, in turn, have informed us that given that  
1684 there--this is a cross-cutting type of issue, the National  
1685 Security Council may have an important role to play in this  
1686 reexamination, and we welcome that opportunity for bringing  
1687 all the players together to come up with solutions to the  
1688 vulnerabilities and weaknesses that we have identified over  
1689 the years.

1690 Ms. {Sutton.} Okay, and you mentioned that there have  
1691 been failures to conduct systematic assessments, and that  
1692 that failure has caused significant vulnerabilities, and if  
1693 you could just expand upon your answer a little bit, could  
1694 you tell us what assessments they should be doing?

1695 Ms. {Lasowski.} What we are calling for in terms of  
1696 those assessments is to determine how effective their system  
1697 is. The system has a particular mission and goals and  
1698 objectives, and it would be important to identify the  
1699 appropriate measures for figuring out are they meeting their  
1700 mission and their objectives, and so what we would be asking  
1701 for is to take a look at the current environment, to develop  
1702 measures that would determine whether they are being  
1703 efficient and effective in the current environment, and then  
1704 periodically measure those to see if they are making  
1705 improvements.

1706 Ms. {Sutton.} I thank you. My time is up.

1707 Mr. {Stupak.} Thank you, Ms. Sutton.

1708 Mr. Gingrey, for questions, please. Five minutes.

1709 Mr. {Gingrey.} Mr. Chairman, thank you.

1710 Mr. Borman, do you have any sense about the number of  
1711 legitimate transactions that these products go through for  
1712 legitimate purposes as part of their normal production or the  
1713 supply chain? I would just like to get a sense of how often  
1714 these products may need to change hands before they reach  
1715 their end use.

1716 Mr. {Borman.} In general terms, of course, we have just  
1717 received a copy of the report and heard the report today, so  
1718 we will have to look at this in detail, and, again, I am  
1719 talking about on the dual-use side really, the items on this  
1720 table, not the items on this table. But a lot of these are  
1721 components, so it is very likely that they will go through  
1722 several iterations either from the manufacturer to a  
1723 distributor or to a sub-vendor who then puts it into a sub-  
1724 system and so on.

1725 But one of the things we did look at in thinking about  
1726 the scale of domestic commerce, just to give you two  
1727 examples, last year it was estimated that the domestic market  
1728 for semiconductor goods was almost \$40 billion. That is just  
1729 the domestic market. The domestic market for aerospace  
1730 goods, about \$35 billion. So, you know, when you are talking

1731 about dealing with domestic, potential domestic controls on  
1732 at least the dual-use items like this, that is a significant  
1733 challenge.

1734 Now, others of these are more specialized, and maybe  
1735 some of the products like the triggered spark gap are more  
1736 specialized, and they really just go from the manufacturer to  
1737 an original manufacture equipment in OEM, and that--there is  
1738 only one transaction there. So it really varies, but these  
1739 kinds of things I think, the accelerometers, certainly the  
1740 QRS-11 chip, which goes into a component that then goes into  
1741 civil aircraft, you are talking about several stages usually.

1742 Mr. {Gingrey.} Let me do a follow up on this same  
1743 question, particularly for these items that we are talking  
1744 about that have the domestic commercial use.

1745 Is there any kind of a protocol or oversight of their  
1746 ultimate disposal process? Because at some point the  
1747 technology is going to either malfunction or exhaust its  
1748 primary purpose, and it would likely need to be discarded.  
1749 Should this--is this an area that we should be concerned  
1750 about?

1751 Mr. {Borman.} Well, again, I think there is a  
1752 distinction to be made at least currently between those  
1753 things that are exported and those that are used  
1754 commercially. So, for example, the QRS-11 chip, that is

1755 probably in thousands of commercial airliners around the  
1756 world; Boeings, air buses, Embraers, also Commadiers. To the  
1757 extent they are operating domestically and the companies need  
1758 to replace them, again, that is one set of circumstances.

1759         If they are going to be replaced abroad, then, again,  
1760 they are subject to the Export Control System, and so there  
1761 are certainly requirements that if companies want to export  
1762 them to replace them in China or some other country, they  
1763 have to go through that process.

1764         Mr. {Gingrey.} I was referring to those who were  
1765 primarily for domestic use.

1766         Let me go to--and thank you, Mr. Borman. Mr. Fitton,  
1767 thank you for being here today. As the sole employee of your  
1768 business, I know it certainly had to make a sacrifice to get  
1769 up here, and we know that this committee appreciates your  
1770 presence and your testimony.

1771         In light of what you said, it seems to me that you took  
1772 most every possible precaution that you could to evaluate  
1773 your buyer, the end user. Take a moment and further expand  
1774 on the current limitations that a reseller faces in  
1775 validating the information and the background of a potential  
1776 buyer. You touched on that just a little bit a minute ago.  
1777 Could you elaborate in the remaining time that I have got?

1778         Mr. {Fitton.} Correct. Say if you are dealing with a

1779 firearms transaction, an individual has to fill out what is  
1780 essentially an end use certificate stating that there is  
1781 nothing preventing them from purchasing the weapon or any of  
1782 this type of business. They have got their Social Security  
1783 number, their names, their addresses, everything is listed on  
1784 that application. That application is then submitted to the  
1785 ATF for approval. This may be instantaneous approval, and in  
1786 many cases take a week or 2 weeks for that approval process  
1787 to take place.

1788         This is no reason that we can't go through a similar  
1789 process to at least validate the person purchasing that item.  
1790 Now, what happens beyond that point, let us face it. If  
1791 somebody wants to do some nefarious activities to the U.S.,  
1792 they can do it. There is no way to prevent this in its  
1793 entirety. All we can do is try and do as many measures as  
1794 possible, and one of the things that we have to look at is  
1795 the fact that there are terrorists that are trying to destroy  
1796 America, there are individuals throughout the world who want  
1797 to see our downfall, but our current political correctness  
1798 and the fact that we do have so many privacy rights  
1799 protecting American citizens, these privacy rights are also  
1800 protecting the terrorists, and we are not able to actually  
1801 hunt down the real cause of what is causing damage to the  
1802 countries. It is not the items. It is the end user, simply

1803 because I could do more damage with a truck full of  
1804 fertilizer and gasoline than I can with any of the items that  
1805 have been brought up on display today.

1806 Mr. {Gingrey.} Thank you, Mr. Fitton, and I yield back,  
1807 Mr. Chairman.

1808 Mr. {Stupak.} Thanks, Mr. Gingrey.

1809 Mr. Braley for questions, please.

1810 Mr. {Braley.} Thank you, Mr. Chairman. Mr. Alvis, I  
1811 appreciated your comments about some of the changes that have  
1812 been made at ITT, but you may want to count me as someone who  
1813 is still skeptical about the progress that is being made, and  
1814 I want to talk to you about that.

1815 In 2007, your company was convicted of one of the  
1816 biggest criminal violations in the history of the Arms Export  
1817 Control Act for illegally exporting to China and other  
1818 countries technology relating to your highly-sought-after  
1819 night-vision goggles, and the company was fined \$100 million.  
1820 And I want to show you what Daniel Wilkins at the Defense  
1821 Criminal Investigative Services said about your company. He  
1822 said this, ``The illegal export of U.S. military technology  
1823 and equipment threatens our national security in the most  
1824 direct way. Americans' security and its critical military  
1825 technology are simply not up for sale.''

1826 And Julie Myers, who was the assistant secretary for

1827 U.S. Immigration and Customs Enforcement at the Department of  
1828 Homeland Security said that your company placed profits ahead  
1829 of the security of our Nation.

1830 So my question for you is are you here today to vouch on  
1831 behalf of ITT that those concerns are no longer valid about  
1832 your company?

1833 Mr. {Alvis.} Yes, we are. The people that were  
1834 involved are no longer with the company. I talked earlier in  
1835 my opening statement about the structure we put in place. I  
1836 was not there. I've only been there 2-1/2 years. I was  
1837 redeployed there along with--our entire senior staff has come  
1838 on board within the last 3 years to include our president.

1839 Mr. {Brale.} Okay. Well--

1840 Mr. {Alvis.} We are totally--yes, sir. That--

1841 Mr. {Brale.} Let us talk about that. Here is another  
1842 quote from Kenneth Wanstein, who is the assistant attorney  
1843 general at the Department of Justice, and he said, ``ITT's  
1844 exportation of this sensitive technology to China and other  
1845 nations jeopardized our national security and the safety of  
1846 our military men and women on the battlefield,'' which is an  
1847 extremely strong statement coming from the Department of  
1848 Justice.

1849 And what I don't understand and what the committee  
1850 doesn't understand is your company is still doing business

1851 with the Federal Government. Correct?

1852 Mr. {Alvis.} That is correct.

1853 Mr. {Braley.} And the Justice Department allowed your  
1854 company to defer \$50 million of that \$100 million criminal  
1855 fine by allowing you to invest it towards a new, more-  
1856 advanced line of night-vision goggles. Isn't that true?

1857 Mr. {Alvis.} That is true.

1858 Mr. {Braley.} Now, normally when a company is convicted  
1859 of illegal activities of this magnitude, they are  
1860 automatically debarred from future government contracts. Why  
1861 hasn't ITT been debarred, according to your understanding?

1862 Mr. {Alvis.} As I mentioned in my opening statement and  
1863 my written statement, we are the world leader, and we have  
1864 made drastic changes. One of the things that I think the  
1865 government believes, and this is my opinion, is that the  
1866 heart of the night-vision technology was not compromised.  
1867 The goggle is nothing but a wrapper for the tube. The tube  
1868 is the essence of the goggle. The tube cannot be reverse  
1869 engineered. The tube is--and the government is convinced of  
1870 this. I have talked to the former customer general officer  
1871 level, that the security of the United States was not  
1872 compromised via any of the activity.

1873 Mr. {Braley.} Well, that would seem to de-lie \$100  
1874 million fine, which apparently was levied in connection with

1875 the activity. Wouldn't you agree with that? That if there  
1876 is no compromise of the national security, why in the world  
1877 would \$100 million fine be imposed?

