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H.R. 4455, A PROPOSAL TO AMEND THE  
EXPORT-IMPORT BANK ACT OF 1945

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
INTERNATIONAL DEVELOPMENT, FINANCE, TRADE  
AND MONETARY POLICY  
OF THE  
COMMITTEE ON BANKING, FINANCE AND  
URBAN AFFAIRS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JUNE 8, 1994

Printed for the use of the Committee on Banking, Finance and Urban Affairs

**Serial No. 103-144**



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# H.R. 4455, A PROPOSAL TO AMEND THE EXPORT-IMPORT BANK ACT OF 1945

WEDNESDAY, JUNE 8, 1994

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL DEVELOPMENT,  
FINANCE, TRADE AND MONETARY POLICY,  
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:35 p.m., in room 2128, Rayburn House Office Building, Hon. Barney Frank [chairman of the subcommittee] presiding.

Present: Chairman Frank, Representatives Kennedy, Bereuter, and McCandless.

Chairman FRANK. The hearing of the Subcommittee on International Development, Finance, Trade and Monetary Policy will come to order.

This hearing was called because of a legislative proposal by the ranking minority Member, the gentleman from Nebraska, who has been a very serious and effective advocate for increased international economic activity of various sorts. Part of our jurisdiction is the Export-Import Bank, and Mr. Bereuter had some useful suggestions to make, it seemed to me, about explicitly amending the charter of the Export-Import Bank in ways that would have a positive impact and, in my way of thinking, no real negative effects.

So we have called this hearing to address that legislation, and, with that, I will recognize the gentleman from Nebraska for an opening statement.

Mr. BEREUTER. I thank you very much, Mr. Chairman, and thank you for your kind words and thank you for holding this hearing on H.R. 4455, a bill I introduced on May 19. I am very appreciative of your courtesy in arranging the hearing.

H.R. 4455 would amend the Export-Import Bank Act to allow the Bank to consider financing the export of nonlethal defense articles and services when the primary end use is for civilian purposes. The bill would clarify Ex-Im's ability to consider financing a narrow range of exports of nonlethal dual-use items when the primary end use will be civilian, not military.

To set this bill and my involvement in the legislation in context, I think it is useful to recall some of the previous debate on giving Ex-Im a general role as a defense export financing agency.

In each of the last several Congresses there has been lively controversy over the proper role of the Export-Import Bank in financing defense articles and services. This Member was opposed and continues to be strongly opposed to the Ex-Im becoming an agency

to finance any offensive or lethal defense articles. In 1992, I favored extending the restrictions on financing of defense articles and services to all countries, not just the less developed countries. In my opinion, the Ex-Im Bank is not the appropriate agency for general financing of defense export sales. It should focus on civilian exports.

The current situation with respect to Ex-Im Bank financing of defense articles and services is as follows: Ex-Im is now prohibited by law from financing defense articles and defense services. Section 2(b)(6)(A) of the Export-Import Bank Act states:

“The Bank shall not guarantee, insure, extend credit or participate in extension of credit in connection with any credit sale of defense articles and defense services to any country.”

In section 2(b)(6) (B) through (H), there is a limited exception made to this prohibition only in the case of defense articles or services sold primarily for antinarcotics purposes.

Ex-Im's Board of Directors has delegated to the Bank's Engineering Division the authority to review transactions with military sales potential to determine whether prohibited defense articles or services are involved. The criteria used in this review by the Engineering Division has been approved by the Ex-Im Board and are summarized by the Bank, and I will include that entire element in my statement for the record.

But I wanted to focus on item number three in a list of five.

This is number three. “If the item has dual use, it is financeable if the investigation yields convincing evidence that the item will be used only”—I am stressing only here—“for nonmilitary activities, and the buyer or user provides a certificate to that effect.”

The intent of this legislation is to let Ex-Im investigate and decide to finance dual-use items when they will be used primarily for civilian or nonmilitary activities as long as those items are nonlethal. That is the language that I have in the bill.

Examples of such items have been brought to my attention including radar systems for air traffic control, communications satellites, and surveillance technology for antipoaching and anti-smuggling. It seems likely that the principal market for such items will be in smaller countries where economies of scale dictate shared use of satellite and radar by both civilian and military users.

If an export license is required for any controlled good or service it must still be obtained in the normal way, whether or not Export-Import Bank is financing the export. Nothing in this bill changes export control requirements. Furthermore, all normal Export-Import Bank screening for creditworthiness and other factors will still apply to any loan application made possible by this proposed change in the law.

In conclusion then it is my hope that the testimony today will help the subcommittee decide whether it is reasonable to give a little more leeway to Export-Import Bank to look at financing exports which have the earmarks of a primarily civilian deal, even if there is some small military element. Right now Export-Import Bank does not have that latitude except in the case of antinarcotics uses.

I certainly don't want to put Export-Import Bank on a slippery slope or convey the impression that this is the opening for the Export-Import Bank to go into financing of defense articles for pri-



marily military use, anywhere, any time. And I look forward to hearing this testimony and working with members of the subcommittee and others to craft an amendment to the Export-Import Bank Act that will accomplish this purpose.

Thank you, Mr. Chairman, for your assistance in scheduling this hearing, and I look forward to hearing from our colleague and the two other gentlemen that will be testifying.

[The prepared statement of Mr. Bereuter can be found in the appendix.]

Chairman FRANK. I thank the gentleman. I call on another Member, the gentleman from Massachusetts, who has been on the forefront of Congressional concern about international economic activity and, in particular, with a rational policy for the Export-Import Bank.

Mr. KENNEDY. Thank you very much, Mr. Chairman. Let me thank you very much for holding this important hearing as you have continued your leadership on this committee and in this subcommittee. I appreciate all the efforts that you have made to try to bring about a more rational export policy for our country in general.

And as Mr. Bereuter has been a great advocate of making certain that we had a rational policy in terms of our exports, I think that he has no intention of trying to have his proposal be utilized for the purposes of exporting lethal defense articles or other kinds of weaponry. But it is an issue that as I have talked with Mr. Bereuter on the floor and at other times, that I have been concerned about.

We in this subcommittee looked a few years ago at the idea of allowing a sometimes exception to the current restrictions on Ex-Im lending for the purposes of exporting some helicopters, and at the time many of us—and I thought Mr. Bereuter himself—had opposed those provisions.

I have no problem with the Ex-Im being utilized for the purposes of satellite systems or other kinds of technologies that the United States ought to be involved in trying to export on a competitive basis, but I think we have to be very, very careful that we do not inadvertently enter what has already been referred to as a slippery slope.

As you know, the United States is now by far and away the world's largest arms exporter. We exported in 1992 about 14 billion dollars' worth of arms, about 57 percent of the world's total. France was second, leading at \$4 billion; and Russia was the fourth, leading at \$1.3 billion.

My sense is that if, in fact, we open up the Export-Import Bank as we found out that year—I can't remember what year the helicopter issue came up. It was probably 4 years ago or something—that we began to bang up against the ceiling of Ex-Im Bank lending. And these items are so large and the amount of money that it costs for Ex-Im to subsidize—not subsidize but to provide these issues, so dwarfs many of the smaller products that Ex-Im has used as an effective agency to help export that, very quickly, Ex-Im can bang up against their total capabilities.

So I am—while not opposed to the purposes that Mr. Bereuter has explained, I am very concerned about the specifics, and I am

also very concerned about the notion that we begin to enter a real Pandora's box by opening up this as a whole range of activities and have the Ex-Im involved in.

So Mr. Chairman, I want to thank you for holding this hearing. I look forward to working with you and Mr. Bereuter to avoid the kinds of pitfalls that I believe could take place, but I look forward to hearing from Representative Byrne and others today about their ideas on how we can structure the Ex-Im to allow these activities but not allow them to enter into arms exports, which, as I say, could provide serious problems into the future.

Thank you very much, Mr. Chairman. I look forward to the hearing.

Chairman FRANK. Thank you. I think we clearly have an area of some agreement here, and it may be that we will have to work on specific language. But I am glad to see that there is some disposition to move forward.

And we will now hear from one of our colleagues who has been very interested in this subject, and we are delighted to have with us the gentlewoman from Virginia.

#### STATEMENT OF HON. LESLIE L. BYRNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Ms. BYRNE. Thank you. And I want to thank you, Mr. Chairman and Mr. Bereuter, for inviting me to testify today, and I applaud the subcommittee's leadership on this issue.

This hearing comes at a critical time, a time when many of our defense firms are searching for ways to survive in a commercial marketplace in the light of defense cutbacks. Over the past few years, defense cuts have devastated many companies throughout the Nation and threatened their survival, and these circumstances are not going to get any better. Over the next 5 years, there is a projected 20 percent drop in defense employment and a substantial decrease in the numbers of contracts going to defense firms is anticipated.

