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Aerospace Industries Association
Alliance for Network Security
American Association of Exporters and Importers
American Bar Association Export Controls Committee
Association for Manufacturing Technology
Coalition for Employment Through Exports
Computer Coalition for Responsible Exports
Computer and Communications Industry Association
Computer Systems Policy Project
Electronic Design Automation Consortium
Electronic Industries Alliance
Industry Coalition on Technology Transfer
Information Technology Industry Council
International Safety Equipment Association
National Association of Manufacturers
National Foreign Trade Council
Satellite Industry Association
Semiconductor Equipment and Materials International
Semiconductor Industry Association
USA Engage
U.S. Chamber of Commerce
U.S.-China Business Council

September 21, 2005

The Honorable Stephen Hadley
Assistant to the President
For National Security Affairs
The White House
Washington, D.C. 20500

Dear Mr. Hadley:

We write on behalf of our members to register our concerns about the U.S. government's proposed implementation of the December, 2003, Statement of Understanding on Control of Non-Listed Dual-Use Items under the Wassenaar Arrangement. Interagency deliberations have begun on a proposed rule to impose additional licensing requirements and controls on the export of U.S.-origin dual-use items and technology to some 19 countries, including China.

Thousands of American companies, including many of our members, will be adversely affected by these new restrictions. This is because an open-ended "catch-all" regulation that covers exports and re-exports would require U.S. companies to screen all transactions globally. The burden will be particularly acute on small- and medium-sized firms.

More important, we believe the goal of the Wassenaar Statement of Understanding can be achieved by less far-reaching means. The U.S. already controls the transfer of all militarily-significant items to the countries in question. Adding a "catch-all" control would not contribute to U.S. security. If, however, there are additional specific items that the U.S. government determines should be more strictly controlled, then those items can be addressed through existing mechanisms without imposing on American exporters the burden of determining what is subject to a "catch-all". The U.S. government also could update existing regulations to reflect the current practice of denying licenses for affected military end-uses. We hope that before any regulation is proposed there will be a thorough discussion, both within the Administration and in dialogue with the potentially affected businesses, of the need for it and an explanation of how any security benefit outweighs the significant cost to the private sector.

If you nonetheless decide to proceed with the regulation, we urge that several principles, outlined below, should be reflected in it.

First, any new U.S. licensing and export controls should be consistent with those promulgated and implemented by other Wassenaar Arrangement member governments, as well as limited to implementing the Statement of Understanding. Given the widespread availability of most dual-use items and technologies, unilateral U.S. restrictions would only widen the disparity between U.S. export controls and those of other governments, including our closest allies, undercutting the goal of multilateral cooperation. Unilateral U.S. controls inevitably are futile in restricting access to dual-use items and technologies. Moreover, they erode U.S. technological leadership by shifting procurement and sourcing away from American firms to those of other supplier countries.

Second, the scope of any new U.S. licensing and controls should be limited to those items and technologies that the government has informed exporters would directly and significantly contribute to new military capabilities of the subject countries. Requiring export licenses and restricting exports of dual-use items that have minor or no impact on military capabilities would only impose a heavy burden on U.S. companies without contributing to the goal of the Wassenaar Statement of Understanding.

Third, all items that are to be subject to new licensing and controls must be explicitly identified and listed, so that U.S. companies, especially small- and medium-sized firms, will be able to comply. We are particularly concerned that this rulemaking may result in an open-ended application to items and technologies that would impose an impossible compliance burden on U.S. exporters. In addition, any new regulation should explicitly adhere to the Wassenaar Statement of Understanding that governments should inform exporters when a transfer would involve a military end-use.

Fourth, the foreign entities that are the targets of any new licensing and controls must be explicitly identified in a comprehensive list, so that U.S. companies know exactly which transactions are

subject to licensing for military end-use. The list of such entities should be limited to military and security agencies in the target countries.

While we understand the desire to implement the Wassenaar Statement of Understanding, we urge that any new U.S. controls be carefully calibrated to balance the implementation of the multilateral agreement with the burden that this new regulation will impose on American companies. We stand ready to assist your department in crafting a regulation that will achieve that critically important balance.

Sincerely,

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