1878         Anyway, let me move on. This isn't the only time that  
1879 ITT has been engaged in illegal export activities. The  
1880 committee requested from the Department of Commerce copies of  
1881 documents relating to other ITT export violations, and one of  
1882 the documents shows that in 2007, which would have been  
1883 within the timeframe you are talking about after this  
1884 changeover in management at the company, one of your  
1885 subsidiaries, Engineered Values Group, was fined for  
1886 illegally shipping valves used in chemical and biological  
1887 weapons to China, Israel, Saudi Arabia, and Taiwan. Isn't  
1888 that right?

1889         Mr. {Alvis.} As I mentioned earlier, I am in the night-  
1890 vision business area. I have no knowledge of that.

1891         Mr. {Brale.} But that certainly would have been within  
1892 the period of time that you have indicated the company has  
1893 had a change in management if it happened in 2007.

1894         Mr. {Alvis.} We can respond to that question and get  
1895 back to you for the record. I really don't feel comfortable,  
1896 particularly under oath, responding to something I have no  
1897 knowledge about.

1898         Mr. {Brale.} All right. Then, Mr. Chairman, I would

1899 specifically request that we get an official response from  
1900 the company in regard to that question.

1901           Mr. Kutz, let me close with you. After ITT's conviction  
1902 and \$100 million fine, the company officials issued a  
1903 statement saying they had conducted a comprehensive review of  
1904 their policies and procedures and were initiating new  
1905 monitoring to prevent illegal exports. But in November,  
1906 2008, which is even later than this 2007, incident, you were  
1907 able to purchase their night-vision technology from one of  
1908 its distributors using fake company and fake individuals'  
1909 identification. Isn't that true?

1910           Mr. {Kutz.} Yes, and in fact, we became a distributor.

1911           Mr. {Braley.} So, Mr. Chairman, that illustrates why I  
1912 continue to have serious concerns about ITT's actions. The  
1913 company's history of illegal exports is troubling and raises  
1914 serious questions about whether it continues to put profits  
1915 over the security of our Nation.

1916           And in closing, Mr. Chairman, I would just like to point  
1917 out that while this hearing has been going on in response to  
1918 the memo we received from the committee, I drafted a very  
1919 simply certification that I think could address many of the  
1920 issues that have been raised here at the hearing today. It  
1921 would require the name, address, phone number, e-mail,  
1922 business address, employer identification number of anyone

1923 purchasing these items, and it simply states in a very short  
1924 form, ``I understand that the item I am purchasing is, A, a  
1925 defense items under the Arms Export Control Act, or B, a  
1926 dual-use item under the Export Administration Act. I also  
1927 understand that this item is subject to export control laws  
1928 that may prevent or restrict the sale or delivery of this  
1929 item to anyone outside the United States. I am aware that I  
1930 may face criminal prosecution and or civil fines and  
1931 penalties if I attempt to sell or distribute this item in  
1932 violation of these export control laws, and I certify that  
1933 neither I nor anyone on my behalf will attempt to export this  
1934 item at any time.''

1935 Now, there is a paper trail that would certainly add  
1936 some teeth to prosecution and enforcement of anyone  
1937 attempting to violate our laws.

1938 And with that I yield back the balance of my time.

1939 Mr. {Stupak.} Thank you, Mr. Braley.

1940 Mr. Burgess for questions. Five minutes, please.

1941 Mr. {Burgess.} Thank you.

1942 Mr. Alvis, we heard I think it was Ms. Lasowski testify  
1943 that the exporter determines the level of government review.  
1944 Is that--do you generally agree with that?

1945 Mr. {Alvis.} That the company--

1946 Mr. {Burgess.} Yeah. That the exporter, the person who

1947 is doing the export of--exporting the item in question is--  
1948 because of the ambiguity of our laws and the problems with  
1949 jurisdiction, that many, much of that is left up to your  
1950 discretion. Is that a fair statement?

1951 Mr. {Alvis.} On the exports it is pretty specific. On  
1952 our international business we sell to the U.S. Government  
1953 which sells to other governments as a government-to-  
1954 government sale through the Foreign Military Sales Program,  
1955 but we also do direct sales to other militaries. ITT is in  
1956 the business of selling to militaries overseas. We can sell  
1957 to them directly, but the ITAR that I mentioned earlier does  
1958 have provisos. Every time you ship an item, every time you  
1959 get an order from an international customer, you apply to the  
1960 State Department to receive an export license. Each export  
1961 license is handled on a case-by-case basis and can have  
1962 specific provisos in it that regulate the technology. So we  
1963 just respond to whatever our government determines.

1964 Mr. {Burgess.} And do you think that is an adequate  
1965 safeguard the way that is set up, or would you structure  
1966 something different having come through the experience that  
1967 you have endured?

1968 Mr. {Alvis.} From my personal experience having used  
1969 these goggles as a military officer and also--and having been  
1970 down in the night-vision business for the past 2-1/2 years,

1971 my personal opinion is that the ITAR is rigorous enough with  
1972 its figure of merit calculations. A lot of people don't know  
1973 that the stuff we export, even to our closest allies, is not  
1974 the same night vision that the U.S. military gets. The  
1975 goggle may look the same, but the tube inside--we made 200  
1976 different types of tubes of varying degrees, all the way down  
1977 to the ones which I would not consider to be cutting edge  
1978 that we sell commercially, to the best tube that the U.S.  
1979 military gets.

1980 So my personal opinion is that the ITAR is rigorous  
1981 enough to control the export of night vision.

1982 Mr. {Burgess.} Okay. Let me ask a question. I guess,  
1983 Ms. Lasowski, I need to direct this to you. You talked about  
1984 the turf battles that go on between Commerce and State. I  
1985 guess, Mr. Chairman, I don't really understand why we don't  
1986 have the State Department here today. Perhaps that would be  
1987 helpful, but is this a frequent occurrence that these turf  
1988 battles occur between Commerce and State?

1989 Ms. {Lasowski.} We have noted various instances where  
1990 there have been jurisdictional disputes that have occurred.  
1991 Sometimes it has occurred due to some confusion about where  
1992 space technology, for example, is controlled. But the  
1993 instances that I was referring to had to do with actually an  
1994 exporter who became aware that his competitor of the very

1995 same item was going through the Department of Commerce and  
1996 utilizing that system to export his item, while this other  
1997 company was going through the State Department.

1998 Mr. {Burgess.} So they were at a competitive  
1999 disadvantage.

2000 Ms. {Lasowski.} They were at a competitive  
2001 disadvantage, and therefore--

2002 Mr. {Burgess.} Do you get--

2003 Ms. {Lasowski.} --in that kind of situation you have an  
2004 unlevel playing field--

2005 Mr. {Burgess.} Sure.

2006 Ms. {Lasowski.} --and that is why I referred to the  
2007 exporter as being really the first step in terms of deciding  
2008 which process to use.

2009 Mr. {Burgess.} Because they can venue shop or, I am  
2010 sorry, agency shop as to the most expeditious way to get  
2011 their product out.

2012 Ms. {Lasowski.} It is a complex system, and it is up to  
2013 them to be--to understand the export control laws and  
2014 regulations.

2015 Mr. {Burgess.} Why is it like that? Why is there a  
2016 dual jurisdiction?

2017 Ms. {Lasowski.} That has been--

2018 Mr. {Burgess.} I am just a simple country doctor, and

2019 so tell me, why did we set it up like that? When did it  
2020 happen, why did it happen, was there something we were trying  
2021 to accomplish by setting up this dual jurisdiction?

2022 Ms. {Lasowski.} The system is bifurcated because they  
2023 are to accomplish different activities. The State Department  
2024 is to control the most sensitive defense items, while the  
2025 Commerce Department is to control those items that are  
2026 commercial and military applications.

2027 Mr. {Burgess.} But has it always been that way?

2028 Ms. {Lasowski.} The system has been established, yes,  
2029 as that long ago.

2030 Mr. {Borman.} Sir, if I could just add a little bit to  
2031 that.

2032 Mr. {Burgess.} Yeah.

2033 Mr. {Borman.} The Export Administration Act originally  
2034 was passed in 1949, but it is a Cold War statute as I  
2035 mentioned. The Arms Export Control Act actually predates  
2036 World War II, and as Ms. Lasowski said, they originally had  
2037 different purposes. One of the challenges now is, of course,  
2038 you have so much commercial, off-the-shelf technology going  
2039 into military systems and conversely, you have some military  
2040 systems moving back into the commercial area, and that is a  
2041 big difference over the last 20 years.

2042 Mr. {Burgess.} Now, when I was just a regular person

2043 and not in Congress, I mean, I seem to recall a lot of  
2044 controversy back in the '90s about selling satellite  
2045 technology to China. Did we not get into some of this same  
2046 difficulty between Commerce and State with selling the  
2047 satellite technology to BRC back in the '90s?

2048 Ms. {Lasowski.} That is correct. The late '90s there  
2049 were export violations that occurred and then the Congress  
2050 passed legislation to change the jurisdiction of satellites  
2051 and related components from the Commerce Department to the  
2052 State Department.

2053 Mr. {Burgess.} Well, was that fix then just inadequate,  
2054 that it should have been a broader fix that has led us now to  
2055 these additional problems that we are discussing today?

2056 Ms. {Lasowski.} I think the best thing--response that I  
2057 would have for that is that we are calling for a  
2058 reexamination of the system and the whole safety net of  
2059 programs, and as part of that one of the first key steps is  
2060 determining what is it we want to control and how do we want  
2061 to control it, particularly given the challenges of the 21st  
2062 century.

2063 So it would be a good set of questions for the agencies  
2064 that are responsible to come together and discuss to see if  
2065 they are--if the current structure best supports the current  
2066 challenges.

2067 Mr. {Burgess.} That is an excellent piece of advice.

2068 Mr. Chairman, I am just concerned that 10 years ago  
2069 Congress took it upon itself to fix this problem, and here we  
2070 are 10 years later, and the problem is not fixed, and people  
2071 are put at risk, and fines are being levied. It seems like  
2072 an inconsistent way for us to be doing business. So I hope  
2073 we take this problem seriously, and I just thank the  
2074 witnesses for being here today. I think it is a terribly  
2075 important issue that we need to get resolved.

