

REAUTHORIZING THE DEFENSE PRODUCTION ACT

HEARING

BEFORE THE
SUBCOMMITTEE ON
MONETARY POLICY AND TRADE
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
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REAUTHORIZING THE DEFENSE PRODUCTION ACT

Wednesday, May 8, 2013

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONETARY
POLICY AND TRADE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:01 p.m., in room 2128, Rayburn House Office Building, Hon. John Campbell [chairman of the subcommittee] presiding.

Members present: Representatives Campbell, Huizenga, Lucas, Posey, Fincher, Stutzman, Mulvaney, Pittenger, Cotton; Clay, and Perlmutter.

Chairman CAMPBELL. The subcommittee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

And we now have all three witnesses, so that is just in the nick of time.

The Chair recognizes himself for 5 minutes for an opening statement. Good afternoon, and thank you to our distinguished panel for appearing today before this subcommittee.

Shortly after the outbreak of the Korean War, the Federal Government sought powerful authorities to mobilize the U.S. economy for the war effort in order to enhance military preparedness and ensure that we have the means to defend this Nation and its interests.

Congress granted these powers to the President through the Defense Production Act, which we will probably throughout this hearing call the DPA for short because we have to have an acronym for everything.

So for the Defense Production Act or the DPA, many of these expensive authorities have been abandoned and allowed to expire over time but others remain essential to providing for national security and defense, protecting critical infrastructure, and bolstering disaster relief capabilities.

The three DPA titles that remain active are due to expire in 2014 and this subcommittee will be considering their reauthorization. Possessing exclusive jurisdiction over this statute in the House of Representatives, the Financial Services Committee can best ensure that these powers are exercised with the least possible distortions on the broader economy. That is why we have the jurisdiction over these titles and over the DPA.

I hope to gain a better understanding from our witnesses' testimony about how government is using DPA authorities today and what systems and policies are in place to ensure that they are only exercised in the circumstances for which they are truly warranted.

In addition, periodic reauthorizations of statutes provide Congress the opportunity to review the effectiveness of these programs and identify problems.

Since the DPA was enacted in 1950, Congress has taken advantage of this opportunity to strip out provisions that were no longer relevant and add additional provisions to mitigate the risk of out-sized or unintended consequences.

I will be looking for our panel of witnesses to provide their expert opinions on what is working and what is not with regard to the DPA in order to help the committee identify appropriate solutions that we can implement in this reauthorization.

Thank you again to the witnesses and the agencies they represent for appearing before this panel. I look forward to this thoughtful discussion on the Defense Production Act or DPA.

I yield back my time, and I would like to yield 5 minutes now to the gentleman from Missouri, Mr. Clay, the ranking member of the subcommittee.

The gentleman is recognized for 5 minutes.

Mr. CLAY. Thank you, Chairman Campbell, and thank you so much for conducting this hearing. I will not take the total 5 minutes. The title of the hearing is, "Reauthorizing the Defense Production Act." And as you stated, it gives the President broad powers to implement.

There are three titles that need to be reauthorized, and as you know, Presidents have used the authorities granted under this Act in many ways.

President George H.W. Bush used the Act during Operation Desert Storm. President Clinton used his authority under the Act during the Bosnian conflict.

President George W. Bush used his authority during the Iraq and Afghanistan wars. Also, Presidents have used their powers under the Act in the wake of natural disasters.

Congress last reauthorized the Act in 2009, and the Act is up for reauthorization when it expires at the end of 2014.

So, again, thank you, Mr. Chairman, and I look forward to the witnesses comments. I yield back.

Chairman CAMPBELL. The gentleman yields back. I would now like to recognize for an opening statement, also for 5 minutes, the gentleman from Michigan, the vice chairman of the subcommittee, Mr. Huizenga.

Mr. HUIZENGA. Thank you, Chairman Campbell. I appreciate that, and I also thank Ranking Member Clay.

I do have a longer statement that I would like to submit into the record. Nobody wants to sit here through all this, but I do appreciate us holding this hearing.

The fact that the Financial Services Committee is sort of one of the places where this resides and has the responsibility for this reauthorization is really testimony to how strongly our defense capabilities depend on our Nation's economic strength, and I think that just underscores how important this is.

We cannot prepare for war without the private sector. We simply cannot. Coming from Michigan, being the home of the arsenal democracy, that is something that was drilled into us from a very early age, and we still see the remnants of that, but there have been some very challenging times, and we know that we have to make sure that we have that robust private sector.

When it was first passed, this Act empowered the Administration's ability to force private industry to give priority to defense and homeland security contracts and to allocate those resources.

We need to make sure that we are using those very powerful authorities to meet those critical needs, but also make sure that we are doing that in a way that deals with the private sector. So we are glad that we are going to be able to move forward on this.

This is a very important element, and clearly these are worthy priorities, and I look forward to hearing from the members of the Departments of Homeland Security, Commerce, and Defense today.

I yield back.

Chairman CAMPBELL. The gentleman yields back.

Are there any further opening statements?

If not, then we will proceed to the witnesses. Each of you will be recognized for 5 minutes for an oral presentation of your testimony. Without objection, each of your written statements will be made a part of the record.

On your table, there is a light. It will start out green, when it turns yellow you have 1 minute to sum up, and when it turns red, please suspend.