For many of the companies in northern Virginia, this is not an academic debate. It has real life implications for their survival. Gone are the days when defense companies can rely on DOD contracts alone. If we are going to keep our economy strong, our defense base viable, and our technology base formidable, then we must accept the challenge of ensuring the health of our high-tech communities. Currently, we are not giving these communities the bridge they need to make a successful transition.

Providing incentives to defense firms to move out of the defense market and into the commercial marketplace is a commonsense solution. When we talk about defense conversion, providing loan guarantees through the Export-Import Bank just makes sense.

That is why I introduced H.R. 3158, the Defense Competitiveness Act, which will enable the Ex-Im Bank to provide financing for dual-use defense articles and services. I want to applaud Representative Bereuter for his continued work on this issue in the subcommittee and through his introduction of H.R. 4455.

Authorizing the Ex-Im Bank to provide financing for export of dual-use products and services is an initiative that allows defense firms the chance to apply their technologies in new arenas. This

will move defense companies away from the production of tanks and fighter jets and toward the manufacture of technologies that have civilian applications. Defense firms have technologies that can evolve into commercial products and we need to provide them with the support they need to produce these peaceful technologies. The results will be more jobs here in the United States without compromising our national security.

If we want our defense firms to move forward and not drive them back into the sphere of defense contracts, then we need to look for the best way to accomplish this aim. I believe the Ex-Im Bank is the most appropriate vehicle for assisting defense companies to move into the commercial marketplace. Their focus and experience is on financing commercial products which should now be translated into a new role for them in defense conversion. Once the Ex-Im Bank begins to provide this financing, they will plant the seed of commercial production in defense firms, thereby moving them forward.

Using the experience of Ex-Im Bank in this way is not a handout to business. It is a hand-up of incentives for defense firms to diversify their product line and market it in the commercial sector. At a time when we are seeking to expand our exports and create high-paying technology jobs in the United States, using the Ex-Im Bank to assist defense companies in this way just makes sense.

As the subcommittee moves forward with your work on this issue, I would like to express my willingness to continue to work with you. Again, I want to thank Chairman Frank and Representative Bereuter for extending me this invitation and commend you for your commitment in finding a way to make this happen. Thank you, Mr. Chairman.

[The prepared statement of Ms. Byrne can be found in the appendix.]

Chairman FRANK. Thank you, Ms. Byrne. I know that you have been very concerned with assuring a reasonable transition to a lower level of defense spending so that the harm to your constituency is minimized. I regard your expertise as a very significant asset for us in this area. We appreciate your testifying, and we will be working with you in trying to develop something.

I have no questions. Any of my colleagues? Any questions for Ms. Byrne?

Mr. BEREUTER. Thank you very much, Ms. Byrne, for your testimony and your initiative. I very much appreciate it, as we all do.

I noted that you opened it up to the NATO countries and to ANZUS Pact countries and to Japan. But you also put a limit on the guarantees of \$1 billion, and I guess that could be expressed as percentage limitation if we chose to go that way, but it would tend to answer the concern that Congressman Kennedy was enunciating about disproportionate amounts of the available financing going to defense industries, and that is probably why you put it there. Would you say what is behind that figure?

Ms. BYRNE. That was exactly the expression of the gentleman from Massachusetts and was part of my thinking, too. This has a potential to eat up a lot of the resources of Ex-Im Bank and so we put a cap or a limit in the legislation that we drafted to make sure that that did not happen.

But what we face, as you gentlemen know, is that we don't have any problems selling defense articles right now through DOD. We can sell defense articles. And the question is what incentives are there to go outside Defense Department and start getting into a commercial venue. And, to me, Ex-Im made perfect sense to do that. Plus the fact that in our legislation we set some limits about what would be available so that it would not command all the resources of Ex-Im and chase out other worthy loan products.

Mr. BEREUTER. Now, as you know, Ms. Byrne, the key item in my very brief legislation is that it be an article or service that is nonlethal in nature and, second, that it is primarily geared for civilian use, such as an air control system, that may still have military implications, or at some times it might, but the primary use would be civilian. But I open it geographically without exception, and thus far, the examples I have had have mostly been countries that do not have their own Export-Import Bank equivalent; and they are developing countries—Brazil, well along toward becoming a major developed country, and a former Warsaw Pact country that has all kinds of economic problems, which they need to move into an air control system.

Do you see any aspects or major aspects of my legislation as being an alternative or partial alternative to what you are attempting to accomplish?

Ms. BYRNE. By way of answering that, I would say that the reason that we kept ours basically to our allies is to give a comfort zone, knowing of the controversy surrounding Ex-Im Bank loans and that if there was some assurance that this would be tried with allied nations rather than Third World countries. That is why we took that approach.

Conversely, I also understand that some of those same Third World countries are in most need, but knowing of the touchiness of the circumstances, I felt that it gave some people a comfort zone that we were dealing only with allies in this regard.

Mr. BEREUTER. I understand that, and my approach is to give comfort zone protection by the terms "nonlethal" and "primary use." That was my approach. I very much appreciate your legislation and your initiative and your testimony today. Thank you.

Ms. BYRNE. Thank you.

Chairman FRANK. Thank you, Ms. Byrne. Given your interest in this, we will want to work with you.

Mr. KENNEDY. Mr. Chairman.

Chairman FRANK. Mr. Kennedy.

Mr. KENNEDY. I am sorry, I thought you were—

Chairman FRANK. I was saying goodbye.

Mr. KENNEDY. If I could ask a couple of brief questions. If, in fact, it was for military use, would you allow it to be exported under the Ex-Im Bank?

Ms. BYRNE. It would have to show a dual-use capability. I think Mr. Bereuter's nonlethal language is actually better in that regard. But one of the things that we found out in our research leading up to this legislation is, for example, a company in northern Virginia was talking about trying to market a system that was used on a minesweeper, a computer system that was used on a minesweeper,

and with few technical changes it became a system that could be used for oceanographic mapping.

And they were interested in selling this system to Turkey, but they couldn't get the loan out of DOD because they fixed it so that it couldn't be used for a defense item. Yet there were no loan guarantees, unlike other nations, to use it for a peaceful purpose such as oceanographic mapping. And so it is sometimes—like with the helicopter situation you spoke of, before I came to this Congress—sometimes it is almost impossible to tell you where that line is.

Mr. KENNEDY. Just to give you some of the problems with it, I was down in Chiapas, Mexico, just in the middle of the uprising or revolution, whatever you want to refer to it as, earlier this year. And the United States had sold helicopters to Mexico with the specific purpose of—restrictions that these would be used for only police actions and for no military use. And what happened was the United States helicopters had machine guns mounted on them, and then were used to shoot the Mexican people.

And so, you are a Mexican, and you look up and you see a helicopter that is a United States helicopter that is shooting the people in Mexico; and that is not something that is, in my opinion, the kind of situation that we ought to be allowing the Ex-Im Bank to be providing support for. I just raise it as the kind of situation that can develop, and that it is complicated.

And there is just one last point that I wanted to make, which is that, in general, one of the difficulties is that we are getting—the United States is getting beaten in many cases abroad because we have not developed an opportunity for small- and medium-sized businesses to look at the opportunities that exist in foreign countries. And if we take these very sophisticated companies that are building minesweeping equipment or satellite dishes or satellites and the like, and we use Ex-Im for the purposes of those particular industries that are highly sophisticated and have very large numbers of employees and large work forces and the like, sales forces, what happens is that it becomes very easy for us to sit back and utilize existing industries, rather than having Ex-Im be used to challenge both the U.S. companies and the foreign countries to begin to develop new markets in those countries and to allow our companies to take advantage of those markets.

It is much more difficult for the employees and for everybody at Ex-Im to be involved in the latter kind of activity than in the former; where you make three sales, you have done, you know, 1½ billion dollars' worth of business, and they come in before the committee and they say, look, we have done all of this business and it looks rosy and we all say, gosh, that is terrific, versus the long-term market development that really is what Ex-Im was initially designed to try and accomplish.

So I am a little concerned about it. But as I say, I am not completely opposed to it. You have to be very careful about the language that we end up with.

Mr. BEREUTER. Will the gentleman yield? One of the things that Representative Byrne has made an interesting point in her legislation is a limit on the guarantee in any fiscal year, as well. It looks like a lot of money in 1 year, \$1 billion. I gather, from discussing with the staff, that we are talking about one-fifteenth or one-twen-

tieth or 5 percent of the total guarantee opportunities for the Ex-Im Bank. So I am wondering if the gentleman would think that in part some kind of limitation in that respect might be an approach to assuring that this particular nonlethal civilian dual use, military use equipment would not dominate the agenda, if that might be an approach.