2076 I yield back.

2077 Mr. {Stupak.} That is why we are having the hearings,  
2078 and we hope to have some resolutions.

2079 Mr. Markey, for questions, and Mr. Welch, I want to try  
2080 to get you in, too, before votes.

2081 Mr. {Markey.} Thank you, Mr. Chairman.

2082 Mr. Borman, as you know, I have been a long-time critic  
2083 of your bureau's validated end-user program which allows  
2084 certain foreign companies to import certain controlled U.S.  
2085 goods without individual export licenses. Of the five  
2086 Chinese companies originally certified as validated end  
2087 users, two were found to be closely affiliated with China's  
2088 military industrial complex, and two companies that had been  
2089 under U.S. Government sanctions for proliferating WMD-related  
2090 technologies.

2091           Apparently, these bad background checks by your bureau  
2092 are continuing. On April 24 you signed an order which added  
2093 a new Chinese company, Avesa Technology, to the program, that  
2094 is this validated end-user program, which basically says we  
2095 trust you. We are not going to put you through the full  
2096 process.

2097           The order named five import destinations that Avesa was  
2098 authorized to receive certain sensitive U.S. goods without  
2099 export licenses. Here we are talking about a pressure  
2100 transducer, which is used in uranium enrichment.

2101           Are you aware that one of the import locations that you  
2102 authorized to receive a pressure transducer is also listed as  
2103 the address of a company that the United States sanctioned by  
2104 the State Department in December of 2006?

2105           Mr. {Borman.} Mr. Markey, the validated end users go  
2106 through an extensive review with many agencies including the  
2107 intelligence community and--

2108           Mr. {Markey.} Are you aware that one of them was  
2109 sanctioned in December of 2006?

2110           Mr. {Borman.} I don't believe that is correct, sir,  
2111 that any of those validated end users, the ones that we  
2112 approved, were sanctioned by the U.S. Government, because if  
2113 they were, they wouldn't have been approved.

2114           Mr. {Markey.} Okay. Then I have here pages and pages

2115 of documents that show this Chinese company called CEIEC  
2116 International Electronics, which has been sanctioned by the  
2117 State Department, is headquartered at the exact address that  
2118 you have now authorized to receive certain sensitive, dual-  
2119 use, high-technology U.S. products. The location that you  
2120 have authorized to import sensitive U.S. goods, including  
2121 pressure transducers, which are extremely important to  
2122 uranium enrichment, is Building A-23, Buxing Road, Beijing.  
2123 And these documents show the exact same address is the  
2124 headquarters of a company that has been sanctioned by our  
2125 government for WMD-related proliferation, Building A-23,  
2126 Buxing Road, Beijing.

2127         These documents were provided to me by the Wisconsin  
2128 Project on Nuclear Arms Control, which was the organization  
2129 that originally blew the whistle on your VEU Program.

2130         How is it that this small NGO can consistently do a  
2131 better background check on these Chinese companies than you  
2132 can do?

2133         Mr. {Borman.} Well, I have to say respectfully I  
2134 disagree that they can do a better job. We would be happy to  
2135 take a look at what information they provided you, they have  
2136 not provided to us, but what I can tell you is all of those  
2137 validated agencies go through a thorough interagency review,  
2138 including the intelligence community. So right now today I

2139 can't discuss this with you. We would be happy to look at  
2140 it, but I can tell you that, again, it goes through a  
2141 thorough review, and as you recall from the response our  
2142 bureau gave to you earlier on the original five, there is a  
2143 significant distinction between the specific entities that  
2144 are approved and other entities that the Wisconsin Project  
2145 is--

2146         Mr. {Markey.} Well, you have just certified a sixth  
2147 Chinese company to ignore our Export Control System, and that  
2148 is essentially what this program does, ignores the Export  
2149 Control System, sets up a special fast lane that doesn't have  
2150 the same level of scrutiny, and it is the third one where you  
2151 did not know it was associated with a company that had been  
2152 sanctioned by the United States Government.

2153         Mr. {Borman.} Well--

2154         Mr. {Markey.} And I think that when three out of the  
2155 six are, in fact, not properly scrutinized, then the program  
2156 is essentially unacceptable. It is not something that should  
2157 be in place, and we will share these documents with you, but  
2158 it just seems to me that it shouldn't be an NGO that  
2159 identifies that this new transfer is going to the exact same  
2160 address as a company which was sanctioned just 2 years ago  
2161 for violations of the very same type that we are talking  
2162 about here today.

2163           Mr. {Borman.} Well, again, all I can tell you is there  
2164 is a thorough interagency review, including the intelligence  
2165 community. We would be happy to look at that information,  
2166 but I would be very surprised if this is information that  
2167 really correlates as the Wisconsin Project apparently is  
2168 alleging.

2169           The other point I would like to make with the validated  
2170 end-user program is very extensive review. All of these  
2171 companies have extensive individual licensing history. Many  
2172 of them have been visited by U.S. Government officials in an  
2173 official capacity, and there is a check once things are  
2174 shipped there on the back end. So the requirement is that it  
2175 eliminates individual rights and requirements. They don't  
2176 get a free ride.

2177           Mr. {Markey.} Well, I just think that this whole  
2178 concept of validated end user that allows for a circumvention  
2179 of a full inspection is a very questionable process. It  
2180 would be like being at the airport and them being able to  
2181 say, well, you don't have to go around, you don't have to go  
2182 through the full screening, you don't have to go through the  
2183 full screening, but all the rest of you do. Well, if you are  
2184 going to have a program like that, then you cannot have  
2185 mistakes. You cannot have--there ought to be a trusting  
2186 relationship which is developed where the same address 2

2187 years later is receiving materials that could be used in  
2188 uranium enrichment in a country about which we still have  
2189 questions in terms of their nuclear non-proliferation record.

2190 So I thank you, Mr. Chairman, very much. I just have  
2191 very serious questions about this validated end-user program.  
2192 I think it ultimately turns into a validated end-abuser  
2193 program if, in fact, you can have violations like this, and I  
2194 will share the material with you, and I look forward to  
2195 getting a response.

2196 Thanks, Mr. Chairman.

2197 Mr. {Stupak.} Yes.

2198 Mr. {Burgess.} Mr. Chairman, can I ask unanimous  
2199 consent that Mr. Markey's documents be shared with members of  
2200 the minority as well as the witnesses?

2201 Mr. {Markey.} It will be done so. Yes.

2202 Mr. {Stupak.} For the record, shared with both.

2203 Mr. Welch, for questions, please. We got votes on the  
2204 Floor, but let us get your 5 minutes in.

2205 Mr. {Welch.} I will try to be quick.

2206 Mr. {Stupak.} No. Take your time.

2207 Mr. {Welch.} I want to ask Mr. Kutz a few questions if  
2208 I could, and it is about the nuclear weapons issues.

2209 Two weeks ago if you note North Korea detonated a  
2210 nuclear weapon during an underground test and is threatening

2211 to test fire an intercontinental ballistic missile. And what  
2212 concerns me is this. Last year the Strategic Studies  
2213 Institute, a component of the Army War College, issued a  
2214 report about the North Korean ballistic missile program, and  
2215 I don't know if you want to make this part of the record, but  
2216 that report is here.

2217         And it concluded, and this is what is relevant to us,  
2218 that North Korea almost certainly depends upon outside  
2219 sources for advanced electronic components and other  
2220 sophisticated hardware for missile guidance systems, and  
2221 incidentally, North Korea then sells what it makes, including  
2222 possibly to Iran. And the report warned that as early as  
2223 1999, North Korea was trying to procure gyros and  
2224 accelerometers and other components for its ballistic  
2225 inertial guidance.

2226         And what I want to ask you is about those two items, the  
2227 accelerometers and the GyroChips, those are two of the  
2228 categories of items that you were able to purchase using the  
2229 fake company and a fake buyer. That is right. Correct?

2230         Mr. {Kutz.} Yes.

2231         Mr. {Welch.} And I don't know if you want to put the  
2232 photos of those two items--I guess you have done that.

2233         Mr. {Kutz.} I have got these over here, too.

2234         Mr. {Welch.} All right. How easy was it for you to

2235 purchase those?

2236 Mr. {Kutz.} The accelerometer there was an end-user  
2237 certificate, and it was done by credit card, fictitious name,  
2238 bogus company, and mailbox. So that was--

2239 Mr. {Welch.} Easy.

2240 Mr. {Kutz.} --relatively simple I would say, and then  
2241 the GyroChip, the same thing, and we got a quote for  
2242 additional ones of those. So I would say that they were  
2243 similar in how difficult they were to obtain.

2244 Mr. {Welch.} And is it correct that those items can be  
2245 sold within the U.S. without any license?

2246 Mr. {Kutz.} Legally, yes.

2247 Mr. {Welch.} Okay, and let me ask you, after you bought  
2248 these items, you were then able to send them to Federal  
2249 Express to a country in southeast Asia?

2250 Mr. {Kutz.} Correct.

2251 Mr. {Welch.} And I won't ask you what country it is. I  
2252 know that is sensitive information, but can you tell us why  
2253 you chose that specific country?

2254 Mr. {Kutz.} Because it is a known transshipment point  
2255 to terrorist organizations.

2256 Mr. {Welch.} All right. So we send it there or someone  
2257 sends it there, and that is a location from which it goes to  
2258 people who are trying to do Americans warm.

2259 Mr. {Kutz.} Correct.

2260 Mr. {Welch.} These items are very small and  
2261 lightweight. Just out of curiosity, how much did it cost to  
2262 mail these halfway around the globe?

2263 Mr. {Kutz.} Fifty dollars and what we labeled them as  
2264 was documents. That was the word we used on them.

2265 Mr. {Welch.} To me your undercover investigation, thank  
2266 you for doing that, even though it is quite alarming, it  
2267 shows that our current system does not adequately prevent the  
2268 export of items that are actually used in nuclear weapons  
2269 programs. Do you agree with that conclusion?

2270 Mr. {Kutz.} Yes. I mean, that is why we chose these  
2271 items. We took the exact same part number out of indictments  
2272 and criminal cases, and that--these two items you just  
2273 mentioned are the exact same part that was cited in cases  
2274 going to China, Iran, terrorist organizations, et cetera. So  
2275 that was why we chose them so this was real examples of what  
2276 is going on.