As I discussed with you all before, we are expecting votes to be called in about an hour. So I am going to dispense with your all of your impressive bios and just go straight to each of you by title because we would like to see if we can get everybody in before the votes are called in about an hour.

We will begin with the Honorable Kevin Wolf, Assistant Secretary of Commerce for Export Administration.

Secretary Wolf, you are recognized.

STATEMENT OF HONORABLE KEVIN J. WOLF, ASSISTANT SECRETARY OF COMMERCE, EXPORT ADMINISTRATION, U.S DEPARTMENT OF COMMERCE

Mr. WOLF. Thank you very much, Chairman Campbell, Congressman Clay, and members of the subcommittee.

I appreciate the opportunity to testify before the subcommittee this afternoon on the important role of the Defense Production Act, which it continues to play in supporting our national defense.

The Department of Commerce plays several roles in implementing DPA related to the defense industrial base. First, under Title I, the Department administers the Defense Priorities and Allocations System.

Second, under Title VII, the Department submits an annual report to Congress in the offsets of defense trade.

Third, also under Title VII, the Department analyzes the health of the U.S. defense industrial base.

All three DPA authorities need to be reauthorized before September of 2014. My written remarks go into each of these in more detail so I will just provide a summary of some of the key provi-

sions and elements, and I will be happy to discuss them as you would like.

Title I of the Defense Production Act authorizes the President to, as you summarized, require acceptance and priority performance of contracts and orders, other than contracts for employment, to promote the national defense over the performance of other contracts or orders and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense.

These authorities to prioritize contracts and require allocations for industrial resources were most recently delegated to the Secretary of Commerce by an Executive Order in 2012.

Today, Commerce's Bureau of Industry and Security implements these authorities through the Defense Priorities and Allocations System regulation, commonly known as the DPAS regulations, and they establish procedures for the placement, acceptance, and performance of priority-rated contracts and orders and for the allocation of materials, services, and facilities which are regularly used to support the acquisition of industrial resources needed to support the U.S. national defense requirements.

The Department of Defense is our primary user of the DPAS. Our industrial base is well-versed in the DPAS and has more than 60 years of experience in receiving and placing priority-rated contracts and orders to support the Department of Defense requirements.

The private sector also appreciates that the DPA includes a protection against claims in the event that a contractor is required to reschedule an unrated order after receipt of a rated order.

My Department also works closely with the Department of Homeland Security's Federal Emergency Management Agency (FEMA) through the DPAS to support emergency preparedness and critical infrastructure protection and restoration requirements.

My colleagues will highlight several examples in their testimony demonstrating how the DPAS is being used to support our national defense including military and homeland security requirements.

If the DPA's Title I authority were to lapse, Commerce would be forced to rely on the limited priority authority it is delegated under the Selective Service Act of 1948 to administer the DPAS. The Selective Service Act authority may only be used to support procurement of products and materials for the exclusive use of the U.S. Armed Forces and may not be used to support emergency preparedness homeland security program requirements.

In addition, the Selective Service Act does not provide contractors with protection against claims. Under Section 705 of the DPA and the Executive Order, the Department also conducts survey assessments of defense-related industries and technologies, and these surveys are routinely requested by the Department of Defense to help with the analysis and development and strengthening of our industrial base.

So, in sum, the DPA provides authority for a variety of programs at the Department of Commerce and is of substantial importance to U.S. national security. The DPAS continues to facilitate the timely delivery of industrial resources to support the Department of Defense, coalition partners, and increasingly meet Homeland Security requirements. The DPA also facilitates valuable assessments

of the impact of offsets in defense trade and the health of key sectors of the defense industrial base.

We look forward to working with the subcommittee on its reauthorization, and I am ready to answer whatever questions you may have after the opening statements. Thank you.

[The prepared statement of Assistant Secretary Wolf can be found on page 36 of the appendix.]

Chairman CAMPBELL. Thank you, Secretary Wolf.

Next, we have Mr. David Kaufman, who is the Associate Administrator for Policy, Program Analysis and International Affairs at the Federal Emergency Management Agency, FEMA.

Mr. Kaufman, you are recognized for 5 minutes.

STATEMENT OF DAVID J. KAUFMAN, ASSOCIATE ADMINISTRATOR, POLICY, PROGRAM ANALYSIS AND INTERNATIONAL AFFAIRS, FEDERAL EMERGENCY MANAGEMENT AGENCY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. KAUFMAN. Thank you.

Good afternoon, Chairman Campbell, Ranking Member Clay, and members of the subcommittee. It is a pleasure to be here today before you, and I appreciate the opportunity to testify in support of the Defense Production Act and its importance to homeland security and emergency preparedness and response.

The DPA is the primary source of Presidential authorities to expedite supply of materials and services needed for both military and civil emergency preparedness and response.

Expiration of this authority would seriously hinder our ability to prepare for and respond to natural disasters and other threats including catastrophic disasters such as a major earthquake, a major hurricane strike, or an incident involving a weapon of mass destruction.

As discussed already, the use of DPA authorities has evolved over time, and while these authorities are used primarily to support Department of Defense programs, they are also used today to support disaster preparedness and response, critical infrastructure protection and restoration, including physical and cyber-based assets, as well as other homeland security activities.