Mr. KENNEDY. I think the difficulty is—and I would like to get the chairman's thoughts on this—that while \$1 billion this year sounds pretty good, the fact is that there are going to be a lot of people that represent districts that have an interest in export technology of military equipment. And we could easily see this program fall into \$1 billion this year, \$5 billion next year, and \$15 billion 3 years from now, which I think would gain a lot of support.

In my own district, I have had a lot of companies contact me, interested in this provision. And these guys make military equipment, and they are interested in using this as an opportunity for development of additional markets because they can get lower interest rates.

I am concerned about it. I don't have a hard or easy answer to it. But I am worried that we are taking what is essentially a program that was an attempt to give small- and medium-sized business the opportunity to develop overseas, and we are turning it into an arms program.

Chairman FRANK. I would say to the gentleman, if he would yield. There was one other problem. There has been a move, a change in direction from this focus on small and medium business, but I do think it is one where we have been largely defensive, economically defensive; that is, we have this other problem. And it is true, if companies are large enough, they shouldn't need this, but they need it when they are competing with Japan or France or Italy, who are subsidizing even their larger firms.

We have companies which have come to us not for marketing help or anything else, but simply because the Japanese or the Italians or the French are going to give their manufacturer a form of a subsidy. So I think that has been the major distorting factor. I would like to get rid of that and the best way to get rid of that is to match them. You might as well be even at zero as a 5 percent subsidy.

Mr. KENNEDY. And that is exactly why I am not opposed to attempting to get something written that allows us to do—fulfill the purposes that both Mr. Bereuter and Ms. Byrne have in mind. But I was wondering—I am not that familiar with what the upper limit on Ex-Im's lending capacity is. Maybe what we ought to be doing is saying, if we are going to allow Ex-Im to be involved in these kinds of activities that there has to be a raise on the upper limit; for every dollar that is used for this particular purpose, there has to be a rise in the upper limit of their lending authority in order to take out, so it doesn't in fact hurt the smaller companies.

Chairman FRANK. And also as I understand it—I don't know the specific ratios—CBO gives you the likelihood of default. And why don't we ask Ex-Im to come in and have an informal conversation with them to talk about creating a structure to see the different risk categories. Would it then be possible to create a limited pot

that would not impinge very much on the others? I would be glad to.

Mr. McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

Ms. Byrne, I have a concern here on the part of both bills that deals with the terms "lethal" and "nonlethal." In Mr. Bereuter's bill he leaves this, if I understand the language properly, up to the Bank itself to make that determination.

And there are a number of other more specific points in his bill relative to the lethal/nonlethal. And it is an important point in my mind, because unless we have some definition that is acceptable, it is going to be very difficult to apply.

Let's take a vehicle. A vehicle can carry people out in the field and carry products back to market; it can also carry lethal weapons to a particular location, along with the soldiers that are going to fire them. And we could go on and on and make different analogies. A MedVac helicopter is providing a humanitarian function; on the other hand, that helicopter could provide a lethal function.

I guess what I am trying to say here is that Mr. Bereuter attempts to try to address this through the administrative process. Would his bill be an acceptable substitute or proposal for your bill as far as the Ex-Im Bank financing is concerned?

Ms. BYRNE. I think in the terms—to answer your question directly, I think in the terms "nonlethal" as opposed to "dual use" that that is even more narrowly defined, and that would be perfectly acceptable; but in how these things are viewed, I would also say that when we are selling arms abroad, we make distinctions between offensive and defensive weapons—and you know how hard that sometimes can be, but we do it anyway—and the question is really, in my mind, whether we are going to give a venue to those companies who have some application that can be other than defense-related that are able to sell them as defense-related items now and sell them as regular commercial products.

And I think Ex-Im Bank has the capability to draw those distinctions. They are a bank. They want to know that the product is going to be viable and that it is going to have a market and they are going to pay back the loan; and that, to me, as a former businesswoman, that is the bottom line.

And in terms of Mr. Kennedy's remarks, there is no problem in getting defense items to Mexico or any place else now. We are the biggest arms sellers in the world. That is not the problem; that is really not a part of this discussion. What I believe is a part of this discussion is getting those companies that are caught in the conversion weaned away from defense items. They can sell defense items; that has never been a problem for the United States to find some place to sell defense articles. What is a problem is making a transition to "nonlethal" or "dual use" or whatever else you want to call it in a global marketplace. And the capital to do that is not there.

In first answering Mr. Kennedy's question—I used the mine-sweeper as an example—a Canadian company got that same contract because the American company could not come up with the financing. If they wanted to sell it as a minesweeper, no problem.

If they wanted to sell it as an oceanographic mapping tool, they couldn't find the financing.

Mr. KENNEDY. Could I ask—will the gentleman yield briefly?

Mr. MCCANDLESS. Yes.

Mr. KENNEDY. I mean, having been in international business for several years before coming to Congress, what the heck difference would that make? What difference would it make to the bank that is financing the sale?

Ms. BYRNE. Because under DOD they could sell it as a mine-sweeper, but they wanted to do something beyond a defense item and change it so that it could be used for peaceful purposes.

Mr. KENNEDY. I understand that, but if you are in the bank sitting in the middle of a deal and you have got a guy who is willing to buy it as an oceanographic device and what you are doing is financing a letter of credit between the country and the company, it shouldn't make any difference to the bank in between.

Chairman FRANK. Unless there is a guarantee—the only question is whether there was a guarantee under one program.

Mr. KENNEDY. Well, OK.

Ms. BYRNE. And the Canadians would guarantee it and we would not.

Mr. KENNEDY. But that is not an Ex-Im issue because Ex-Im is not going to be providing guarantees. So it has nothing to do with—I don't think it is a legitimate equation to put before the committee because I don't believe that that is probably what was critical to the deal.

Ms. BYRNE. Well, the companies that I have dealt with here in northern Virginia said that was exactly critical to the deal—the fact that they could not get a subsidy, while the Canadian firm was proposing this and could get a subsidy in terms of a loan guarantee. And the American companies could not, and that was crucial to the deal. And the Turkish Government bought it from the Canadians.

Chairman FRANK. Let me suggest, because given Ms. Byrne's interest in this—

Mr. KENNEDY. I yield back.

Chairman FRANK. We will be dealing with her on a continuous basis, and let's see if we could get back to our witnesses.

Mr. McCandless.

Mr. MCCANDLESS. I am finished, thank you.

Chairman FRANK. We will now hear from our two witnesses, Mr. Michael Smith, Vice President for Marketing, Martin Marietta Corp., and Joel Johnson, Vice President, International Aerospace Industries. Gentlemen, your written statements will go in the record. We know that you are here; you don't need to thank us. We know about your organizations. We want to get to the merits.

#### STATEMENT OF JOEL JOHNSON, VICE PRESIDENT, INTERNATIONAL, AEROSPACE INDUSTRIES ASSOCIATION

Mr. JOHNSON. Thank you Mr. Chairman. I am testifying not only for the Aerospace Industries Association, but the Electronic Industries Association identifies with this testimony. We are talking about dual-use items that are primarily produced by those two industries, aerospace and electronics.



As has been noted, Ex-Im Bank interprets its charter to mean it can't finance the purchase of nonlethal dual-use equipment by civilian or military organizations even if the primary use of the product is to support civilian purposes. What I will try to do this morning is to touch on a few of the issues I have heard this morning and suggest that there is no camel behind the nose that Congressman Kennedy is worried about on how you interpret this issue.

Chairman FRANK. Let this be the only mention of camels in this hearing. Talk about camels at congressional hearings has adverse effects on members of my subcommittee.

Mr. JOHNSON. The Bank management has made reasonably clear to us that it is not going to deviate from its current interpretation of its charter unless it is given a clear mandate to do so by Congress. H.R. 4455 would provide such a clear but very limited mandate.

It is an appropriate time to address this issue because I think this question will occur increasingly in the future for a couple of reasons. First, as has been noted, defense companies are looking for commercial uses of their technology. We have been encouraged to do so by the Congress. They are most likely to be successful in using products and technology with which they are already familiar such as in air traffic control, surveillance, communications, simulation, and data processing.

And, at the same time, companies are increasingly going to pull commercial technology into defense uses, which means you are increasingly going to see commercial technology acquired overseas by governments for both defense and commercial purposes.

On the consumer side, many countries are finding they cannot afford to have separate infrastructures to support civilian and defense needs. If you want to take air traffic control as an example—and it will be elaborated more by my colleague—a country contemplating an upgrade to its commercial air traffic control system may well want that system to serve an air defense purpose.

To tell you more than you ever wanted to know, perhaps, a civilian radar will tell you the location of an aircraft but not its altitude in two-dimensional radar. Transponders in commercial aircraft provide that information to flight controllers. If you are dealing with smugglers or hostile aircraft, they tend not to help you by telling you their altitude, and you need a three-dimensional radar to tell at what altitude that plane is.