2277 Mr. {Welch.} Well, I really thank you. It is  
2278 incredibly alarming. Mr. Chairman, it is troubling because  
2279 North Korea manufactures nuclear things and then exports  
2280 their technology. So I do hope and I appreciate your efforts  
2281 to have a thorough review of export controls.

2282 And I yield back my--the balance of my time.

2283 Mr. {Stupak.} Thanks, Mr. Welch. Mr. Doyle still plans  
2284 on coming. I am sure there will be questions after.

2285 We got votes here. Why don't we just recess until--  
2286 about 25 minutes here. How about 12:20, give you a chance to  
2287 stretch your legs. We will come right back, and I am sure we  
2288 can finish up in probably within an hour after that. So I  
2289 ask you all be back about 12:20.

2290 Thank you. We are in recess.

2291 [Recess.]

2292 Mr. {Stupak.} The hearing will come back to order.  
2293 Thanks for your patience. I know Mr. Doyle has come in and I  
2294 think one or two other members.

2295 I have a couple questions. Mr. Kutz, let me ask you  
2296 this if I--because one that sort of caught my eye was GAO's  
2297 purchase of the infrared American flag patches. I think you  
2298 have one up here. Can you pull in those on screen, what they  
2299 look what?

2300 These infrared flags can appear as a United States flag  
2301 or just a black material when you look at it. Right? A  
2302 black--

2303 Mr. {Kutz.} Right. They can appear as black or if you  
2304 use the infrared and you turn on the--

2305 Mr. {Stupak.} Right.

2306 Mr. {Kutz.} --specialized item that is made--

2307 Mr. {Stupak.} So show that. So it is black up there  
2308 and then when you look with the infrared it comes out the  
2309 American flag.

2310 Mr. {Kutz.} It looks like a U.S. flag with the goggles.  
2311 Yes.

2312 Mr. {Stupak.} That is with the night-vision technology.  
2313 And these flag patches are currently worn by our troops  
2314 during combat to help identify friendly forces at night.  
2315 What is the danger to our troops if these flags are available  
2316 to our adversaries?

2317 Mr. {Kutz.} Well, certainly on the battlefield and I  
2318 guess there are public statements made by Defense Criminal  
2319 Investigative Service and the Department of Defense that the  
2320 enemy does have these in Iraq and Afghanistan, so there is a  
2321 concern that these are the kinds of things that could--they  
2322 are supposed to be able to identify friendly versus foe, and  
2323 if the foe has them, then they are going to look like a  
2324 friend, and that is the risk.

2325 Mr. {Stupak.} Okay. Now, you purchased these flags.  
2326 Did you buy them in person or over the internet?

2327 Mr. {Kutz.} Internet.

2328 Mr. {Stupak.} How many did you purchase?

2329 Mr. {Kutz.} We purchased several, but we got a quote  
2330 for 400. They were going to ship us 400 if we wanted them.

2331 Mr. {Stupak.} Okay. So you got 400 and then you put an  
2332 offer for--I mean, you had four--

2333 Mr. {Kutz.} Like four, eight, but we--

2334 Mr. {Stupak.} Okay, and then you offered to buy 400,  
2335 and that--

2336 Mr. {Kutz.} Yes.

2337 Mr. {Stupak.} --was approved?

2338 Mr. {Kutz.} Yes. They would have shipped us 400.

2339 Mr. {Stupak.} It seems that there aren't really any  
2340 legitimate reasons for anyone other than our service men and  
2341 women to have these flags, is there?

2342 Mr. {Kutz.} No, although I think this is probably  
2343 considered lower-end technology now. It is apparently  
2344 exactly what is being used by our soldiers according to the  
2345 Department of Defense officials we spoke to.

2346 Mr. {Stupak.} Were you required to show that you were a  
2347 member of the Armed Forces in order to buy them?

2348 Mr. {Kutz.} The agreement that this distributor had  
2349 with the manufacturer was that they required a military ID,  
2350 but this distributor did not request a military ID from us,  
2351 and so we were not--we did do a counterfeit military ID in  
2352 another case, but in this one they were supposed to, and they  
2353 didn't. According to the manufacturer, this will no longer  
2354 be a distributor of theirs.

2355 Mr. {Stupak.} Like I said, this one sort of caught my  
2356 eye because no one really needs this except maybe your  
2357 military people. So I asked our staff to do some research on  
2358 this, and this--here is what they tell me.

2359 First, anyone can buy these legally in the United  
2360 States. Correct?

2361 Mr. {Kutz.} Correct.

2362 Mr. {Stupak.} And you cannot export these items to  
2363 certain countries like North Korea, China, or Afghanistan.  
2364 Correct?

2365 Mr. {Kutz.} These are on the Commerce Control List, I  
2366 believe.

2367 Mr. {Stupak.} Okay, but you can export these flags to  
2368 countries like Saudi Arabia, Yemen, and Cambodia. Is that  
2369 correct?

2370 Mr. {Kutz.} I don't know the difference in who you can  
2371 ship it to--

2372 Mr. {Stupak.} Okay.

2373 Mr. {Kutz.} --and who you can't.

2374 Mr. {Stupak.} Well, let me ask you this then. Does it  
2375 make any sense that you can--you can't export to North Korea,  
2376 China, or Afghanistan, but you can to Saudi Arabia, Yemen,  
2377 Cambodia. They are readily available here in the United  
2378 States even though there really is no use for it, I guess, as

2379 far as military and for identification. If we believe our  
2380 adversaries shouldn't have these, I think it is a pretty  
2381 bizarre way to implement that goal, and I really think it  
2382 highlights why we think we should reexamine the entire system  
2383 for controlling items that only have military uses.

2384 Mr. {Kutz.} Yeah. I concur with that. I think that  
2385 many in the military and especially the soldiers concur. I  
2386 don't think that they are excited about the items that they  
2387 use on the battlefield today being so readily available.  
2388 That is something that is a concern.

2389 Mr. {Stupak.} Mr. Fitton, would your customer base be  
2390 interested in these?

2391 Mr. {Fitton.} Actually, the largest percentage of my  
2392 customer base is military and law enforcement, and in the  
2393 past I have had difficulty getting these from U.S. suppliers.  
2394 I have purchased them directly from China. So--

2395 Mr. {Stupak.} So they export back you are saying.

2396 Mr. {Fitton.} --no matter what exports you restrict  
2397 here in the U.S., it doesn't make a difference if a Chinese  
2398 person can buy it directly from their own country. So our  
2399 export regulations won't affect this market whatsoever.

2400 Mr. {Stupak.} Buy from their own country. Do you know  
2401 if they are manufactured in China?

2402 Mr. {Fitton.} Yes. They are manufactured in China.

2403 Mr. {Stupak.} So you just export them back here, and  
2404 you can--

2405 Mr. {Fitton.} Right. This is not high-tech technology  
2406 that only the U.S. has access to. Countries around the world  
2407 produce IFF flags and patches for--

2408 Mr. {Stupak.} But then in order to view it or to see  
2409 it, you have got to have night vision, don't you?

2410 Mr. {Fitton.} Correct.

2411 Mr. {Stupak.} And I take it not very high-tech night-  
2412 vision goggles, just probably any night vision.

2413 Mr. {Fitton.} Correct. Gen 1, Gen 2, or both will  
2414 reflect it.

2415 Mr. {Borman.} Mr. Stupak, if I could just add an  
2416 observation.

2417 Mr. {Stupak.} Sure.

2418 Mr. {Borman.} Based on what I have just seen and heard,  
2419 I think it would be more likely that those items would be on  
2420 the U.S. Munitions List and not on the Commerce List.

2421 Because the definition for a military item is specifically  
2422 designed for military application, and off the top of my head  
2423 it would seem to me that is exactly what those things are.  
2424 Just a little correct there or observation.

2425 Mr. {Stupak.} But either way they are on a list, they  
2426 are restricted but readily available, or we can bring them in

2427 from China if we wanted to. So there is plenty of  
2428 opportunities for our adversaries or terrorist groups or  
2429 whatever, domestic or foreign, to get them, to use them to  
2430 harm Americans.

2431 Mr. Doyle has arrived. I know the Penguins aren't going  
2432 to show up for the game tonight, but I am glad to see you  
2433 did, so if you would like to ask some questions, now would be  
2434 a good time.

2435 Mr. {Doyle.} Later, my friend, have your fun now  
2436 because tonight you are going to be crying in your beer.

2437 Mr. {Stupak.} Are those Penguin colors you are wearing?

2438 Mr. {Doyle.} Black and gold. Yeah.

2439 Thank you, Mr. Chairman. Mr. Chairman, on April 4 in my  
2440 district three Pittsburgh police officers were killed and two  
2441 others were injured by a heavily-armed man who fired on them  
2442 as they responded to a domestic disturbance call. The three  
2443 officers who were murdered in the line of duty left five  
2444 children without their fathers. The standoff between the  
2445 armed man and the police units lasted for hours that morning.  
2446 SWAT officers were pinned down by a hail of bullets, and the  
2447 wounded policemen lay where they fell. It was complete  
2448 chaos.

2449 But the gunman, armed with an AK-47 and a number of  
2450 handguns, was protected. Although the gunman had been shot

2451 in the chest and the leg, he wore a bulletproof vest to  
2452 shield them. The gunman was able to continue to fire on the  
2453 police as a result of this protection he was wearing.

2454 Now, Mr. Kutz, you were able to purchase a bulletproof  
2455 vest over the internet, and you could have acquired the  
2456 protective inserts from the same company, enabling it to  
2457 withstand even heavy ammunition.

2458 Could you tell me how did you purchase these bulletproof  
2459 vests?

2460 Mr. {Kutz.} We actually in this case represented that  
2461 we were part of an active reserve unit and provided  
2462 counterfeit military documentation, and we were shipped this  
2463 item along with the commitment to ship 20 more.

2464 Mr. {Doyle.} Had--did they do any background check on  
2465 you?

2466 Mr. {Kutz.} I don't know. Well, the military ID seemed  
2467 to be what they were looking for.

2468 Mr. {Doyle.} What threats do you think these  
2469 bulletproof vests pose to our emergency first responders and  
2470 military?