Title I of the DPA authorizes the priority treatment of contracts and orders. The priority rating is one that we invoke rarely in the civil departments but the availability of this authority is essential to ensure timely delivery of needed resources

The priorities authority has gained increased importance for homeland security purposes. As with rated orders in support of military programs, rated orders for homeland security programs are used to ensure on-time performance when delays could place lives and property at greater risk. Ongoing or recent use of priorities authority for various homeland security purposes includes: the U.S. Army Corps of Engineers program to repair and restore floodwalls and levees after Hurricane Katrina; Aircraft for the U.S. Customs and Border Protection; and the emergency preparedness and critical infrastructure protection activities of the Architect of the Capitol.

The priorities authority is also used, on an as-needed basis, to protect and restore critical infrastructure operations and to respond to and recover from domestic emergencies and disasters.

Examples of these uses include: thermal imaging camera systems for perimeter security at both airport and seaport facilities in the Boston region; equipment to enable the rapid restoration of rail service in the Gulf Coast region after Hurricane Katrina; and components of weather satellites that help detect, monitor, and track severe weather for early warning to protect lives and property.

While the use of the priorities authority for homeland security purposes is limited, it is still important. The DPA priority authority is essential, as we discussed, to ensuring our ability to respond to disasters, rapidly restore and protect critical infrastructure, and ensure that timely development of emergency preparedness and protection measures to protect lives and property can be enabled.

Along with other FEMA responsibilities to coordinate Federal emergency preparedness and response activities, FEMA provides government-wide coordination and guidance for the use of DPA authorities on behalf of the Secretary of Homeland Security pursuant to Executive Order 13603

To date, our use of these authorities has been limited primarily to resources falling under the jurisdiction of the Department of Commerce. These include most manufactured goods and services. The Department of Commerce has delegated authority to DHS to place priority ratings on contracts and orders to support emergency requirements, critical infrastructure protection and restoration, and homeland security programs.

FEMA is continuing to work with all six resource departments that have been delegated priorities and allocations authority by the President to ensure the effective use of this authority, and we will continue to work with the appropriate Federal departments and agencies to ensure the proper implementation of DPA authorities and incorporate the DPA as an important planning tool for emergencies. It is a critical tool in our toolbox for preparing for, responding to, and recovering from disasters.

Without the DPA, that critical authority to ensure timely procurement of materials and services to protect and restore critical infrastructure operations, whether they are key transportation capabilities, floodwalls, or levees, would be lost.

Without the DPA, we would have no authority to prioritize contracts for resources needed to respond to and recover from a major natural disaster or act of terrorism.

In closing, I urge Congress to reauthorize the DPA authorities which remain so critical to our homeland security.

Thank you, Mr. Chairman, for the opportunity to appear before you today. And I would also be pleased to answer any questions that members of the subcommittee may have.

Thank you.

[The prepared statement of Mr. Kaufman can be found on page 22 of the appendix.]

Chairman CAMPBELL. Thank you, Mr. Kaufman.

And last but not least, Mr. Brett B. Lambert is the Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy for the U.S. Department of Defense.

Secretary Lambert, you are recognized for 5 minutes.

STATEMENT OF BRETT B. LAMBERT, DEPUTY ASSISTANT SECRETARY OF DEFENSE, MANUFACTURING AND INDUSTRIAL BASE POLICY, U.S. DEPARTMENT OF DEFENSE

Mr. LAMBERT. Thank you.

Thank you, Mr. Chairman, and members of the subcommittee, for this opportunity to talk about this very important Defense Production Act in supporting the Nation's defense needs. I have a prepared testimony that goes into a lot more details, but I am sure you want to get to your questions, so I will keep this brief.

The DPA provides important authorities to the Department, both to ensure timely delivery of equipment and services essential to our Armed Forces and to promote domestic industrial capabilities to produce superior defense systems at affordable costs.

My testimony today will focus on the priorities authorities provided in Title I and the business incentives provided in Title III, but I will also note that Title VII provides a number of important authorities that support our capabilities to maintain and strengthen our defense industrial base.

DOD supports the 5-year reauthorization of all the DPA provisions which are scheduled to expire in September of 2014.

Let's start with Title I. Title I of the Defense Production Act is vital to ensure timely DOD access to industrial resources during both peacetime and periods of conflict. It authorizes the President: one, to require acceptance and priority performance of contracts and orders; and two, to allocate materials, services, and facilities, as necessary or appropriate to promote the national defense.

These Presidential authorities are delegated to the Department of Commerce with respect to industrial resources. Commerce has re-delegated to the Department of Defense authority under the Defense Priorities and Allocations System—another acronym; DPAS—to place priority-rated contracts and orders for industrial resources in support of DOD-approved programs.

DPAS priority ratings help to ensure that rated orders will be performed on time. For the most part, contractors and suppliers act on their own to fulfill their obligations under rated orders, without further action required by the Government. However, when problems occur that cannot be resolved by the contractors and suppliers, the DPAS provides for special priorities assistance, whereby problems can be resolved with the assistance of DOD or, ultimately, the Department of Commerce.

