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Congress of the United States

Washington, DC 20515

March 16, 2000

The Honorable Madeleine K. Albright
Secretary of State
U.S. Department of State
Washington, D.C. 20520

Dear Madam Secretary:

We write with respect to ongoing discussions within the Administration regarding defense globalization, in particular efforts to revise the munitions export licensing process, and other export control issues.

We are fully supportive of expediting legitimate defense exports by improving the munitions licensing process. To that end, we have strongly supported efforts to provide additional resources over the past two fiscal years to the Office of Defense Trade Controls (ODTC) to help address the lack of personnel and other resources which are needed to improve the efficiency of the munitions licensing process. In the FY 2000 Foreign Relations Authorization Act, section 1309 mandated the provision of \$9 million to ODTC for these purposes.

We are also fully supportive of addressing concerns raised by allied nations that the current munitions license process hinders defense cooperation between the U.S. and our friends in Europe, particularly as such cooperation relates to bilateral and multilateral projects that serve to enhance interoperability and coalition operations.

In this regard, we understand that it is the Administration's intent to move ahead with wide-ranging proposals to enhance transatlantic defense industry cooperation at the upcoming NATO ministerial in May.

As you consider such proposals, we want to make clear our adamant opposition to any proposal extending exemptions - i.e. a Canada-like exemption - to allied nations.

The current defense trade system, including the export control system governing munitions, is by law expressly subject to the continuous supervision and general direction of the Secretary of State under the Arms Export Control Act (AECA) and authorities that are vested in the President by the Act have virtually all been delegated to the Secretary, not other agencies. We believe that the AECA provides the appropriate structure under which the United States should continue to advance our foreign policy, national security and non-proliferation interests. State Department regulations and practice in implementing U.S. munitions laws, including the AECA, have long provided for individual, case-by-case licenses for defense exports. Yet, we understand that proposed exemptions, if extended as planned for NATO and other non-NATO allies, would exempt about eighty percent of commercial defense trade from licensing. Such exemptions are fundamentally inconsistent with the licensing scheme required by the AECA, and the legislative intent underlying the same.

Any decision to extend such exemptions, even in principle, should be made only when the recipient countries have in place an export control system comparable to that in the U.S. This means that such exemptions shall only be provided if a country has provided assurances in a legally binding document (e.g. through an exchange of notes) that details how such country will enact export control procedures that sufficiently conform to those of the United States and has drafted, promulgated and enacted necessary modifications to its laws and regulations.

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The existing Canadian exemption should not be viewed as a useful model or precedent for exemptions for other allies. It exempts defense articles and services that will remain in Canada for its use, or be returned to parent corporations in the U.S. for further export. It is only justified because of the integration of our defense industries (with most recipients of defense articles and services in Canada being subsidiaries of U.S. companies) and because our neighbor to the north was historically expected to prompt fewer law enforcement problems due to license free exports. Other allies, on the other hand, need U.S. technologies to incorporate into their defense items and for re-export. Thus any exemption initially granted for allied use could be a step down a dangerous slope toward full exemption to re-export among favored allies or a free trade zone.

We are also concerned about the extent to which other proposals under consideration infringe upon the Secretary of State's prerogatives. It is important to ensure that such proposals will not result in additional diversions of technology and will not weaken, generally, enforcement of export controls and, specifically, the ability of the United States to prosecute and extradite persons that violate U.S. export control laws.

In accordance with such views, we therefore propose a moratorium on extending exemptions to other countries pending further review and consultations with our Committees to discuss the proposals under consideration to enhance defense globalization and cooperation by revising the munitions licensing process.

Again, we stress that we are supportive in principle of expediting legitimate defense exports to our close allies. However, any proposals must be subject to careful deliberations by all parties concerned, including our respective Committees, before any steps toward implementation are taken, or commitments made to other countries.

Thank you for your attention to this issue.

With best wishes,

Sincerely,

BENJAMIN A. GILMAN
Chairman
Committee on International Relations

JESSE HELMS
Chairman
Committee on Foreign Relations

SAM GEJDENSON
Ranking Democratic Member
Committee on International Relations

JOSEPH BIDEN
Ranking Democratic Member
Committee on Foreign Relations