2471 Mr. {Kutz.} I think this really is a domestic threat.  
2472 Again, I mentioned earlier when you weren't here that there--  
2473 we didn't see any export cases for these items. We see  
2474 these more as a domestic threat, something that, you know,

2475 the military's best body armor here, the ESAPIs are the newer  
2476 plates that have additional protection from the regular  
2477 SAPIs, and this is what the Marine Corps uses today. It is  
2478 hard to understand why anybody but military and potentially  
2479 law enforcement would have a use for those.

2480 Mr. {Doyle.} Thank you. Three officers from my  
2481 district were killed and two were wounded by a man who was  
2482 able to continue this onslaught because he had the same  
2483 product you were able to buy off the internet. I see no  
2484 reason, Mr. Chairman, why criminals should be able to buy  
2485 bulletproof vests for use on our streets, just as terrorists  
2486 overseas should not be able to acquire them for use on the  
2487 battlefield.

2488 Mr. Chairman, for the sake of brave Americans who make  
2489 our country and community safe, including the three brave  
2490 officers from Pittsburgh who died in the line of duty, we  
2491 have to do more to keep this equipment out of the hands of  
2492 criminals and terrorists.

2493 And I yield back.

2494 Mr. {Stupak.} Thank you, thank you, Mr. Doyle, and Mr.  
2495 Kutz mentioned earlier the gunman up in Brighton where he  
2496 killed about 12, 13 people, same thing, body armor. I  
2497 mentioned James Gelf legislation, the San Francisco police  
2498 officers on a bank robbery where there was almost like a

2499 robo-cop, just head to toe, and they got them through the  
2500 mail. And we tried to restrict that with the James Gelf  
2501 legislation I had a few years ago. We could never really put  
2502 any severe or--curtail it, and I agree with you, and that is  
2503 one of the purposes of looking at it, and I know a number of  
2504 members have mentioned both--not just terrorists but also  
2505 criminal activities with being able to purchase these items.

2506         So we will continue working on it, and thanks for your  
2507 input.

2508         Mr. {Fitton.} Mr. Chairman.

2509         Mr. {Stupak.} Yes.

2510         Mr. {Fitton.} Might I? As a dealer for these items, I  
2511 do have serious reservations when you start restricting  
2512 strictly to law enforcement and military. The reason for  
2513 this, one of the primary consumers I have interested in body  
2514 armor right now is not civilian, it is not military and law  
2515 enforcement because they are typically supplied with these  
2516 items. It is first responders such as EMT and firemen.

2517         Typically in active-shooter situations and things of  
2518 this nature they are some of the first people that are on  
2519 site. Gunmen will typically fire at anyone in uniform or of  
2520 a government capacity. Once you restrict them to military  
2521 and law enforcement, all the sudden these individuals are no  
2522 longer authorized to use, as well as contractors serving

2523 overseas in security details, as well as VIP protection  
2524 details here in the United States.

2525         So we have to really address a fine line when we start  
2526 doing restrictions to make sure individuals who do have a  
2527 need for these items can still obtain these items, and that  
2528 is something we tend to forget about when we think just  
2529 tactical situations involving military and law enforcement.

2530         Mr. {Stupak.} No. I--we are cognizant of that fact,  
2531 and but there is no reason why this stuff should be purchased  
2532 without some kind of identification, verification of who they  
2533 are. Just going on the internet I think what we have seen is  
2534 if you have a credit card that is valid, they will accept the  
2535 purchase. We don't care who you are, and this committee has  
2536 shown time and time again everything from cat, Viagra for our  
2537 cat, as long as have--that cat has a credit card, he got his  
2538 Viagra. And that is the problem we see. It is not just in  
2539 this area. We see it in drugs, we see it in pornography, we  
2540 see it in gaming, we see it in e-commerce, and there is some  
2541 legislation we are working on to really put some kind of  
2542 restrictions on this credit card or verify the individual  
2543 using that credit card before he can even use it.

2544         So there is other areas we are looking at, so while we  
2545 have this hearing, the purpose of this hearing was military  
2546 and dual-use technology, we still go back--it filters in many

2547 of the areas of jurisdiction this committee has. And so we  
2548 are trying to look at the whole thing.

2549 But you are right. You are right.

2550 Mr. Roush.

2551 Mr. {Roush.} Yes. If it is possible, I would like to  
2552 just clarify one point. I think a lot of excellent points  
2553 have been raised by the committee today, but there is one  
2554 factual point I did want to clarify. The triggered spark  
2555 gaps were mentioned in the GAO's report. We didn't get the  
2556 chance to see the report ahead of time. There is a few  
2557 things we want to clarify.

2558 Triggered spark gaps are not used as detonators for  
2559 nuclear weapons. In fact, Perkin Elmer has an entirely  
2560 separate product line that is completely ITAR controlled and  
2561 not available for commercial sale that is used in conjunction  
2562 with nuclear weapons. Triggered spark gaps are primarily  
2563 used in medical equipment, lithotripters, which are treatment  
2564 devices for kidney stones, and there is a second use of the  
2565 product on conventional munitions which accounts for the  
2566 minority of its sales.

2567 I just wanted to make that clarification.

2568 Mr. {Stupak.} Well--

2569 Mr. {Kutz.} Sir, could I just comment briefly?

2570 Mr. {Stupak.} Sure, and I want to get into that a

2571 little bit because there's the Central Contractor  
2572 Registration Database which sort of looks like it is like  
2573 government-approved site, and we are buying the stuff.

2574 Go ahead.

2575 Mr. {Kutz.} I don't know if the manufacturer knows why  
2576 these purchased, but the source of information we used was  
2577 the Department of Commerce and Justice saying that these  
2578 items could be used, and I will just for the record, if you  
2579 want me to submit it for the record, I would, too, but  
2580 according to the indictment the triggered spark gap and the  
2581 exact model number we bought could be used as a detonating  
2582 device for nuclear weapons as well as other applications.  
2583 And the testimony of Christopher Podea in 2007, asserted the  
2584 same thing for the Department of Commerce.

2585 So, again, whether it was designed for that and could be  
2586 used, again, I am not an expert at that, and I would  
2587 certainly defer to the manufacturer to what it was designed  
2588 for.

2589 Mr. {Stupak.} Well, whether it was the triggered spark  
2590 gap or a couple of these other items we purchased which are  
2591 sort of technical, a lot of them fall on this Federal Central  
2592 Contractor Registration Database, which is an approved  
2593 government supplier via the General Services Administration  
2594 Schedule. It seems to me like if you are on this Central

2595 Contractor Registration that somehow you have--it is  
2596 government approval, but yet you are able to purchase it like  
2597 there is no--it is like the government is approving what you  
2598 are doing but yet you can purchase anything you want off this  
2599 CCR Registration.

2600           Shouldn't there be some safeguards in there that if a  
2601 company is on a CCR, this database that is government  
2602 approved, that there is some restrictions on how they do the  
2603 sales or something? Or even licensing?

2604           Mr. {Kutz.} The Central Contract Registry is something-  
2605 -actually a lot of our undercover companies are in the  
2606 Central Contract Registry. I mean, no one validates anything  
2607 in there. There is approved GSA vendors that go through a  
2608 little bit more stringent process. So there is a distinction  
2609 between the CCR and an approved government vendor, I believe,  
2610 but to do business with the government you have to be  
2611 registered in the Central Contract Registry.

2612           Mr. {Stupak.} So if you are registered, doesn't it give  
2613 it some form of legitimacy to the outsider?

2614           Mr. {Kutz.} It does, and we use that all the time. We  
2615 say we are registered in the Central Contract Registry, and  
2616 it is similar to your IRB hearing several months ago where we  
2617 were registered with HHS and assured.

2618           Mr. {Stupak.} Right.

2619 Mr. {Kutz.} It did mean something to people who look at  
2620 it.

2621 Mr. {Stupak.} Well, let me ask you a little bit about  
2622 this, a little bit about know your customer, Mr. Borman, and  
2623 I think it is tab number five. Do we have a book up here?  
2624 On the far end. Mr. Fitton, could you pass that book down?

2625 Look at tab number five because it is some helpful hints  
2626 that you get from Commerce and all that on--to know your  
2627 customer, and we just have parts of your form there. It is  
2628 about a 40-page form. We have certain parts of it in there,  
2629 and I think it was page 38. I want to highlight a few  
2630 portions of this guide.

2631 First it says, ``Absent red flags, there is no  
2632 affirmative duty upon exporters to inquire, verify, or  
2633 otherwise go behind the customer's representations.'' It  
2634 also says, ``You can rely upon representations from your  
2635 customers and repeat them in the documents you file unless  
2636 red flags oblige you to take verification steps.''

2637 So, Mr. Borman, do you think this guidance is adequate  
2638 given the GAO was able to, you know, basically subvert that,  
2639 know your customer?

2640 Mr. {Borman.} Well, I think it goes back, Mr. Chairman,  
2641 to what I mentioned earlier. I think the first issue would  
2642 be for us does existing legal authority, that is the

2643 statutory authority we have, give us the authority to do  
2644 anything differently? In this case extend regulations in a  
2645 significant way to domestic transfers. And that is something  
2646 that we would have to look at very carefully to see whether  
2647 the existing authority goes that far.

2648 Mr. {Stupak.} Okay. Well, GAO is able to convince  
2649 these companies to sell sensitive military technologies every  
2650 time it tried in all 12 cases. The Commerce Department  
2651 guidance also lists--also includes a list of red flags for  
2652 companies that--for companies to look for, and I think it is  
2653 page 40 there, maybe the last one there.

2654 For examples, custom--companies should be on the lookout  
2655 if, and ``the customer is willing to pay cash,'' or ``the  
2656 customer is reluctant to offer information about the end use  
2657 of the item.'' By posting this guidance on the internet,  
2658 aren't you really informing terrorists and criminals how to  
2659 beat the system?

2660 Mr. {Borman.} Well, I think the issue is, though, we do  
2661 want legitimate companies to have some specific guidance from  
2662 the government, and it is very difficult, I think, for us to  
2663 identify the thousands, if not hundreds of thousands of U.S.  
2664 companies that do business and sort of repeat individually to  
2665 them, and it seems to me the Perkin Elmer example we talked  
2666 about earlier exactly shows the benefit of these kind of--

2667 because it is that kind of information that they have  
2668 incorporated with their product and to their corporate  
2669 compliance program that said there are some red flags on that  
2670 particular transaction, they contacted our field office in  
2671 Boston, and that is exactly what we want to have happen.