Although important in peacetime, DPAS is indispensable in times of conflict. It provides the authority and flexibility to address the critical procurement needs to our warfighters. Even though this authority was first enacted over 60 years ago, experience with providing direct support to the operations in Afghanistan and Iraq demonstrates its continued importance today.

The DPAS played an important role during these operations in expediting delivery of equipment needed to counter new threats and protect the lives of our Armed Forces overseas.

The DPAS, under Title I authorities, was instrumental in speeding the deployment of new and increased quantities of personal body armor, Counter Improvised Explosive Device or IED systems,

MRAPs, Mine Resistant Ambush Protected Vehicles, and ISR platforms, night vision equipment, submarine environmental controls, weapons targeting systems, and many other items necessary to support our warfighters.

Title III of the Defense Production Act authorizes various actions by the President to develop, maintain, modernize, restore, and expand the productive capacities of domestic sources for critical components, critical technology items, materials, and industrial resources essential for the execution of our national security strategy in this country.

The Title III authorities were initially used, as was pointed out, during the Korean War era to establish the industrial infrastructure needed to transition aircraft production into the jet age and for other industrial base needs.

Much of the U.S. processing capabilities for these and dozens of other key materials can trace their roots to Title III projects that were undertaken during the 1950s. The national defense and the U.S. economy overall are still reaping enormous benefits from these historical Title III actions.

Today, Title III projects continue to support us in the transition of new and next-generation technologies that are essential to meeting the national security requirements identified by government customers.

I suspect most people in this hearing room are carrying a device, which performs better and is cheaper, due to a Title III project that was completed several years ago. The project involved manufacturing capabilities for gallium arsenide wafers. The primary purpose of the project was to support defense needs of advanced integrated circuits, but gallium arsenide integrated circuits are also important components in your cell phones.

U.S. Title III contractors more than doubled their share of the world market for gallium arsenide wafers over the course of the Title III efforts and reduced the wafer price by more than one-third. So everyone's cell phone is cheaper, performs better, and is more likely to contain integrated circuits fabricated and domestically-produced largely as a result of Title III actions.

Most provisions of the Defense Production Act are now permanent law but must be renewed periodically by Congress. We request that the provisions scheduled to expire at the end of the next fiscal year be extended.

The U.S. industrial base continues to be the cornerstone of our national defense structure and the Defense Production Act continues to provide unique and important authorities to establish, expand, maintain, and modernize critical elements of the base.

Title I authorities play an important role to allow us timely access to domestic production. Title III authorities are important to expedite the transition of new and advanced technologies into defense systems that also have an economic benefit overall. While the primary purpose of Title III actions is to support the national defense, these actions also contribute, I believe, to a stronger, more competitive U.S. industrial base.

I am happy to answer any questions you have regarding this issue.

[The prepared statement of Deputy Assistant Secretary Lambert can be found on page 25 of the appendix.]

Chairman CAMPBELL. Thank you, Mr. Lambert.

And thank you to the panel.

I will now recognize myself for 5 minutes for questioning.

Mr. Lambert, you just mentioned that you request that these three titles of the DPA be reauthorized as is. Is that the position of the DOD? Is that the position of the Administration? Is there an Administration request coming? Are any of you aware of what the Administration is actually going to request?

Mr. LAMBERT. Congressman, I am not. We are working within the structure we have. We believe that we have the flexibility within the structure as currently written. I would look forward to a dialogue of where there may be instances where we could collectively agree on how to adjust given the changes of time and effort, but there is nothing I am aware of, a proposal at this time that would change what we currently have in statute.

Chairman CAMPBELL. Okay.

Are any of the rest of you aware of the Administration's position on what their request is that we do with the DPA?

Mr. WOLF. I am aware of no other position within any other department requesting any change other than reauthorization. We will ask around. There are different parts of the U.S. Government with equities in this and I will survey them, but as of now, I am not aware of any.

Chairman CAMPBELL. All right, thanks.

Just for the record, for the Administration, I haven't been particularly good at sending up formal requests so that we know, okay here is our request, here is what we want, and so we would like to have that request. We would prefer to not let this reauthorization sit until the last minute as I know you would—you all would not like to see happen either.

Okay. With these—you guys have all talked about when this thing—each one of you gave an example of when it has been used, when the DPA has been used, and how it has worked kind of as intended and so forth.

Can any of you give any examples where you think the DPA fell short one way or another, either you weren't able to implement something that you wanted to or where the implementation didn't go right, or the other way around, where the implementation went too far or it caused ripple effects that you didn't anticipate?

Mr. Kaufman?

Mr. KAUFMAN. For my part, no. I don't have any example that comes to mind where we feel like the authority fell short.

Chairman CAMPBELL. Okay.

Mr. WOLF. I would have the same answer. I was just checking with my staff, and we are unaware of any examples that would meet that definition. It has otherwise operated efficiently as far as we can tell.

Chairman CAMPBELL. Okay.

Mr. LAMBERT. I came from business, so I am always looking back to see what we could do better. Are there examples where we have executed programs where we could have done better, we could have implemented better practices, I think the answer to that should al-

ways be yes, and if you can figure out what it is, you should go back and look again.

I don't know of any examples where we failed. I think we could have succeeded better in previous examples and we have incorporated that into our processes.