Clearly, a three-dimensional radar is going to be more expensive than two, but it is cheaper to have one integrated system than two separate systems. And that is the kind of issue we are going to encounter, and the Bank is going to encounter. And right now, being neither fish nor fowl, you don't have a place to get financed.

A country in the market for a geostationary satellite to serve a variety of domestic needs, weather satellites, communication, educational TV channels, may also want the satellite to handle military communications. You are not going to put up two satellites. You are going to put up one satellite, and the company that can provide you with integrated systems is going to win the contract.

And, finally, it should be noted that in a Third World country the military often performs functions that are handled by civilian government organizations or the private sector in industrial countries,

such as air traffic control, helicopter, medical and transport services, enforcement of environmental controls over the oceans, and so forth.

We tend to believe—we, AIA and EIA, believe that it ought to be possible to provide Ex-Im with a little more discretion to provide financing for those kinds of dual-use items while assuring the Bank maintains its characteristic as a commercially focused enterprise.

There are two basic issues and, again, Congressman Kennedy certainly brought them up and others have, also.

The first is political support for the Bank. A number of Members of Congress have made it clear that they don't want to see the Bank become a defense institution. I would note that the aerospace industry alone is the largest user of the Bank for commercial products. There is no one in my industry that wants to see political or public support for the Bank undercut.

And, second, the issue of whether enlarging the Bank's mandate would cut into resources available. We really don't tend to think the pool of these kind of dual-use items is so large that it would essentially be a problem. I tend to think that we are talking about certainly well under \$1 billion, probably \$200 or \$300 million a year, in dual-use items that might qualify under this definition.

One final point. In order to increase the comfort level of some members, either the language could be modified in terms of definition and/or some procedural safeguards might be added in terms of reporting certain kinds of sales or loans in advance to appropriate committees of the Congress that would provide that comfort level that this is not some kind of indefinitely expanding operation.

In summary, I think it ought to be possible to draft legislation which would give the Bank a bit more flexibility in these kind of nonlethal dual-use products and yet protect the Bank's image and reputation as essentially a commercial lender for civilian purposes. Thank you.

[The prepared statement of Mr. Johnson can be found in the appendix.]

Chairman FRANK. Mr. Smith.

#### **STATEMENT OF MICHAEL SMITH, VICE PRESIDENT FOR MARKETING, MARTIN MARIETTA CORP.**

Mr. SMITH. Mr. Chairman and members of the subcommittee, I am Michael A. Smith, and I am vice president of Marketing for Martin Marietta Corp. I am pleased to be here today on behalf of Martin Marietta to support H.R. 4455, a bill to authorize the Export-Import Bank of the United States to provide financing for the export of nonlethal defense articles and defense articles for which the primary end use will be for civilian purposes.

I expect that some persons would ask why, particularly at this time, should we expand the Export-Import Bank's jurisdiction, even in the very limited manner proposed by H.R. 4455. It is our opinion that there has never been a time when the proposed change is more appropriate.

Our industry is perhaps better described by the words of Charles Dickens in the opening line of the "Tale of Two Cities." It is the best of times and it is the worst of times. Indeed, it is the best of times. We helped to win the cold war, we contributed to winning

the war in the Persian Gulf, and we revolutionized much of America's technology.

On the other hand, it is the worst of times because the United States' defense industrial base, which this Nation will need in the future, is being dismantled before our eyes.

For people who work in our industry, the outlook is especially grim. It has been noted that the victory march for Desert Storm has turned into a line at the unemployment office. According to DOD estimates, approximately 1.7 million—or roughly one-half of workers in our industry—will lose their jobs. And by July 4 of this year, approximately 1 million will already have done so. Currently, one worker is being laid off every 30 seconds.

At Martin Marietta alone, if you include the trickle-down effect of other jobs that are impacted by defense losses, we have had to shed the employment equivalent of the city of Lincoln, Nebraska.

Of course, with the demise of the Soviet threat, today the United States can afford to safely shrink its defense industry, and indeed we are doing that. By the mid-1990's, resources available to our national security will have declined by 41 percent, starting from a base of 1985.

The question that I think is important is: How far? My belief is that we are perilously close to undermining our Nation's military capability and that we have already begun to build a hollow defense industrial base.

Many tend to overlook the fact that the U.S. defense industrial base is as critical to our national security as is the Army, the Navy, the Air Force, and the Marines and Coast Guard. Martin Marietta's chairman, Norm Augustine, even called it the fifth armed service.

Given the reality of today's budget situation, the Nation needs to find innovative ways to keep the defense industrial base strong. One way is through the consolidation of defense companies through mergers and acquisitions, which our company has done. Another is to at least sustain the export of defense products. A third is to encourage and support, as would H.R. 4455, the development and promotion of dual-use technologies, a key feature of the administration's Defense Conversion Program. Dual-use technology sales provide jobs, help sustain our defense industrial base, help hold down costs for products purchased by the DOD, improve our balance of trade, and help achieve and sustain our national foreign policy objectives.

A classic example of dual-use opportunity is one we are presently pursuing in Hungary. Similar opportunities also exist in Third World countries, including those in the former Soviet bloc. Hungary is currently in the process of upgrading its air traffic control system to bring it up to Eurocontrol standards. The radar we would like to sell to Hungary is our model FPS-117, which was used for NATO's ground surveillance radar system. This radar was originally developed for defense purposes; however, it is ideally suited to be configured for dual use.

It is common throughout the world for military radar to support air traffic control systems. Our 40 Martin Marietta installed radars in 9 different countries are in daily use for both air traffic control and air sovereignty missions. Hungary intends to procure a radar

system that provides both functions; however, the current Ex-Im Bank policy would not allow U.S. Government financing for this opportunity in Hungary, even though we estimate that approximately 90 percent of the usage will be commercial.

Presently, any taint of a defense application rules out Ex-Im Bank participation. For example, a loan guarantee for a computer sale to Algeria was denied because one of the computer's uses was to process payroll checks for government employees. Since government employees included members of the armed services, the application was ruled ineligible.

Other major opportunities for us include dual-use satellites, dual-use communications equipment, and data processing products. In the international marketplace, we are increasingly being challenged for the sale of dual-use products.

Our technological superiority, which has always been a major competitive advantage, is declining due in part to the decline of the DOD's R&D budget. Our serious competitors all have access to government-sponsored loan guarantee programs comparable to that provided by our Ex-Im Bank for strictly commercial products.

Although export sales financing is often a critical factor in sales to developing or Third World countries, financing becomes a mandatory part of the equation. Such commercial financing is not readily available without government guarantees. Accordingly, without the assistance that would be provided for dual-use products by this legislation, we are at a distinct disadvantage.

We are hopeful that the limited assistance that H.R. 4455 would provide will be forthcoming. There are few opportunities where the expenditure of such a small amount of government funds can provide in relative terms such a large return to our national economy and our national security.

Thank you for giving Martin Marietta the opportunity to address this important issue.

[The prepared statement of Mr. Smith can be found in the appendix.]

Chairman FRANK. Thank you, Mr. Smith. I was struck by Mr. Augustine's formulation that your industry is the fifth service. I wonder if he has thought of changing his title from CEO to Chief of Staff. We could get him a uniform and some stars. He would feel better.

I am surprised when you say that we are endangered because our industrial base for defense is declining and that our technology is weakening vis-a-vis our competitors. Who is it that we are in danger of becoming weaker than?

Mr. SMITH. France. Japan. I think France, the technology that is being supported today is very strong technology.

Chairman FRANK. I am not talking about for future defense capabilities. You think we contemplate a future in which the French might have a defense industrial base that outstrips ours?

Mr. JOHNSON. No.

Chairman FRANK. That is what I am talking about. You suggested that we had a declining defense industrial base. That, obviously, can't happen in the abstract; it has to be worse than somebody's. I am not talking about export capability.

But with regard to your comments about the danger to national security because of our declining industrial defense base, I am just wondering—I think ours is declining, but my sense is that our comparative advantage over anybody else is no worse than it used to be. And I am wondering if there is some other nation out there that is more threatening than I realize.

Mr. SMITH. There are a number of issues that you are discussing, Mr. Chairman, and one of them has to do with what has happened to the industrial base.

Chairman FRANK. But compared with other countries.

Mr. SMITH. Specifically to that, yes, we are the strongest and we remain the strongest.

Chairman FRANK. I understand your concern for the company, but there was an element of dissimulation in the threat of national security that seems to me, frankly, exaggerated.

You said that our national security resources are down 41 percent since 1985. I think the threat, frankly, is down at least 41 percent with the collapse of the Soviet Union and the dismantling of the Warsaw Pact. So I didn't want people to go out of here frightened. I wanted them to get home safely.