2672           So, I mean, I suppose you could take the position that,  
2673 sure, bad guys can read this and figure out, oh, I know how  
2674 to get around this, but--

2675           Mr. {Stupak.} Right.

2676           Mr. {Borman.} --you know, I think it is more important  
2677 to have all--the vast majority of companies in the United  
2678 States that want to do legitimate business to have this  
2679 information available to them so that they do come to us, and  
2680 that is a lot of our cases as Mr. Madigan can tell you--

2681           Mr. {Stupak.} Sure, but--

2682           Mr. {Borman.} --come from tips from U.S. companies.

2683           Mr. {Stupak.} --it just shows you how much the internet  
2684 has changed. I mean, if you take the way we do business,  
2685 all--most of these purchases were on the internet or over the  
2686 internet. Right, Mr. Kutz?

2687           Mr. {Kutz.} Yeah. For all the purchases we made--

2688           Mr. {Stupak.} Yes.

2689           Mr. {Kutz.} --we never spoke on the phone or met face  
2690 to face with anyone. It was all fax and e-mail transactions.

2691 Mr. {Stupak.} So it almost made the red flag almost--  
2692 you can get around it so easy.

2693 Let me ask this. Mr. Roush, if I will, you represent  
2694 Perkin Elmer, the company that sold the trigger spark plug  
2695 gap to GAO, a fake company. Your company adopted the  
2696 Department of Commerce guides right there on tab five and  
2697 created your own customer screening procedure.

2698 Mr. {Roush.} Yes.

2699 Mr. {Stupak.} Right.

2700 Mr. {Roush.} That is correct.

2701 Mr. {Stupak.} Okay. Do you agree that both your  
2702 guidance and the Commerce Department guidance was inadequate?  
2703 Would you agree with that?

2704 Mr. {Roush.} Well, I would say it doesn't protect  
2705 against the kinds of examples that you are talking about; if  
2706 somebody were to try to buy a product under a legal  
2707 transaction and then subsequently illegally, you know, use it  
2708 for a unintended use or export it--

2709 Mr. {Stupak.} Sure, but--

2710 Mr. {Roush.} --the screening might not uncover that.

2711 Mr. {Stupak.} --is your screening and even this guide  
2712 here just for honest people? Keeping honest people honest?

2713 Mr. {Roush.} I believe--

2714 Mr. {Stupak.} I mean, people who want to do us harm or

2715 terrorists, they don't care what--they aren't going to give  
2716 you an honest answer. Right?

2717 Mr. {Roush.} I think it is a valid question. What I  
2718 would say is if you make the red flags in those processes  
2719 robust enough, they start to triangulate in a way that unless  
2720 somebody is extremely informed and diligent, they are going  
2721 to become fearful as Mr. Fitton said, and back away from the  
2722 transaction, or you will start to detect that in their  
2723 behavior.

2724 Mr. {Stupak.} Well, you know, here GAO made up a  
2725 fictitious company, it had fictitious reason for wanting  
2726 these trigger spark gap, and its promise was not to export,  
2727 and then your company sort of relied upon those statements or  
2728 misstatements, but we didn't go any further to try to verify  
2729 that. Right? Your company?

2730 Mr. {Roush.} That is correct.

2731 Mr. {Stupak.} Okay. Mr. Kutz, did Perkin Elmer conduct  
2732 any verification on the representations you made? Do you  
2733 know? Did you know if anyone tried to verify what you had  
2734 said or put down? In your own--anything come back to you?

2735 Mr. {Kutz.} I don't know exactly what they did. I--  
2736 there was no end-use certificate on that one as I understand,  
2737 but we did meet with their folks, and they do have a  
2738 compliance group, and so, again, there was no violation of

2739 the law, and their processes seemed to be consistent with  
2740 some other companies we dealt with, the bigger companies.

2741 Mr. {Stupak.} Okay. Mr. Roush, if I could go back to  
2742 you there on this spark plug and--I am sorry. Spark--yes.  
2743 You submitted with your testimony an article from the Boston  
2744 Globe describing a real case which your company cooperated  
2745 with law enforcement officials to thwart an illegal shipment  
2746 of trigger spark gaps to Pakistan in 2003.

2747 Mr. {Roush.} Correct.

2748 Mr. {Stupak.} According to this article it was--the  
2749 size of the order was 200 spark gaps, which is enough to  
2750 detonate three to ten nuclear bombs, that caused your company  
2751 to alert law enforcement, and one of your spokesmen said,  
2752 ``It was such a huge quantity, a hospital buys one or two.''  
2753 Is that correct?

2754 Mr. {Roush.} Those statements are correct, and I would  
2755 say that particularly the geographic region of the world  
2756 affects whether you would view a quantity as valid or not for  
2757 medical purposes, because in the United States the healthcare  
2758 infrastructure is much larger. So it is normal that  
2759 customers in the United States might order, you know, as many  
2760 as a few hundred of these, particularly if they were a  
2761 distributor serving multiple hospitals.

2762 Mr. {Stupak.} But you would know those customers,

2763 wouldn't you? Pretty much?

2764 Mr. {Roush.} Typically that is correct. Yes.

2765 Mr. {Stupak.} So then Mr. Kutz, before you made your  
2766 purchase from Mr. Roush's company, Perkin Elmer, you asked  
2767 him for a quote on a larger order of trigger spark gaps.  
2768 Right?

2769 Mr. {Kutz.} One hundred. Yes.

2770 Mr. {Stupak.} Okay, and so you had a totally new  
2771 customer then asking for 100, Mr. Roush, that you never dealt  
2772 with before, and they were seeking 100 spark gaps, why didn't  
2773 that alert you, or why didn't you have law enforcement check  
2774 these guys out?

2775 Mr. {Roush.} This is actually a completely normal  
2776 practice for our new customers in all of our product lines,  
2777 including trigger spark gaps, that normally a customer will  
2778 buy one sample of something and test that under an R&D or  
2779 development process. And if it does then meet their  
2780 specifications, they are going to want to purchase production  
2781 quantities of that, so we will typically provide the pricing  
2782 for the sample and the pricing for the production quantity  
2783 upfront. That is the normal, competitive practice, and it  
2784 was followed in this case, and in fact, this, you know,  
2785 fictitious company indicated they wanted one piece for  
2786 development purposes, and if that worked in the application,

2787 then further quantities would be ordered at that time, and  
2788 you know, there would be a separate transaction that would be  
2789 screened in its own right at that time.

2790 So this was a normal commercial practice.

2791 Mr. {Stupak.} Any comments?

2792 Mr. {Kutz.} That could very well be true. I mean, we  
2793 didn't want to spend \$70,000 instead of \$700.

2794 Mr. {Stupak.} Right.

2795 Mr. {Kutz.} That was really the reason we did it that  
2796 way.

2797 Mr. {Stupak.} Okay. What would you use--what would a  
2798 company buy 100--what would you use 100 for? I guess I am  
2799 still trying to figure this one out.

2800 Mr. {Roush.} Well, because this part is used in the  
2801 lithotripter treatment devices in hospitals around the United  
2802 States, there is an awful lot of hospitals--it is--there are  
2803 spare parts demands as well as new system demands that we  
2804 sell 2,000 of these devices in a year, in excess of 2,000,  
2805 and 70 percent of those are for medical uses. So the  
2806 quantity of, you know, one now and potentially 100 later is  
2807 not at all unusual.

2808 Mr. {Stupak.} I see. So it wasn't the fact that 100,  
2809 it was that they had wanted one for research and then might  
2810 possibly want 100 more?

2811 Mr. {Roush.} Correct, and so we provided standard  
2812 quantity pricing for various quantities that would be  
2813 ordered. That is the normal practice. Nobody will design  
2814 your component into a system if they have no idea what they  
2815 are going to be paying once they go into production, because  
2816 they have to work towards, typically towards some kind of  
2817 cost for that system, and they want to know for planning  
2818 purposes what your price would be.

2819 Typically there is a volume discount--

2820 Mr. {Stupak.} Right.

2821 Mr. {Roush.} --you know.

2822 Mr. {Stupak.} But wouldn't you then sort of ask like,  
2823 okay, I got my one for research and--or for testing purposes  
2824 but then when I asked for 100, wouldn't you usually ask what  
2825 the product is? In this case you never even asked what they  
2826 were going to use the 100 for, did you?

2827 Mr. {Roush.} Well, in this case we did not, but I will  
2828 tell you that, you know, triggered spark gaps are not one  
2829 thing. It is a product group. Okay. We offer a lot of  
2830 different models. Most of them are specifically designed for  
2831 a range of performance of a medical device. So some of them  
2832 operate at 20 kilovolts, some at 10 kilovolts, 12. The  
2833 military versions we sell typically operate at 2 kilovolts.  
2834 There is no overlap in the operating range, so there was

2835 nothing about this that would have indicated that it was for  
2836 use in some sort of, you know, munitions application. It was  
2837 entirely consistent with our medical versions.

2838 Mr. {Stupak.} Sure, and there is no requirement under  
2839 law since it was domestic to make sure they were licensed,  
2840 and there is no requirement to follow up to end user or  
2841 anything like that. Right?

2842 Mr. {Roush.} Correct.

2843 Mr. {Stupak.} Mr. Gingrey, questions?

2844 Mr. {Gingrey.} Mr. Chairman, thank you.

2845 Let me go to Mr. Borman. Mr. Borman, some items can be  
2846 exported to some countries without a license but require a  
2847 license if going to certain other countries. Some items can  
2848 be exported to some countries as long as they are intended  
2849 for commercial purposes but not for military purposes. Some  
2850 items can't be exported to some countries for any reason.

2851 I think you are getting my drift here. With all of the  
2852 variables and exceptions, is it not--and I think it is but I  
2853 want your answer, is it not confusing for government agencies  
2854 and businesses involved in export and export controls to make  
2855 sure everyone is doing the right thing? Do you know?