Chairman CAMPBELL. Okay, and that is because of processes at the Department of Defense, not because of some weakness within the DPA itself—

Mr. LAMBERT. That is correct.

Chairman CAMPBELL. —is what you are saying. Okay.

There has been a lot of controversy lately about Title III funds being used for biofuels. I am not going to get into that controversy at the moment. We can deal with that at a later time or as things go forward, but are there any other controversial issues in the past where the use of DPA authority became a controversial issue because of what the authority was used for?

Mr. LAMBERT. Sir, not that I am aware of. I think this is unique. Proposals to DPA come from other government agencies. We give every agency the same look and review.

We are very meticulous about how we review them. We restructure them. Just because somebody asks, it doesn't mean we deliver. We take the same business—everyone has to apply the same business model and business case.

It is a pretty set standard formula, but I am not aware in the past of anything being written about—I won't say controversial, but I will say written about that particular issue.

Chairman CAMPBELL. Okay.

Mr. WOLF. With respect to the areas where the Commerce Department has a role, there are about 60 years' worth of practice of experience working with industry on implementing and working through these authorities, and DOD places an estimated 300,000 or so rated contracts and orders annually.

And the feedback we have been receiving as long as I have been in government, and I asked people before I arrived, has been generally positive, and the Commerce Department is there to sort of help people understand and work through the regulations, but we have no indication of a negative reaction to the way it is administered or to its content. It has been quite helpful, generally.

Chairman CAMPBELL. Okay. My time has expired.

I will now recognize the ranking member of the subcommittee, the gentleman from Missouri, Mr. Clay, for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman.

And I thank all of you for your testimony.

Many DPA authorities have not been used by the Federal Government for years, even decades in some cases, though they remain in statute. Some of these less frequently used authorities include the Title III authority to provide loans and loan guarantees as well as the national defense executive reserve authority in Title VII.

Could you please identify whether there are any authorities that you see as no longer needed for the national defense or perhaps redundant with other laws? I would like to hear from each one of you.

Mr. LAMBERT. Yes, I am sorry, sir. I know the answer to that, but I don't have it in front of me. There is a reason we have

stopped using loan guarantees. As I recall, in preparing for this, it was in the 1980s, and there was a reason that it ended, but I will have to get back to you for the record on that.

Mr. CLAY. How about you Mr. Wolf?

Mr. WOLF. The Commerce Department has no role with Title III, so I have nothing more to add.

Mr. CLAY. Mr. Kaufman?

Mr. KAUFMAN. Thank you, Congressman. FEMA also has no role with the Title III program. It is not an active program for us; no request for appropriations.

Mr. CLAY. Hopefully, Mr. Lambert, that will be an area where you come back with recommendations to this committee on how we can improve on the Act.

Mr. LAMBERT. Yes, sir.

Mr. CLAY. Let me also look at under Title III, once a determination is made that a critical industrial resource is in short supply, what steps are taken to rectify the shortcoming, and is there a transparent competitive bidding process in place to ensure fairness among private market participants when the government determines a need for private direct support?

Mr. KAUFMAN. Yes, sir. It is a very businesslike approach and here I would give a significant amount of credit to our executing agent, which is the Air Force Research Lab (AFRL.)

A lot of business people and attorneys who scour—when we have a request, we go through a very methodical process. Is there a market out there? We usually go out with a request for information to determine whether this can be met by commercial needs.

The request on behalf of the agency making the request or the service, and if that is not the case, we go through a very diligent—it is basically a due diligence process. We have laid it out. It is a format we have used for years and it has been very effective, but there is a process. Nobody gets special treatment.

Mr. CLAY. Okay. Is that the case, Mr. Wolf?

Mr. Kaufman?

Mr. WOLF. Again, the Commerce Department has no role in Title III, so we have nothing to add.

Mr. CLAY. Okay.

Mr. Kaufman?

Mr. KAUFMAN. Same for us.

Mr. CLAY. All right. The Defense Production Act defines “domestic source” as both the United States and Canada. Can you explain how the authorities of the DPA function in the context of Canada?

Mr. LAMBERT. Sir, I believe that is their—part of our North—it is in the North American, and Syd Pope will correct me if I am wrong, but North American industrial base.

They are considered a part of our industrial base. They were instrumental, for instance to give you an example, in supporting us in this effort to provide MRAPS to servicemembers as we were trying to build up. So we do consider Canada part of our North American industrial base.

Mr. CLAY. Okay. Any additional comment?

Mr. Wolf?

Mr. WOLF. That is a fair summary.

Mr. CLAY. Mr. Kaufman?

Mr. KAUFMAN. Fair summary. Thank you.

Mr. CLAY. Do any intergovernmental agreements or memoranda of understanding exist to allow the United States to prioritize contracts with Canadian companies?

Mr. LAMBERT. Sir, not to my knowledge. I believe Canadian companies' needs are treated no differently than U.S. companies for this purpose.

Mr. CLAY. Okay. Can you give some examples of where DPA authorities have been used to provide military or critical infrastructure assistance to foreign nations in ways that advance our own self-interest?

Mr. LAMBERT. Sir, I can give you—quickly, I can give you an example where DPS Title I authorities that came through our office—in the not-too-distant past—where we were asked to provide coalition forces with critical night vision equipment, and they were in theater, and we needed to work with the industry to assist them in providing that equipment to our coalition forces operating alongside of us, and we could not have done that without the authorities provided by Title I.