I have one question for both of you, and that is, document for us the competitive disadvantage you are at in selling this kind of technology. One particular question, Mr. Smith, the Algerian example you gave when they were turned down for Ex-Im financing because it couldn't pay government salaries, when was that? Do you know? That is clearly—

Mr. SMITH. I will get you the specific answer.

Chairman FRANK. That is a specific example of why we need this. It would be helpful if we could demonstrate it.

Mr. SMITH. I will give you the specifics, Mr. Chairman.

Chairman FRANK. What kind of competitive disadvantage exists in selling air traffic control or other kinds of technology—well, I had one previous question. Is it generally technology where people tend to think that, obviously, as Mr. McCandless pointed out, any vehicle would be dual use? Food could be, a kitchen could be; an army travels on its stomach. But, is it more than technology that you have run into this problem with the Ex-Im?

Mr. JOHNSON.

Mr. JOHNSON. I think, technologically, we can hold our own with anybody—

Chairman FRANK. No, no, I am talking about where you are having Ex-Im saying to—two points have to be made here. First of all, that we are at a competitive disadvantage in selling things that we shouldn't worry about selling. And the second question, is there a particular type of sales that Ex-Im is more leery of than others? Are they more likely to find sophisticated technology dual usage than they might find something else?

Mr. JOHNSON. Sure, it is only essentially in the high-tech area that you have this problem, and it tends to be items that are on the munitions list or at least on the commerce commodity control list, which clearly have a capability of being used for two different kinds of purposes.

Where you come to a disadvantage is if one country can offer credit and we can't, and a country needs credit. It doesn't mean how good you are or how good your price is.

Chairman FRANK. Then, if this is more of a problem for us competitively in the higher technology area, it is more of a problem for us, because that is clearly an area where we lead the world, and it represents the future for the United States. If we are being beaten out on other products, then it would be less threatening for the future if all products could be described as dual use—vehicles, obviously—but my sense is that people are less likely to look at those; and that it is in the technological area, at least from the examples that I heard, that we have had more of a problem.

Mr. JOHNSON. You can carry troops in schoolbuses, but by and large, you can get credit for schoolbuses as long as you are not selling them to a military establishment. But over the long haul, it would be hard to think of any manufactured good that could not have some application under any circumstances that might—

Chairman FRANK. And, certainly, there are students that you would not classify as nonlethal.

What kinds of disadvantages do you find, yourself? Could you give me some examples? Country X? Because I think that is necessary for us to make the case, in the sale of products that nobody would really object to selling, that you find yourselves at a disadvantage because foreign countries have access to their country's financing mechanisms and you don't.

Mr. SMITH. The specific example that I gave, which was the Hungarian radar system, is a real-life example; the French government is supporting a contractor from France with loan guarantees.

Mr. JOHNSON. You have another competition in Brazil where the finalists are a Massachusetts company and a French company. The American company cannot obtain Ex-Im Bank financing for the entire program, as some equipment is of a dual-use nature. It may have to turn to Sweden for those systems, which the Swedish government will finance. The French can provide and finance the entire package.

Chairman FRANK. But not totally, and—to the extent that you could give us—I don't want to put anybody at a competitive disadvantage—quantifiable examples in writing, what percent, whether it is 3 percent or 5 percent or 20 percent, what creates a disadvantage in terms of the end cost to the user, by not receiving the subsidy that others have. Give us some examples.

And again, I don't need the company. You don't have to tell us the company, or the product, or even the country. But if you could say in situation A, the American company was at a 6 percent price disadvantage, and where we would have won if the financing was even remotely equal. Those kind of examples would be helpful.

Mr. JOHNSON. My guess is, here the example is 100 percent, one country can provide financing, the United States couldn't. The Turks had no choice.

Chairman FRANK. That wouldn't come out to 100 percent differential. Financing is not the total cost. But I would be interested if you could give us some examples of that. I am asking you, frankly, to tell us if this is going to help us get the amendment through.

Mr. Bereuter.

Mr. BEREUTER. Thank you, Mr. Chairman. I think you have asked the key questions I would have asked, perhaps with the exception of one subject area.

Mr. Johnson, you mentioned perhaps there are procedural safeguards we might put in place with this legislation, and you mentioned one, potentially reporting certain types of sales to Congress, the relevant committee, and also perhaps to work on the definitions.

Do you have any other suggestions?

And also, while you are thinking about this, to both of you, are you worried at all about leaving to administrative discretion the definition of nonlethal? You can worry about it from two directions; those people who think it is going to be broadly abused and those exporters who think it will be narrowly defined.

Any other procedural suggestions?

Mr. JOHNSON. No matter how you define it, you then have to define your definers. At some point, somebody has to make judgment calls. That is why a procedural course might be better. I am thinking of where the Defense Department does similar things with the Armed Services Committee. You look at it, if nobody objects in 15 days, you go ahead.

It is sort of one of these things, I know when I see it, but I can't define it. At least that would give the appropriate committees a chance to have a reassurance that no one is going off the deep end.

But as the chairman said, a schoolbus can be—either if you are riding inside it or in front of it, it can be a lethal system—it gets very difficult. You can discard a whole lot of things. F-16 is clearly a lethal product.

Mr. BEREUTER. I have looked at this subject. I can't believe we can do anything better than discretion and good judgment with the possible override or objection by someone in a procedure that you mentioned. I just—

Mr. SMITH. You still will have the same approvals, the Department of Commerce, the Department of State, on those items that you will go through with the same export controls that you have independent of the level of financing guarantee.

Chairman FRANK. Will the gentleman yield?

I think we should point out for the record, because I believe the gentleman's bill is well drafted, he has got an "and" in here. It has to be both qualifications. It has to be nonlethal and primarily for civilian use. Obviously, there is a little bit of "after the horse" there, except that very few of the companies or the countries are going to want to make this the only deal they ever made.

Anybody that ever violated that second condition that the primary end use was for civilian purposes would, in effect, be putting themselves out of business for the future. That is one thing we can talk about, debarment procedures for people who were found to have been lax in that area. So I think the combination of the two together is fairly effective.

Mr. BEREUTER. Thank you. Good idea.

Thank you, Mr. Chairman. I think I will stop there.

Chairman FRANK. Mr. McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

I am representing a district in southern California that is not directly involved with aerospace and the related products. I find it kind of interesting in this downsizing. Maybe we are getting a little bit off, but it is not intended to be, I am going to come around through the back door—there seems to be a lack of initiative on the part of the Aerospace Program to take that tremendous technology and apply it to some of the activities that are now surfacing in the field of transportation.

Example: The Metro cars here in Washington were built in Italy. We are building a similar type of project in Los Angeles currently, and I think the last of this was that the Japanese company is getting the contract for the cars and the engines and so forth.

Is that right or wrong?

Mr. JOHNSON. I think Northrop is involved in that.

Mr. MCCANDLESS. A grant to develop a product. But I don't think that the final development is a guaranteed sale of that product, is it?

Mr. JOHNSON. We can find out. I don't know.

Mr. MCCANDLESS. The point of all this is that you are tied to lethal more than you are tied to nonlethal simply by the evolution of the industry. What can a missile be other than lethal? In Bosnia, they are using trainers as bombers.

So we are getting down to a narrower and narrower area of products. And my concern is that that technology is going to be lost because you are downsizing. You have got to satisfy your stockholders and your balance sheet. And yet we are not seeing new products to any degree coming out of all of this tremendous knowledge.

And this is an indirect way of saying, are we doing in the aerospace industry what we need to do in the way of management initiative to develop the products that would be nonlethal, which the Ex-Im Bank would be happy then to finance and would increase what we have in the way of export trade and maintain what you have in the way of an industry?

Mr. JOHNSON. I don't want to get too far off on conversion issues, but if you look at southern California, Hughes has been making communication satellites for a number of years, and in fact one of the issues we are talking about are satellites and their uses, which is a major industry. Now that the aerospace industry as a whole is about 50 percent commercial, about 50 percent government.

Now, one of our problems is that we have had a worse decline on the commercial side where we would use much of this technology over the last 4 to 5 years than we have on the military side.

You find you have lost more people in Seattle than in Wichita in terms of Boeing. We are up against the unique situation right now where much of the logical applications of technology are in a worse shape than the defense side. That will turn around, and certainly companies are putting in a lot of money and a lot of energy to commercial applications.

And again, partly what we are discussing today, is such areas as air traffic control and communications satellites. You go into a port off of Massachusetts, you will find your mariners are using night goggles today that were developed by ITT Defense. Those products are being commercialized, made available to the American public,



so that somebody doesn't crack his boat up coming in at night in an unlighted port.

I mean, any one of my companies is doing this kind of stuff. On the other hand, it takes time to do that, time, whether it be military or commercial. Product development to the time you market is probably 3 to 5 years. Most of the guys in the defense industry today are going to be long gone by then. You don't want to do things you don't know anything about. Boeing tried railroad cars 20 years ago and they were probably very well engineered, but they were too expensive.

