

Appendix 6

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One Hundred Eighth Congress
Congress of the United States
Committee on International Relations
House of Representatives
Washington, DC 20515

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May 5, 2003

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The Honorable Colin L. Powell
Secretary
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Mr. Secretary:

I write with regard to the Department's proposed legislation for the Foreign Relations Authorization Act, Fiscal Years 2004-2005, wherein the Department seeks an amendment to the Arms Export Control Act that would permit the President to waive any or all of the statutory requirements established in section 38 of the Act relating to so-called "country exemptions."

The requirements set forth in section 38 govern the negotiation of international agreements, which must by law precede the establishment of any exemption in regulations permitting private United States persons to export munitions and arms-related technology to foreign persons located in "exempt" countries without U.S. Government review and approval through an export license. These requirements were enacted by Congress in section 102(a) of the Security Assistance Act of 2000 (Public Law 106-280) in order to ensure that United States security, foreign policy and law enforcement interests could be safeguarded through any such exemption from munitions export licensing. They were based on the specific policy objectives used by the previous Administration to justify this initiative to Congress.

Since then, separate negotiations of international agreements with Australia and the United Kingdom have been in progress for several years, and consideration is reportedly also being given in the Administration's NSPD-19 review of defense trade policies to negotiating an arrangement that would cover transnational defense companies located in France, Germany, Italy, Sweden, and Spain, as well as the United Kingdom. Based on informal representations made by Department officers to Committee staff, I understand the negotiations with Australia (completed we understand) and the United Kingdom (still continuing we understand) will not produce agreements that comport with the requirements of law. Yet, the extent to which this is

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so is not clear as the Committee has only recently been provided with the negotiated texts (draft Australia text only). The Committee has not received any section-by-section analysis of what the agreements will and will not accomplish or other documentation. Nor has the Committee received any information on the status of the Administration's NSPD-19 review, other than anecdotal reports from representatives of the defense industry who are apparently participating in the NSPD review.

I hope you will agree that any change in law such as that proposed in the Department's draft legislation should only be undertaken, if at all, following careful consideration by the Congress of all relevant facts, including a full understanding of the details of the negotiations to date, and how the Administration might use any changes in law to establish more exemptions, in addition to what is contemplated for Australia and the United Kingdom. In this respect, enclosed please find an annex that constitutes an initial request for documents and information necessary to the Committee's consideration of this matter. The Committee requests that such documents be provided for Australia at this point. With regard to the United Kingdom, I ask that similar documents be provided once those negotiations are concluded.

I would note that among the documents requested, specifically the section-by-section analysis of the proposed agreement as it relates to current law, the Committee understands that a complete analysis of the "shortfalls" of the agreement may be difficult, given that Australia is at least 12 months away (according to the Australian Embassy) from enacting the necessary implementing legislation, and underscores perhaps that the "cart is being put before the horse" with regard to the proposed waiver.

This does not imply a lack of support for the objective of deepening defense cooperation with two of our closest allies, Australia and the United Kingdom. That is why, without prejudice to the eventual enactment of changes in law, the Committee is prepared to consider, when taking up this year's authorization act, other appropriate ways in which to facilitate bilateral cooperation with these two important countries.

More generally, Mr. Secretary, please permit me to raise with you the Committee's concern with the apparent trend towards relaxation of controls over munitions and other arms-related exports, a trend that seems unwise and particularly incongruous with the increased threats to U.S. security and foreign policy interests since the attacks of September 11, 2001. Recent efforts by certain governments to circumvent or evade the arms embargo on Iraq through the supply of spare parts for military systems and other relatively inexpensive items, such as night vision goggles, preceding the onset of Operation Iraqi Freedom, suggest very strongly the need for the United States to maintain a comprehensive and stringent system of control over all military exports, and to insist that other governments, particularly our friends and allies in Europe, do the same. In this regard, one of the reasons prompting enactment of statutory criteria in this area has been the spate of press and official reports in recent years, including some from

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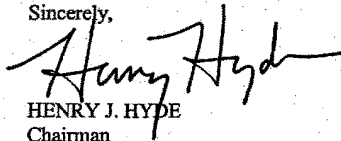
the Department, concerning illicit arms trafficking based in Europe that has largely gone unchecked, and which should be a source of serious concern to the United States and remedial action by the Department, in particular.

Further, lowering our country's standards for munitions and other arms-related transfers in part because it is advantageous to U.S. companies, can only make more complicated the already difficult job you have, Mr. Secretary, in persuading Moscow, Kiev, Beijing and others to pay less attention to weapons export earnings and more to tightening controls of their governments over those exports. The United States does not set a very high standard through a policy that makes arms exports "harder to keep track of," as stated in the Department's sectional analysis accompanying the proposal to modify section 38.

This is a moment in our Nation's history when it behooves us to strengthen, not relax, international standards for nonproliferation and military export controls. I hope that, upon examining this matter, you will come to a similar conclusion.

Thank you for your consideration of this important matter.

Sincerely,



HENRY J. HYDE
Chairman

HJH:jwr/wl
Enclosure

Annex

- (1) Copies of all documents (including any annexes, side notes, interpretative letters, etc.) that will comprise the agreements (e.g., in the case of the United Kingdom, this would include – based on our understanding to date – the agreement, the MOU and the law enforcement MOU).
- (2) Section-by-section analysis by State/L of all provisions of these documents, explaining their meaning; where and how they meet criteria of United States law, if they do; and in other instances, where and why they do not.
- (3) Copies of the C-175 documents, including any memoranda of law, instruction and reporting telegrams and other papers that comprise the negotiating record.
- (4) Description by State/L (and copies, if available) of any recent or proposed foreign laws and/or regulations that are intended to provide a basis for Australia or the United Kingdom for implementation of a United States licensing exemption.
- (5) Description by State/PM of the proposed scope of the exemption(s), as envisaged in section 38(f)(2)(A) of the Arms Export Control Act, including a detailed summary of the defense articles, defense services, and related technical data covered by the exemption(s).
- (6) Description by Justice of how the requirements of section 38(f)(2)(B) of the Act will be met.
- (7) An outline and timetable for what remains to be done on the U.S. side and the foreign government side(s).