Mr. CLAY. An essential piece of equipment that helped our forces.

Mr. LAMBERT. Absolutely.

Mr. CLAY. I thank the witnesses.

And I yield back.

Chairman CAMPBELL. The gentleman's time has expired.

The gentleman from Michigan, the vice chairman of the subcommittee, Mr. Huizenga, is recognized for 5 minutes.

Mr. HUIZENGA. Thank you, Mr. Chairman. I appreciate that.

I think Mr. Kaufman and Mr. Wolf are having an easier time here than Secretary Lambert.

Mr. LAMBERT. I brought more people.

Mr. HUIZENGA. I'm glad, and I hate to break that pattern, so my apologies to you, but Secretary Lambert and I had a chance to meet over an issue regarding A123 and its sale to Wanxiang a number of months ago and the—something called the Committee on Foreign Investment in the United States, CFIUS.

So I am just wondering if you can give 30 seconds—just make sure all my colleagues know exactly, because I did not know about CFIUS or exactly the role it played until that had come up. So I wanted you to have an opportunity to describe that briefly and confirm my understanding that this is not a part of the reauthorization because it is part of permanent law, correct?

Mr. LAMBERT. Correct. I believe it is Section 721. That is part of permanent law. I should start it out by saying the Department of Defense does not speak on behalf—this is the Department of the Treasury, so they are the only official party, I think by statute, that is allowed to speak on the matter but it is—

Mr. HUIZENGA. Can you quickly describe CFIUS?

Mr. LAMBERT. Sure. The Committee on Foreign Investment in the United States was established to ensure that national security concerns were resolved prior to any transaction that involved an international party that could affect national security.

And it is a committee of government agencies that the Department of the Treasury is the chair of and is responsible for. We are one of many members that participate in that review process along

with Commerce and other agencies, but it is truly at the purview of the Department of the Treasury.

Mr. HUIZENGA. All right, thank you. And I will get back to you on another issue.

But Mr. Kaufman, I am curious. Being completely honest and transparent here, probably of all of the three of you up here describing your usages of this Act, the DPA, I am probably most concerned about Homeland Security and I am sorry with FEMA and what those applications are and it seems to me that there is a greater chance of sort of wandering outside of the parameters of what this program is really for, it seems to me, with application within FEMA.

So if you could just describe exactly how you have been using it. I know you gave a couple of examples, and one of those was dealing with railroads post-Katrina, trying to get equipment and trains running there, but help alleviate my concern, please.

Mr. KAUFMAN. I will be happy to, Congressman.

Mr. HUIZENGA. In about 45 seconds.

Mr. KAUFMAN. Noted. First off, I would say we use it on a very limited basis. In homeland security and emergency management space, something on the order of 16 uses since 2006, but when we do use it, it is for a very important purpose.

And the purpose statements are accounted for in the amendments to the Act, or the reauthorization of the Act in 2009, which did expressly include homeland security, emergency preparedness and response, and critical infrastructure protection and restoration as part of the scope of the authority.

So in support of that, in no particular order, but to give you a couple of other examples, most recently during Hurricane Sandy, we had a critical need to procure greater interpretive services, telephonic interpretive services.

There are an awful lot of languages spoken in the New Jersey and New York region, and so that was something that we needed to ensure we had available in very short order to support response recovery operations.

Mr. HUIZENGA. Just so I am understanding what you are saying, you basically jumped to the head of the line and said, sorry, hospitals that may need some of these translation services or whatever else, the government gets priority?

Mr. KAUFMAN. Yes. In the case of that Act, and that disaster where we were in an all-hands-on-deck footing, we said we need to be able to ensure that we are providing support to the survivors of that disaster in the most expeditious manner possible. That is absolutely correct.

Mr. HUIZENGA. All right. And I may want to unpack this a little more at some other point.

But Mr. Lambert, getting back to you, and I am not trying to—I firmly believe that every garden party needs a skunk. All right? So, I am happy to be that skunk today.

I want to read this—shortfall—so—the Title III expenditures reduced shortfalls of industrial resources, critical technology items, or essential materials needed for national defense purposes, and the chairman alluded to this.

I am baffled how under NDAA, where we put a specific congressional requirement for congressional approval for these biofuel projects to be moving forward with the funding, how the DOD has the ability, much less the gumption, to move forward with that.

Chairman CAMPBELL. And the DOD will have to answer that as part of another Member's questioning, because the gentleman from Michigan's time has expired.

I would now like to recognize the gentleman from Colorado, Mr. Perlmutter for 5 minutes.

Mr. PERLMUTTER. Thanks, Mr. Chairman. If I could pass, I just want to listen and understand this a little more, and maybe it will trigger a question, but I don't have any questions right now.

Chairman CAMPBELL. Okay, then we will now turn to the gentleman from South Carolina, Mr. Mulvaney, for 5 minutes. The gentleman from Colorado yields—

Mr. HUIZENGA. You could have recognized me to get the answer.

Mr. PERLMUTTER. All right. I will recognize—if I could—I would recognize my friend from Michigan to finish his question.