One of the things we do well—

Chairman FRANK. We had them in Boston. They were light rail vehicles. They were overengineered and they just broke down; they had too many moving parts and too many people on them that wanted to move them. But I think there is a second generation there that is better constructed. The first ones were not successful, but the second generation has been.

Mr. SMITH. We also have a number of examples of things we have developed originally for military application that are now on commercial platforms, for example, control systems that originally we did for fighter airplanes, we are now applying to railroad locomotives. That is just one example. There are many other ones I could cite across our industry in which the industry has been successful in applying military technology to a commercial market.

But my colleague's comment, it is very difficult to wax off into a totally new area of development. And I recall 20 years ago when we did a number of things in growing tomatoes, in making housing, in another company that I was with, again, it did not turn out to be economically viable for the stockholders or for the employees.

Mr. McCANDLESS. Let me ask you, this is important to people like us in making determinations relative to legislation. Is there a way by which you gentlemen could estimate the amount of additional exports for which Ex-Im Bank funding would be sought, and the number of jobs, what would be created as a result of that? Is there a way that that estimate could be developed, and, as the chairman pointed out, given to us along with the examples that he outlined?

If we had this, we would be able to do that.

Mr. SMITH. I guess the one example I gave, with the Hungarian radar, is an opportunity which is in the range of a \$40 to \$50 million opportunity that exists for us in selling two radars. And if we said that that may be supporting some 250 to 300 jobs, that would be a part of Martin Marietta and possibly twice that number down through the subcontractor base.

So you are talking about in the neighborhood of 600 to 700 jobs, off the top of my head, for maybe a 3-year time period, for that one specific opportunity.

Mr. JOHNSON. Just to take up, because this brings up an issue Congressman Kennedy raised earlier, I think one needs to be careful about the notion that when one of our large companies exports, you are taking something away from small business. The way you export in aerospace is generally on somebody's platform. But when GE exports an engine from Lynn, you are going to have subcontractors all over the country participate in that.

There is more value added to a 747—when you export a 747, you have 10,000 or 15,000 small companies becoming exporters. They don't know it and they don't think of themselves as exporters, but those are small companies with real life workers who have jobs, who wouldn't have jobs if you weren't exporting that 747. That is true of any of our industries, you look at the food chain of any of our products and you have literally hundreds to thousands of small companies involved.

Mr. McCANDLESS. Let me conclude with one more, if I may. This won't take very long. We currently have an Ex-Im Bank administration that functions by making determinations by consulting with other U.S. Government agencies about articles, defense articles, and services in its methods.

I guess what I am trying to say is, in your opinion, is the Ex-Im Bank administration adequate to handle determinations such as Mr. Bereuter's bill talks about relative to lethal, nonlethal? I use that as an example of what would be an expanded scope for the Bank.

Mr. JOHNSON. Insofar as his language is nonlethal and used primarily for commercial purposes, yes, because that is what the Bank has familiarity with. Now, what I suspect you would find is you would wind up with an arrangement like you do with the drug control exception that you have now.

The State Department would certify that this indeed was going to be the primary use. The purchasing government itself would probably have to certify what its end use would be. So you would have a couple of checks, I would guess, both other U.S. Government agencies as well as the foreign government, in addition to the Ex-Im Bank's own judgment, they would all come to bear on that issue.

Again, you might very well have some kind of congressional oversight mechanism as well to take a look and say, yes, that is what we had in mind, or no, that wasn't what we had in mind.

Mr. SMITH. Just the same general comment, that I think again the Ex-Im Bank has the capability to administer that, and there are other safeguards or other oversight activities vis-à-vis State and Department of Commerce involved in overseeing that activity currently, and that could be expanded further with some congressional oversight. But I think DOC and DOS have a capability to do that.

Mr. McCANDLESS. Thank you, gentlemen.

Thank you, Mr. Chairman.

Chairman FRANK. Thank you. I just wanted to ask a question that was suggested to me. I assume that what we are talking about is the difficulty that a product might or might not have dual use—but doesn't that same difficulty exist now? I assume there is always going to be a line.

We are not talking about creating the line, we are simply talking about moving it; that is, this is not a case where, for the first time, these kinds of decisions will have to be made. As you say, Ex-Im is used to this. We are not asking for a new type of decision qualitatively. We are simply changing the terms a little bit. I think that would be helpful, too. We would find there is a considerable body

of government making similar decisions. We are just changing the terms a little bit.

Thank you, gentlemen. This has been very useful. The hearing is adjourned.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]



APPENDIX

OPENING STATEMENT OF THE HONORABLE DOUG BEREUTER OF NEBRASKA AT THE HEARING ON H.R. 4455 IN THE SUBCOMMITTEE ON INTERNATIONAL DEVELOPMENT, FINANCE, TRADE AND MONETARY POLICY, JUNE 8, 1994.

Mr. Chairman, I want to thank you for holding this hearing on H.R. 4455, a bill I introduced on May 19, 1994.

H.R. 4455 would amend the Export-Import Bank Act to allow the Bank to consider financing the export of nonlethal defense articles and services when the primary end use is for civilian purposes. The bill would clarify Eximbank's ability to consider financing a narrow range of exports of nonlethal dual-use items when the primary end use will be civilian, not military.

To set this bill in context, it is useful to recall some of the previous debate on giving Eximbank a general role as a defense export financing agency. In each of the last several Congresses, there has been lively controversy over the proper role of Eximbank in financing defense articles and services. This Member was opposed and continues to be strongly opposed to Eximbank becoming an agency to finance any offensive or lethal defense articles. In 1992 I favored extending the restrictions on financing of defense articles and services to all countries, not just the less developed countries. Eximbank is not the appropriate agency for general financing of defense export sales in my opinion. Its focus should be on commercial, civilian exports.

For the record, the current situation with respect to Eximbank financing of defense articles and services is as follows. Eximbank is now prohibited by law from financing defense articles and defense services. Section 2(b)(6)(A) of the Export-Import Bank Act states:

"The Bank shall not guarantee, insure, or extend credit, or participate in an extension of credit in connection with any credit sale of defense articles and defense services to any country."

In Section 2(b)(6)(B) through (H) there is a limited exception made to this prohibition only in the case of defense articles or services sold primarily for anti-narcotics purposes.

Eximbank's Board of Directors has delegated to the Bank's Engineering Division the authority to review transactions with military sales potential to determine whether prohibited defense articles or services are involved. The criteria used in this review by the Engineering Division have been approved by the Eximbank Board and are summarized by the Bank as follows:

1. If the item(s) are sold to a military organization, they are considered to be defense articles until proven otherwise.
2. If the item is designed primarily for military use, it

is presumed to be a defense article.

3. If the item has dual use, it is financeable if the investigation yields convincing evidence that the item will be used only for non-military activities, and the buyer or user provides a certificate to that effect.

4. "Humanitarian" items are those related to lifesaving, health, and medical purposes. Examples would be hospital equipment, medical laboratory equipment, ambulances, fire engines, and rescue aircraft. These are not considered defense articles even if sold to military buyers.

5. Small scale aircraft and marine vessels used for drug interdiction, safeguarding natural resources, and providing lifesaving services to international shipping may also be financed even though sold to military entities and used primarily for routine patrol activities."

The intent of H.R. 4455 is to let Eximbank investigate and decide to finance dual-use items when they will be used primarily for civilian or non-military activities, as long as those items are nonlethal.

Examples of such items which have been brought to my attention include radar systems for air traffic control, communications satellites, and surveillance technology for anti-poaching and anti-smuggling. It seems likely that the principal market for such items will be in smaller countries where economies of scale dictate shared use of expensive equipment such as satellites and radar by both civilian and military users.

It is also worth noting that if an export license is required for any controlled good or service, it must still be obtained in the normal way whether or not Eximbank is financing the export. Nothing in this bill changes export control requirements. Furthermore, all normal Eximbank screening for creditworthiness and other factors will still apply to any loan applications made possible by this proposed change in the law.

It is my hope that the testimony today will help the Subcommittee decide whether it is reasonable to give a little more leeway to Eximbank to look at financing exports which have the earmarks of a primarily civilian deal, even if there is some small military element. Right now, Eximbank does not have that latitude except in the case of anti-narcotics uses. I certainly do not want to put Eximbank on a slippery slope or, in any way, convey the impression that this is an opening of the door to Eximbank to get into general financing of defense articles and services for primarily military use, anywhere, anytime. I look forward to hearing the testimony and to working with Members of this Committee and others to craft an amendment to the Export-Import Bank Act that will accomplish this purpose.

Thank you again, Mr. Chairman, for your assistance in scheduling this hearing.