2856 Mr. {Borman.} Well, that is a very good question, sir,  
2857 and it is a complex system, and I think it has evolved that  
2858 way because of what I mentioned earlier. Last year, for

2859 example, there were \$1.3 trillion worth of exports from the  
2860 United States. Probably the vast majority of those are  
2861 subject to our regulations but have graduated requirements,  
2862 depending on what the item is and where and who it is going  
2863 to.

2864         And so off the top of my head certainly the system could  
2865 be made simpler but to make it simpler I think it has to go  
2866 one of two ways. Either you drastically reduce requirements  
2867 for items and places or you drastically increase the level of  
2868 control. And when you are talking about a, you know, \$1.3  
2869 trillion worth of exports, that would have a significant  
2870 impact.

2871         And so that is why the system has evolved to try to give  
2872 exporters more and more information about the types of  
2873 transactions and the technologies that they need to be most  
2874 concerned about.

2875         Mr. {Gingrey.} Well, you earlier before we went to  
2876 vote, there was, I think Mr. Burgess from Texas was  
2877 questioning why the dual system or responsibility when you,  
2878 of course, have the Department of State and Department of  
2879 Commerce, the Department of Commerce controlling these  
2880 products that are dual use, and Department of State  
2881 controlling those that are just for military purposes and  
2882 military sales, and you got into some discussion, actually,

2883 any one of the three of you, Mr. Kutz, Ms. Lasowski, Mr.  
2884 Borman, let us elaborate that a little bit more, if you will.  
2885 Because I think what Burgess was getting at was to simply, to  
2886 make it so that the right hand will know what the left hand  
2887 is doing, the left hand will know what the right hand is  
2888 doing, it would be a more efficient way and less chances for  
2889 sales that would be inappropriate.

2890 Let us talk about that a little bit in my remaining time  
2891 and throw it open to the GAO.

2892 Ms. {Lasowski.} I think you have raised some excellent  
2893 questions because the system that was created decades ago  
2894 was--

2895 Mr. {Gingrey.} How long ago would you say the system  
2896 was created?

2897 Ms. {Lasowski.} Well, the current laws were established  
2898 in their most recent form in the 1970s, but they do date back  
2899 earlier in different forms.

2900 Mr. {Gingrey.} I think you said back into the 1940s  
2901 earlier, didn't you?

2902 Ms. {Lasowski.} There--that is where there was an  
2903 origination, yes, but the current laws that are in existence  
2904 really were in the 1970s, and there hasn't been a major  
2905 overhaul of these particular laws, and has previously  
2906 mentioned, the Export Administration Act is currently lapsed.

2907           So it is fair that in terms of a reexamination, which is  
2908 what we have been calling for, that it would be appropriate  
2909 to take a look at the current challenges that have been  
2910 evolving for the 21st century and reexamine the system to  
2911 look at the very basic questions; what is it that needs to be  
2912 controlled and how do we want to control it. And then  
2913 establish clear lines of responsibility and accountability  
2914 for how best to do that.

2915           And so those would be I think the fundamental aspects of  
2916 such a reexamination.

2917           Mr. {Gingrey.} Mr. Kutz, any comment? Mr. Borman?

2918           Mr. {Borman.} I think that--I generally agree with  
2919 that. To add a little bit of, I guess, fuel to the fire to  
2920 your concern about the complexity, we are talking about dual  
2921 use in munitions items, but there are actually several other  
2922 agencies that have direct authority to regulate the control  
2923 of other exports. For example, the Nuclear Regulatory  
2924 Commission on their Atomic Energy Act controls the export of  
2925 nuclear materials and equipment. Department of Energy has  
2926 specific authority.

2927           So it seems more complicated, although these are the two  
2928 main systems. But clearly the current threat challenges,  
2929 technologies and markets, are really challenging the system  
2930 as it currently exists.

2931 Mr. {Gingrey.} Yeah, you know, and just continue along  
2932 that same line and all these variables and exceptions, is it  
2933 not confusing for government agencies and businesses involved  
2934 in exports and export controls to make sure everyone is doing  
2935 the right thing? I mean, that is my main point.

2936 Mr. {Borman.} It is certainly a challenge. That is why  
2937 we do so much on outreach, for example. We do 30, 40, 50  
2938 outreach events every year throughout the country just BIS,  
2939 and there is a whole cottage industry of private entities  
2940 that do export control compliance seminars, I think in part  
2941 as a reaction, a market reaction to that.

2942 Mr. {Gingrey.} Are some dual-use items more sensitive  
2943 than others?

2944 Mr. {Borman.} Oh, certainly. Certainly. I mean, there  
2945 is a whole strata of--most of what we control on our  
2946 controllers are based on multi-lateral agreements by most of  
2947 the supplier countries. There is one specific, the Nuclear  
2948 Missile Technology Cambio and sort of conventional arms, and  
2949 then there is another strata that are controlled really just  
2950 to the terrorist countries or to specific bad end users in  
2951 different countries.

2952 So there is certainly a large gradation.

2953 Mr. {Gingrey.} You touched on the fact that a number of  
2954 different laws and regulations, agencies, multi-lateral

2955 agreements play a role in how we control our exports. Can  
2956 you describe some of the challenges that this presents?

2957 Mr. {Borman.} Well, absolutely. I mean, on the multi-  
2958 lateral side there is agreement, again, among most but not  
2959 all suppliers as to items to be listed but then certainly  
2960 each country has individual discretion as to how they  
2961 actually implement those controls. And what we hear a lot  
2962 from U.S. industry is that our system is much more rigorous  
2963 than other countries, and therefore, they are at a  
2964 competitive disadvantage when they are selling into markets  
2965 like China and India, for example.

2966 So that is a real challenge. Another real challenge, of  
2967 course, is what we call foreign availability. It was alluded  
2968 to earlier. There are--many of the things we control are  
2969 available from many countries including the countries that  
2970 are the target of those controls. So--

2971 Mr. {Gingrey.} Mr. Borman, thank you, and Mr. Chairman,  
2972 I yield back to you at this point.

2973 Mr. {Stupak.} Thanks. Just a couple of questions if I  
2974 may.

2975 Mr. Kutz, if I could ask you, have you got the book  
2976 there, the document binder there? I want to look at tab  
2977 number three, because one of the things that caught my  
2978 attention, you mentioned in your testimony that one seller

2979 actually signed up your fake company as a reseller or dealer.

2980 That was on the night vision. Is that right?

2981 Mr. {Kutz.} It was a distributor. It wasn't the  
2982 manufacturer.

2983 Mr. {Stupak.} Okay. No, no. It was the distributor.  
2984 Right. Not the manufacturer. So if you look at tab three,  
2985 which is the reseller dealer agreement between GAO's  
2986 fictitious company and a company called KERIF Night Vision.

2987 Mr. {Kutz.} Correct.

2988 Mr. {Stupak.} Whose idea was it to make your company,  
2989 your false company a dealer of night-vision equipment?

2990 Mr. {Kutz.} It was the only way we could get the item.  
2991 They wouldn't sell it to us otherwise, so we agreed to fill  
2992 out this agreement, and that was the way we got the items.

2993 Mr. {Stupak.} Okay. So in order to obtain the item you  
2994 had to fill out this dealer, reseller, dealer--

2995 Mr. {Kutz.} Reseller, dealer agreement was necessary to  
2996 get our target item. Yes.

2997 Mr. {Stupak.} What information were you required to  
2998 provide to become a dealer?

2999 Mr. {Kutz.} Well, it was interesting. We didn't have  
3000 to provide a Social Security number or an EIN, and that would  
3001 be something, you know, employer identification number. It  
3002 was other information, you know, name, address, and I believe

3003 other information, but it wasn't any personably identifiable  
3004 information.

3005 Mr. {Stupak.} Well, did you have a face-to-face meeting  
3006 with this company?

3007 Mr. {Kutz.} Yes, we did. No, we did not. Not until  
3008 afterwards. No.

3009 Mr. {Stupak.} Okay.

3010 Mr. {Kutz.} Afterwards. We actually met with this  
3011 individual afterwards.

3012 Mr. {Stupak.} After. So before you became a dealer you  
3013 never even had a face-to-face meeting with this company that  
3014 was going to make you a dealer of their night vision?

3015 Mr. {Kutz.} That is correct.

3016 Mr. {Stupak.} Okay. What is your understanding of what  
3017 access to night-vision equipment would you have as a dealer?

3018 Mr. {Kutz.} Well, I guess ITT could probably better  
3019 answer that because it was ultimately their product, but we  
3020 were at several levels below the distributor level so--

3021 Mr. {Stupak.} Okay.

3022 Mr. {Kutz.} --our understanding was we could have  
3023 actually purchased more of these from this individual. That  
3024 was one of the discussions, I believe, we had. We don't know  
3025 how many or under what circumstances.

3026 Mr. {Stupak.} Okay, and Mr. Alvis, I realize that your

3027 company, you are the manufacturer and there is probably  
3028 multiple layers between you and this KERIF Night Vision. Do  
3029 you know how many layers that would be between you and  
3030 probably KERIF? Two or three?

3031 Mr. {Alvis.} My guess is the company that sold to them-  
3032 -

3033 Mr. {Stupak.} Right.

3034 Mr. {Alvis.} --is probably one of our three dealers  
3035 because--

3036 Mr. {Stupak.} Okay.

3037 Mr. {Alvis.} --they do have 25 distributors, now 26.

3038 Mr. {Stupak.} But before you ever would deal with them,  
3039 would there be a couple layers?

3040 Mr. {Alvis.} We wouldn't deal with--

3041 Mr. {Stupak.} KERIF?

3042 Mr. {Alvis.} --anybody. We deal with three companies--

3043 Mr. {Stupak.} And then they--

3044 Mr. {Alvis.} --that we are allowed to audit.

3045 Mr. {Stupak.} Okay.

3046 Mr. {Alvis.} As I mentioned earlier, we haven't audited  
3047 them, however, we do cooperate with law enforcement, FBI  
3048 whenever--obviously as the biggest manufacturer whenever  
3049 there is an investigation, we cooperated with GAO on this  
3050 end.

3051           We are a resource, and every time we have gone to one of  
3052 our dealers, all their paperwork has been right on the money.  
3053 So the end-use statements that we put out there, whenever we  
3054 have had to follow up, they have always had all the paperwork  
3055 and all the documentation.