Chairman CAMPBELL. All right. If you can hold on just a moment, Mr. Mulvaney, then the gentleman from Colorado has recognized the gentleman from Michigan, whom I believe will allow Mr. Lambert to answer his question.

Mr. HUIZENGA. I deeply appreciate my friend from Colorado, my former neighbor, who has moved up to better environs in Longworth, but thank you for this time.

So, I would love to hear an answer.

Mr. LAMBERT. I'm sorry, could you repeat the—no, I'm sorry.

[laughter]

Mr. HUIZENGA. Okay. Would you like the quote as well? I am happy to do that.

Mr. LAMBERT. This is a very serious issue, and we don't take it lightly. When we reauthorized in 2009, and if you look back at the legislation, energy was one of the important components of the Defense Production Act. We have done a lot of energy activity.

Prior to the biofuels notification that we provided Congress on this current round, we had provided one in 2010, so there was a precedent. It was smaller, admittedly, but there is a precedent and there are really only two factors by law that we look at and one is, is it something that—I am summarizing the language because I don't have it in front of me, but in my head I say, does it make sense for the Nation? Is important to national security?

And then the more important question to me is, is this something the commercial market is not doing for some reason? And then in my mind, again coming from industry, this shouldn't be a defense program.

My goal and the goal of the Defense Production Act and everything that we do is we should be building facilities that we can utilize and then get out of, so they can be of use to the overall U.S. economy. Those are kind of the general things that I—

Mr. HUIZENGA. Okay. The Department of Energy, the Department of Agriculture, people that you had previously been partnering with specifically have not been funded for this.

It seems to me then we inserted language into NDAA that prohibited DOD to be able to do this, but you are going around that

language under this Title III authority to say well, we appreciate that, but we are going to use no year funding from 2012 to fund these programs that pretty clearly Congress has said this isn't a direction we want to go and cellulosic ethanol plants are not that unusual.

Mr. PERLMUTTER. If I could reclaim my time from my friend from Michigan, and I would just help him a little bit and help the panelists. Section 2(a)(6) of DPAS: "to further assure the adequate maintenance of the domestic industrial base to the maximum extent possible domestic energy supplies should be augmented through reliance on renewable energy sources (including solar, geothermal, wind, and biomass sources), more efficient energy storage and distribution technologies, and energy conservation measures." It is in the law. So for them to pursue it, I am glad they are, because that is part of the DPAS as it sits today.

Mr. HUIZENGA. Okay. Can I ask a question?

Mr. PERLMUTTER. I would yield to my friend from Michigan.

Mr. HUIZENGA. All right. I appreciate that.

Mr. PERLMUTTER. Now, we are getting going.

Mr. HUIZENGA. Now we are into something—yes, okay. My understanding is that might be a regulation, not the law. That is what I am being told. But—

Mr. PERLMUTTER. "The Defense Production Act of 1950 as amended."

Mr. HUIZENGA. Okay. "As amended." I guess the question to me, or I guess the problem I am having that I am trying to sort out then is it appears that we may have a conflict between what we have passed and in three different budgets, a DOD budget, an agriculture budget, and a Department of Energy budget with specific language in NDAA, so four different places that appear to be in conflict with that and—

Mr. PERLMUTTER. Reclaiming my time, we may have a conflict and we should iron that conflict out. I like this section of the Defense Production Act of 1950 because I think from the national security basis we can't just—I would like to see us rely on a variety of sources of energy, not just petroleum-based, which we spent \$17.3 billion compared to like \$46 million or something like that for biofuels.

So, I appreciate the gentleman's questions, and if there is a conflict, as Members of Congress it is our responsibility to iron those conflicts out, but this particular section, I believe, does benefit the national security of the Nation and it may—and homeland security may be benefited as well if a bunch of refineries, petroleum refineries were to be attacked or lost in an earthquake or whatever. So, I appreciate that.

Mr. HUIZENGA. Will the gentleman—

Mr. PERLMUTTER. Of course, I will yield to my friend.

Mr. HUIZENGA. All right. I appreciate that and only to say this: my reading and understanding, and this is new territory for a lot of us I think, is that these are for some critical things that are not being done anywhere else in the economy.

And that a production of something that may have gone out of production for example only because it has limited military use,

cellulosic ethanol is not just specifically a military use and there is private sector research and things that are happening.

Mr. PERLMUTTER. I thank the chairman. And I will yield back.

Mr. HUIZENGA. Thank you.

Mr. PERLMUTTER. I appreciate the opportunity—

Mr. HUIZENGA. I appreciate my friend.

Chairman CAMPBELL. The gentleman who was not going to use any of his time has now used all of his time with the help of the gentleman from Michigan.

Mr. PERLMUTTER. I took my 5 minutes. So now, I have had a chance to prepare for your questions.

Chairman CAMPBELL. Now, we will go back—and I really mean it this time—to the gentleman from South Carolina, Mr. Mulvaney. You are recognized for 5 minutes.

Mr. MULVANEY. I am not sure how I got dragged into that, but it was fun to watch. Thanks, guys.

Gentlemen, I congratulate you. You are actually seeing something that is rare in this process. I haven't been here very long, but we are actually having a hearing to find out information.

Ordinarily, we come into these things with these scripted questions and we already know what we want to ask, and this has actually been interesting to me, because I didn't even know this thing existed until the chairman told us about it at the beginning of this year.