LESLIE L. BYRNE  
11TH DISTRICT VIRGINIA

COMMITTEE  
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SUBCOMMITTEES  
SURFACE TRANSPORTATION  
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INVESTIGATIONS AND OVERSIGHT  
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**TESTIMONY OF CONGRESSWOMAN LESLIE BYRNE**

**Before the Subcommittee on  
International Development, Finance, Trade & Monetary Policy**

*Wednesday, June 8, 1994*

I want to thank Chairman Frank and the ranking member Rep. Bereuter for inviting me to testify today. I applaud the subcommittee's leadership on this issue.

This hearing comes at a critical time...a time when many of our defense firms are searching for ways to survive in the commercial marketplace in the face of defense cutbacks. Over the past few years, defense cuts have devastated many companies throughout the nation and threatened their survival...and these circumstances will not get any better. Over the next five years, there will be a projected 20 percent drop in defense employment and a substantial decrease in the number of contracts going to defense firms.

For many companies in Northern Virginia, this is not an academic debate...it has real life implications for their survival. Gone are the days when defense companies can rely on DOD contracts alone. If we are to keep our economy strong, our defense base viable and our technology base formidable, then we must accept the challenge of ensuring the health of our high-tech communities. Currently, we are not giving these communities the bridge they need to make a successful transition.

Providing incentives to defense firms to move out of the defense market and into the commercial marketplace is a common sense solution. When we talk about defense conversion, providing loan guarantees through the Export-Import Bank just makes sense.

That is why I introduced H.R. 3158, the Defense Competitiveness Act, which will enable the Export-Import Bank to provide financing for dual-use defense articles and services. I want to applaud Rep. Bereuter for his continued work on this issue in the subcommittee and through his introduction of H.R. 4455.

Authorizing the Eximbank to provide financing for the export of defense articles and services is an initiative that allows defense firms the chance to apply their technologies in new arenas. This will move defense companies away from the production of tanks and fighter-jets and toward the manufacture of technologies that have civilian applications. Defense firms have technologies that can evolve into commercial products, but we need to provide them with the support they need to produce these peaceful technologies. The result will be more jobs here in the United States without compromising our national security.

If we want our defense firms to move forward and not drive them back into the sphere of defense contracts then we need to look for the best way to accomplish this aim. I believe the Eximbank is the most appropriate vehicle for assisting defense companies move into the commercial marketplace. Their focus and experience is on financing commercial products which should now be translated into a new role for them in defense conversion. Once the Eximbank begins to provide this financing, they will plant the seed of commercial productions in defense firms, thereby moving them forward.



Using the experience of Eximbank in this way is not a hand-out to business...it is a hand-up of incentives for defense firms to assist them diversify their product line and market it in the commercial sector. At a time when we are seeking to expand our exports and create high-paying technology jobs in the United States, using the Eximbank to assist defense companies in this way just makes sense.

As the subcommittee moves forward with your work on this issue, I would like to express my willingness to continue to work with you. Again, I want to thank Chairman Frank and Rep. Bereuter for extending to me an invitation to testify before you today and commend your commitment and leadership on this issue.

EXPORT FINANCING FOR DUAL-USE PRODUCTS

THE ROLE OF EXIMBANK

Testimony by

Joel L. Johnson

Vice President, International

Aerospace Industries Association of America

Before the Subcommittee on

International Development, Finance, Trade, and Monetary Policy

Committee on Banking, Finance and Urban Affairs

House of Representatives

June 8, 1994

## Export Financing for Dual-Use Products

Joel L. Johnson  
Aerospace Industries Association

The Aerospace Industries Association (AIA) appreciates the opportunity to provide testimony to the International Development, Finance, Trade, and Monetary Policy Subcommittee on the question of modifying the Charter of the Export Import Bank. AIA represents the major U.S. producers of aircraft, helicopters, rockets, propulsion systems, satellites, and related electronic and mechanical components. I might note that last year the U.S. aerospace industry was the largest net exporter of any manufacturing sector, exporting \$39.4 billion in products with a trade surplus of over \$27 billion.

In addition, the Electronic Industries Association (EIA) supports this testimony. EIA is the national trade organization that represents the entire spectrum of electronics companies involved in the manufacture of electronic parts, components, equipment and systems for use in consumer, commercial, industrial, military and space use. The industry was responsible for more than \$300 billion in factory sales of electronics in 1993, of which more than \$85 billion were exports.

This hearing addresses the question of official export financing support for a range of products, frequently produced by the aerospace and electronics industries, which have both commercial and defense uses, often known as dual use products. With a few rare exceptions, Eximbank has in recent years only financed manufactured goods which were to be used solely for civilian activities. Eximbank is in fact prohibited by charter from supporting the export of "defense articles and defense services".

Eximbank management currently interprets that restriction to mean it cannot finance the purchase of even nonlethal, dual use equipment by a civilian or military organization, if that product will be used in any way for defense purposes, even if the primary use of the product is to support civilian activities. An exception is made in the case of products used for purely humanitarian purposes, such as ambulances. Attached to this testimony is a more complete summary of Eximbank's policy.

The legislation being discussed today would modify the Bank's charter to clarify that nonlethal dual use products, which will be primarily used for civilian activities in a particular application, should be eligible for Eximbank programs. This is an appropriate time to address this issue, as this question is likely to increase in the near term for several reasons.

### Conversion

First, with the sharp drop in the U.S. defense budget, defense companies and subsidiaries are looking for commercial applications of their products and technologies. Many in Congress and the Administration have encouraged them to do so, often under the rubric of conversion. A number of companies are succeeding, particularly in areas closely related to products and technology they are already producing, in areas such as air traffic control, surveillance, night vision, communications, simulation, and data processing.

Conversely, defense companies are being encouraged to look at commercial technologies and incorporate them into military applications as ways to reduce both development and procurement costs. This trend is likely to continue, and in the same kinds of areas as outlined above. In many high tech areas the commercial sector today is driving technology, and given the increasingly short product cycles of such commercial products, the military will increasingly have to turn to the commercial sector for its needs. This is likely to mean that in many cases items developed for commercial purposes will be acquired overseas by governments to perform both defense and civilian functions.

### Budget Restraints

Many governments face stringent financial limitations on their defence and civilian budgets, and cannot afford to have separate infrastructures to support civilian and defense needs. Thus a country contemplating an upgrade to its commercial air traffic control system, may also want that system to serve an air defense purpose. A country in the market for a geostationary satellite to serve a variety of domestic needs, ranging from weather sensing to telecommunications to educational TV channels, may want the satellite to also handle military communications and provide data for defense weather forecasting. The prime operator of such systems may be a civilian agency or a military one.

Particularly in developing countries with limited financial and human resources, the military often performs functions that are handled by civilian government organizations or the private sector in industrial countries. The air traffic control system may be run by the air force, as may be helicopter medical and transport services. The military may also have responsibility for enforcing environmental controls in the oceans and rural areas, for weather forecasting, and for control of smuggling and illegal migration.

In principle, the U.S. government supports our defense industry reaching out for alternative uses of its products and technology, and also urges developing countries to restrain their defense expenditures and place more emphasis on economic infrastructure and environmental enforcement. At times, however, the restrictions on Eximbank tend to be counterproductive to those objectives, encouraging countries to purchase dual-use products from our competitors who are also trying to diversify their defense industries, or to duplicating commercial and military expenditures.

For example, one East European country wishes to upgrade its civilian air traffic control system, and at the same time link its air defense operations to that of NATO countries. A single system is more economical, and the need can be met by American producers. Yet because the system would not be used exclusively for commercial activities, the bank will not be able to finance the program, and the country will likely turn to similar systems widely available from our European competitors.

It should be noted that even if a new and separate export financing guarantee program for defense products were to be established, the issue of how Eximbank should deal with dual use items would still need to be addressed. An air traffic control system, for example, which would be used on a day to day basis to land commercial aircraft, but which would also serve as part of an air defense system, would most logically be financed by Eximbank, not by a defense-oriented guarantee facility. Eximbank has extensive experience in financing air traffic control systems, and in evaluating whether a potential buyer was structuring the program in a way that would likely generate the income stream needed to pay off the loan. This is not the kind of analysis that would be conducted by a facility oriented towards defense equipment.

#### Industry Concerns

Industry believes that it ought to be possible to provide Eximbank with more discretion to provide financing for the kind of dual use products outlined above, while assuring that the bank maintains its character as a commercially focused enterprise. There are two possible concerns with respect to the proposed amendment which should be addressed.

The first is the issue of political support for the bank. Many Members of Congress have made clear their belief that Eximbank should restrict its programs to supporting the export of U.S. commercial products. There is thus some apprehension in industry that it will be difficult to define a range of dual use products or applications which would be eligible for Eximbank financing. Such a definition should assure that U.S. exporters are not shut out of legitimate commercial markets, while at the same time protecting the bank's current and future public support. Certainly the aerospace and electronics industries, which are the largest users of the Eximbank, would want to avoid any action which would undercut the bank's political support among such Congressional Members.