3056           Mr. {Stupak.} Well, I take it from your answer then  
3057 KERIF had no requirement of contacting you and saying, hey, I  
3058 signed up a new company to sell night vision.

3059           Mr. {Alvis.} No.

3060           Mr. {Stupak.} Okay.

3061           Mr. {Kutz.} Mr. Chairman, I would just say, too, ITT  
3062 was able to trace this item down within a couple of hours,  
3063 very quickly.

3064           Mr. {Stupak.} By going through--

3065           Mr. {Alvis.} We make 175,000 night-vision tubes a year.  
3066 Every tube we make is serial numbered whether it is going to  
3067 the U.S. military. Everything we do is ITAR, so we don't  
3068 have the dual-use distinction. Everything is ITAR. The  
3069 downgraded tubes or the non-military spec tubes that we sell  
3070 into the commercial market are also serial numbered. So  
3071 whenever GAO--and that is a very--that--there is 2  
3072 generations behind that goggle up there on the front is 2  
3073 generations behind what the U.S. Army currently has. We  
3074 could still take that serial number. We can also autopsy any

3075 tubes and see what has been done to it.

3076 Mr. {Stupak.} Sure. Let me ask you this in tab three,  
3077 and you may want to pass that down to him, in there it says,  
3078 ``KERIF shall exercise no control over the activities and  
3079 operations of reseller, dealer.'' In other words, Mr. Kutz's  
3080 company there with the GAO.

3081 Have you ever seen these agreements like that? Is that  
3082 something your distributors do, where they shall exercise no  
3083 control over the activities and operations of a reseller,  
3084 dealer?

3085 Mr. {Alvis.} I have actually never looked at a dealer  
3086 agreement that came from one of our distributors to a lower-  
3087 level distributor.

3088 Mr. {Stupak.} Okay.

3089 Mr. {Alvis.} However, I will see if our team--Greg,  
3090 have you ever looked at--

3091 Mr. {Stupak.} He can't answer. He would have to answer  
3092 through you, sir. He can advise you but he can't--

3093 Mr. {Alvis.} Oh. Okay. Fine.

3094 Mr. {Stupak.} It is also on the board up there, too.

3095 Mr. {Alvis.} KERIF, even though they are the  
3096 distributor--

3097 Mr. {Stupak.} KERIF. Okay.

3098 Mr. {Alvis.} Yeah. KERIF. They gave the agreement to

3099 the fictitious company.

3100 Mr. {Stupak.} Right.

3101 Mr. {Alvis.} They are not the one--they are not our  
3102 dealer. So there is--

3103 Mr. {Stupak.} Right.

3104 Mr. {Alvis.} --a layer in there.

3105 Mr. {Stupak.} There is a layer in there.

3106 Mr. {Alvis.} And that layer in there is required to  
3107 have the end-use statements and all the documentation that we  
3108 are likely to audit and occasionally call on them to give  
3109 back to us in cooperation with law enforcement.

3110 Mr. {Stupak.} Okay. I guess the part that gets me a  
3111 little bit is the law prohibits exports of your product  
3112 outside the United States, but when it is--but when you hire  
3113 a distributor, you don't control who that distributor signs  
3114 up as dealers of your product. So the distributor signs up a  
3115 dealer and doesn't control the activities of the dealer. So  
3116 it sounds like we got a crazy system here. You can't export,  
3117 you hire a distributor, he hires dealers, and everyone says  
3118 we exercise no control over the activities of the next  
3119 person.

3120 Go ahead.

3121 Mr. {Alvis.} This distributor, this real-world  
3122 distributor, not the fictitious company--

3123 Mr. {Stupak.} Right.

3124 Mr. {Alvis.} --would be the distributor that hired him,  
3125 would be in violation of our agreement.

3126 Mr. {Stupak.} Of your agreement?

3127 Mr. {Alvis.} Of our agreement.

3128 Mr. {Stupak.} Okay.

3129 Mr. {Fitton.} Mr. Chairman.

3130 Mr. {Stupak.} Sure.

3131 Mr. {Fitton.} As a dealer myself in night-vision  
3132 goggles and equipment, the certificates that I signed as a  
3133 dealer setting up myself as a distributor or dealer for the  
3134 company I have to agree not to export the items through any  
3135 distributor I purchase it through. So even down to my level  
3136 giving it to the end user I have to abide by these same laws  
3137 and regulations.

3138 Mr. {Stupak.} Sure, because you are in the United  
3139 States, but then after you sell it to someone, they can do  
3140 anything they want with it in a way.

3141 Mr. {Fitton.} Correct. Once it falls into civilian  
3142 hands, then it is out of our control.

3143 Mr. {Stupak.} Okay. Thanks.

3144 Mr. Gingrey, anymore questions? Wrap it up here.

3145 Mr. {Gingrey.} Mr. Chairman, thank you. I did have a  
3146 couple more that I wanted to address to the GAO, Mr. Kutz or

3147 Ms. Lasowski, excuse me.

3148           In my State of Georgia we--in fact, in my Congressional  
3149 district even we have a large number of defense contractors  
3150 and businesses, both large and small, who work every day in  
3151 good faith towards the defense of our Nation as well as the  
3152 defense of our international allies, which is also in our own  
3153 national defense.

3154           While there are clearly areas upon which we need  
3155 additional oversight, it also seems that many of these small  
3156 businesses that I represent, who play by the rules,  
3157 experience sometimes massive delays when trying to secure the  
3158 necessary licensing through the State Department and its  
3159 Directorate of Defense Trade Controls.

3160           So my first question is this. As a result of your  
3161 investigation do you have any insight with respect to the  
3162 existing process at the Directorate and its efficiency in  
3163 approving clearly, clearly aboveboard export activities, how  
3164 timely do you believe the Directorate is in the approval  
3165 process? How long should American businesses be expected to  
3166 wait in this process, because time is money obviously. They  
3167 lose these opportunities if it drags on too long, and I have  
3168 had one of these companies come to me with this concern.

3169           Mr. {Kutz.} Yeah. Nothing we did in the investigation  
3170 was aboveboard, so I will pass.

3171 Ms. {Lasowski.} Over the years we have looked at the  
3172 State Department--

3173 Mr. {Gingrey.} Is your mike on, Ms. Lasowski?

3174 Ms. {Lasowski.} Over the years--

3175 Mr. {Gingrey.} You got a sweet, low voice.

3176 Ms. {Lasowski.} Oh, thank you. Let me see if I can  
3177 speak up a little bit here.

3178 Mr. {Gingrey.} That is fine.

3179 Ms. {Lasowski.} Over the years we have looked at the  
3180 State Department's licensing process, and we have noted a  
3181 number of inefficiencies associated with the process. We  
3182 have recognized that it is important for the process to take  
3183 the time necessary to deliberate and to do various  
3184 verifications and come up with the appropriate restrictions  
3185 that will be placed on the licensed conditions for the  
3186 exports.

3187 However, we have noted that a number of inefficiencies  
3188 have delayed the process, and a couple of years ago when we  
3189 looked at the process, we noted that there were not  
3190 particular standard operating procedures, there was not a lot  
3191 of attention in terms of the--taking a triage approach in  
3192 terms of referring the licenses to the appropriate parties.

3193 So when we completed our review, we made a number of  
3194 recommendations to improve the efficiency of the licensing

3195 process. We have not been back into examine the current  
3196 state of play, however, we have been briefed by State  
3197 Department officials that they have taken a number of steps  
3198 to restructure their workforce and to establish procedures  
3199 and training in an attempt to reduce the number of licenses  
3200 that are in the pipeline and also to ensure that they are  
3201 consistent in terms of their processing with license  
3202 applications.

3203 Mr. {Gingrey.} Well, I appreciate that answer. I would  
3204 suggest to you that the problem is still there, and my  
3205 information is very, very recent, and I sincerely do believe  
3206 the problem is still there.

3207 Is this applicable as well to the Department of  
3208 Commerce? You mentioned the Department of State but--

3209 Ms. {Lasowski.} In terms of the Department of Commerce,  
3210 most of the exports can occur without an actual license  
3211 application. So very few in terms of what is ultimately  
3212 under the control is licensed and compared to a much larger  
3213 volume of licensed applications that occur at the State  
3214 Department.

3215 Mr. {Gingrey.} I see. Sure. Of course. That makes  
3216 sense. Well, thank you all very much. I appreciate the  
3217 opportunity to hear from you and ask you some questions.

3218 And I thank you, Mr. Chairman. I yield back to you.

3219 Mr. {Stupak.} Thank you, Mr. Gingrey.

3220 As I said, we started this investigation in 2008. We  
3221 are going to continue our investigation. I want to emphasize  
3222 again that the witnesses that have appeared here today, they  
3223 have created no violation of law. ITT, Perkin Elmer, and Mr.  
3224 Fitton, you guys followed the law, you did not violate the  
3225 law, and you probably followed the absence of law as I think  
3226 Mr. Walden said earlier.

3227 So that is work for this committee to do some more work,  
3228 and I want to thank you for your cooperation in providing the  
3229 requested documents as well as the other companies that were  
3230 part of this sting operation that did provide documents to  
3231 us.

3232 And I just--I have to for the record note there is one  
3233 exception. Systron Donner of Walnut Creek, California, a  
3234 company which sold the GyroChips to the GAO undercover  
3235 company, that company, Systron Donner, stands out for defiant  
3236 failure to comply with the document request from our  
3237 committee. While everybody else complied with it, they  
3238 refused to--and we are going to continue to press to receive  
3239 the information from this company.

3240 So I want to thank you for your being here, thank you  
3241 for your cooperation, thank you for your testimony, and thank  
3242 all of our witnesses. And that concludes our testimony for

3243 today.

3244           The rules provide that members have 10 days to submit  
3245 additional questions for the record. I ask unanimous consent  
3246 that the content of our document binder be entered into the  
3247 record, provided that the committee staff may redact any  
3248 information that is of business proprietary nature or relates  
3249 to privacy concerns or is a law enforcement sensitive in  
3250 nature.

3251           Without objection, the documents will be entered in the  
3252 record.

3253           That concludes our hearing. The meeting of the  
3254 subcommittee is adjourned.

3255           [Whereupon, at 1:15 p.m., the subcommittee was  
3256 adjourned.]