The second concern is the question of the bank's resources, and whether expanding the bank's mandate might reduce the loans and guarantees available for current users. We do not believe this is likely to be a problem. The volume and value of products which fall into the current gray area is not large, and is likely to involve activities already financed by the bank. For example, in 1993 the bank financed four air traffic control projects, which is the product area most likely to immediately benefit from a change in the bank's charter. Adding another system or two a year would not be a major resource problem.

We would certainly encourage the sponsors of the legislative change we are discussing today to consult closely with their colleagues on the Banking Committee, as well as the foreign affairs and appropriations committees, both in the House and Senate, to be certain that there is general understanding and sympathy with the intent of this legislation. Language in H.R. 4455 might be modified, if necessary, to provide improved definitions or additional procedural safeguards to assure all interested parties of the narrow intent of this bill.

With imagination and good will on all sides, it ought to be possible to provide Eximbank with the mandate and flexibility to support the export of U.S. dual use products which help our defense companies to diversify into commercial activities and foreign governments to economize on their government expenditures, while at the same time assuring that Eximbank maintains its reputation as an agency that supports exports of manufactured products and services for civilian uses. We look forward to working with you and others in the Congress to accomplish that objective.

Statement by  
Michael A. Smith  
Vice President of Marketing  
Martin Marietta Corporation

Before the House Banking Subcommittee  
on International Development, Finance,  
Trade and Monetary Policy

June 8, 1994

Mr. Chairman and Members of the Committee. My name is Michael A. Smith and I am Vice President of Marketing for the Martin Marietta Corporation. I am pleased to be here today on behalf of Martin Marietta to support H.R. 4455, a bill to authorize the Export-Import Bank of the United States to provide financing for the export of non-lethal defense articles and defense services for which the primary end use will be for civilian purposes.

I expect that some persons would ask why, particularly at this time, should we expand the Export-Import Bank's jurisdiction, even in the very limited manner proposed by H.R. 4455. It is our opinion that there has never been a time when the proposed change is more appropriate.

Our industry today is, perhaps, better described by the words of Charles Dickens in the opening line of the *Tale of Two Cities*: "It is the best of times, it is the worst of times." Indeed it is the best of times. We helped win the Cold War, we contributed to winning the war in the Persian Gulf, and we revolutionized much of America's technology. On the other hand, it is the worst of times because the United States' defense industrial base, which this nation will need in the future, is being dismantled before our eyes.



For people who work in our industry, the outlook is especially grim. It has been noted that the "victory march" for Desert Storm has turned into a line at the unemployment office. According to DOD estimates, approximately 1.7 million -- or roughly one-half of all the workers in our industry -- will lose their jobs, and by July 4 of this year, approximately 1,000,000 will already have done so. Currently, one worker is being laid off every 30 seconds. At Martin Marietta alone, if you include the "trickle down" effect of other jobs that are impacted by defense losses, we have had to shed the employment equivalent of the city of Lincoln, Nebraska.

Of course, with the demise of the Soviet threat, today the U.S. can afford to safely shrink its defense industry. And indeed we are doing that. (By the mid-1990's, resources available to our national security will have declined by 41%, starting from a base of 1985.) The question that I think is important is, how far? My belief is that we are perilously close to undermining our nation's military capability and that we have already begun to build a hollow defense industrial base.

Many tend to overlook the fact that the U.S. defense industrial base is as critical to our national security as is the Army, the Navy, the Air Force, the Marines and the Coast Guard. Martin Marietta's Chairman, Norm Augustine, even calls it the "fifth armed service." Given the realities of today's budget situation, the nation needs to find innovative ways to keep the defense industrial base strong. One way is through the consolidation of defense companies through mergers and acquisitions which our company has done. Another is to at least sustain the export of defense products. A third is to encourage and support, as would H.R. 4455, the development and promotion of dual-use technologies, a key feature of the Administration's defense conversion program. Dual-use technology sales provide jobs, help sustain our defense industrial base, help hold down cost for products purchased by the DOD, improve our balance of trade, and help achieve and sustain our national foreign policy objectives.

A classic example of a dual-use opportunity is one we are presently pursuing in Hungary. Similar opportunities also exist in third world countries including those in the former Soviet bloc. Hungary is currently in the process of upgrading its air traffic control system to bring it up to EUROCONTROL standards.

The radar we would like to sell to Hungary is our model FPS 117, which is used for NATO's ground surveillance radar system. This radar was originally developed for defense purposes; however, it is ideally suited to be configured for dual use. It is common throughout the world for military radar to support air traffic control system. Over 40 Martin Marietta-installed radars in nine different countries are in daily use for both air traffic control and air sovereignty missions. Hungary intends to procure a radar system that provides both functions, however, the current Ex-Im bank policy would not allow U.S. government financing for this opportunity in Hungary, even though we estimate that approximately 90% of the usage will be commercial. Presently, any taint of a defense application rules out Ex-Im bank participation. For example, a loan guarantee for a computer sale to Algeria was denied because one of the computer's uses was to process payroll checks for government employees. Since government employees included members of the armed services, the application was ruled ineligible.

Other major opportunities for us include dual-use satellites, dual-use communications equipment and data processing products. In the international marketplace, we are increasingly being challenged for the sale of dual-use

products. Our technological superiority, which has always been a major competitive advantage, is declining due in part to the decline in the DOD's R&D budget. Our serious competitors all have access to government-sponsored loan guarantee programs comparable to that provided by our Ex-Im Bank for strictly commercial products. Although export sales financing is often a critical factor, in sales to developing or third-world countries, financing becomes a mandatory part of the equation. Such commercial financing is not readily available without government guarantees. Accordingly, without the assistance that would be provided for dual-use products by this legislation, we are at a distinct disadvantage.

We are hopeful that the limited assistance that H.R. 4455 would provide will be forthcoming. There are few opportunities where the expenditure of such a small amount of government funds can provide, in relative terms, such a large return to our national economy and our national security.

103D CONGRESS  
2D SESSION

# H. R. 4455

To authorize the Export-Import Bank of the United States to provide financing for the export of nonlethal defense articles and defense services the primary end use of which will be for civilian purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1994

Mr. BEREUTER introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

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## A BILL

To authorize the Export-Import Bank of the United States to provide financing for the export of nonlethal defense articles and defense services the primary end use of which will be for civilian purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 SECTION 1. AUTHORITY TO PROVIDE FINANCING FOR THE  
2 EXPORT OF NONLETHAL DEFENSE ARTICLES  
3 AND DEFENSE SERVICES THE PRIMARY END  
4 USE OF WHICH WILL BE FOR CIVILIAN PUR-  
5 POSES.

6 Section 2(b)(6) of the Export-Import Bank Act of  
7 1945 (12 U.S.C. 635(b)(6)) is amended by adding at the  
8 end the following:

9 “(I) Subparagraph (A) shall not apply to a sale of  
10 defense articles or services if the Bank determines that—

11 “(i) the defense articles or services are  
12 nonlethal; and

13 “(ii) the primary end use of the defense articles  
14 or services will be for civilian purposes.”.

○

## Marketing News

THE BANK OF  
AMERICA

### Defense Articles and Services

Eximbank is prohibited by law from financing defense articles and defense services. In defining what is a "defense article" or "defense service" the Bank uses criteria based on the identity of the end-user, the nature of the item, and the use to which it will be put. Limited exceptions may be made for lifesaving, health and medical equipment, and for small marine vessels and aircraft for coast guard/border patrol and drug interdiction purposes, even though these items are sold to military organizations. The Anti-Drug Abuse Act of 1988, as amended, grants a limited exception, under specific statutory conditions, to allow Eximbank assistance in financing the sale of defense articles and services.

Eximbank's Board of Directors has delegated to the Bank's Engineering Division the authority to review transactions with military sales potential to determine whether prohibited defense articles or services are involved. The criteria used in the Engineering Division's review was approved by the Board of Directors, and can be summarized as follows:

1. If the item(s) are sold to a military organization, they are considered to be defense articles until proven otherwise.
2. If the item is designed primarily for military use, it is presumed to be a defense article.
3. If the item has dual use, it is financeable if the investigation yields convincing evidence that the item will be used only for non-military activities, and the buyer or user provides a certificate to that effect.
4. "Humanitarian" items are those related to lifesaving, health, and medical purposes. Examples would be hospital equipment, medical laboratory equipment, ambulances, fire engines, and rescue aircraft. These are not considered defense articles even if sold to military buyers.
5. Small scale aircraft and marine vessels used for drug interdiction, safeguarding natural resources, and providing lifesaving services to international shipping may also be financed even though sold to military entities and used primarily for routine patrol activities.

For general information concerning defense articles and services eligibility, contact the Engineering Division at (202) 566-8802.

7/93

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