So you are seeing Members of Congress doing things that they are not ordinarily comfortable doing, which is asking questions that they don't know the answers to already. So I appreciate you participating in the process.

I am going to start with Mr. Kaufman, because I am going over your testimony, Mr. Kaufman, and help me understand that—I think I grasp the role of the DPA under emergency or exigent circumstances.

The examples you give in your testimony about restoring floodwalls and levees after Hurricane Katrina, and thermal imaging in Boston, make sense. I can follow them and they seem to make sense to me.

I think I am having a more difficult time getting my head around your examples of aircraft for U.S. Customs and Border Protection and components for weather satellites to help detect moderate or track severe weather. Can you help me understand how those last two examples are things that are appropriate exercises of the DPA authority?

Mr. KAUFMAN. I will be happy to. In the case of the aircraft for CBP, for Customs and Border Protection, those are their P-3 Orion aircraft and they needed critical parts for maintenance for those aircraft that actually if we hadn't executed a priority rating for that contract, then they would have fallen into a lengthy delay because similar ratings were in place from the Department of Defense. So that is a perfect example of—

Mr. MULVANEY. Okay. Thank you. I am going to cut you off because—and I want to let you go, but I want to cut you off there because it raises a really good point. Is that—we have had these things since what, the 1950s, their DC-6s, I think, or something like that modified.

Was the lack of spare parts simply lack of planning on somebody's part and it turned out being—my secretary, when I first started practicing law, had a sign that said, “A failure to plan on your part does not constitute an emergency on my part.” Is that what we saw in that particular circumstance?

Mr. KAUFMAN. No, I do not believe that is what we saw. I think what you saw in that circumstance is a small market with competing demands on that market. And a need to adjudicate what was most critical at a point in time.

Mr. MULVANEY. Right, but again, that is a knowable thing, isn't it? We have had these things for 60 years—why are you shaking your head, Mr. Lambert—I am not trying to be combative. I am just trying to—

Mr. LAMBERT. No, it is a question about tempo and priorities, and in this particular case, as I recall, there were a lot of demands in a short period of time for these priorities. We were flying them or using them harder than we were prior and it was a question of how we adjudicated—from a business model perspective, your option is to build up a huge inventory of parts that may or may not be obsolete in a few years, which you pay a lot for, and then you store and manage, or to work with industry to do just-in-time prioritization, which the Title I authorities allow us to adjudicate that, that priority rating.

Mr. MULVANEY. Okay, that helps. Thank you for that. I appreciate that.

Mr. Lambert, that leads me to another question. You mentioned in part of your testimony, you said that agencies apply for DPA treatment. Have you ever turned anybody down?

Mr. LAMBERT. Yes, sir.

Mr. MULVANEY. And what is the—you said there is this two-part test about whether or not it is important for national security and whether or not it is something the private sector would do. Is it basically, fail one of those two tests? Is that the idea?

Mr. LAMBERT. No, that is just to get into the gate. That is to make the application. So any service—first of all, you need a government customer, so that is the first basis.

The U.S. Government has to be a customer because frankly, this is U.S. taxpayer money. And so when we go out and look, we ask, is there a U.S. customer? That is one of the first internal hurdles we look at.

Is there a private industry willing to match? A really important part of DPA that people don't appreciate is there needs to be a private sector contribution to this.

Usually is more than one to one, but we strive to make it to give them incentive to get some skin in the game from the private sector. So it is not entitlement.

We really are trying to transition a technology or capability from the government—something we need that isn't performing, there is a market error—and we need to help correct the market, but then the market should take over.

At the end of the day, we don't want to be in this—we need to transition this to a commercial enterprise. So it needs to have a government customer. That is the first hurdle.

If we can't find a sponsor for it, we get a lot of people coming in offering ideas. If there is no customer for it, even if it meets those first two DPA criteria, we will not fund it. We won't even put it in our hopper.

Mr. MULVANEY. Can you give me an example of something that failed the test within recent memory?

Mr. LAMBERT. Sure, we have had—they tend to be smaller entrepreneurial companies which have grand ideas. We had one recently, and I need to go back, because it may have been something that worked on the classified program, but it seemed to have great promise but we ran it on to ground, we put together these IPT's that are—we treat every inquiry very seriously.

We put together an IPT and it was determined that there were alternatives—this was a good idea, but there were alternatives and the commercial market was already addressing that need for us, and so there was no need for government support.

Mr. MULVANEY. And Mr. Lambert—one quick question if I may, Mr. Chairman.

I'm sorry. I misunderstood. I thought you said earlier that the agencies make application to you. Are you telling us that individual companies, private companies come to you and ask for DPA treatment for the products?

Mr. LAMBERT. Absolutely. Sometimes through Members. Historically, Members have provided us information about companies. Members tend to have a good ground sense of what is happening in their districts, and we always look and listen to those inquiries, but they run through the same process that if a government agency came to us, we would go through the same screening.

Mr. MULVANEY. I thank the gentleman.

Chairman CAMPBELL. The gentleman's time has expired.

And next, we have the gentleman from North Carolina, Mr. Pittenger. You are recognized for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

And thank you, Secretary Wolf, Secretary Lambert, and Mr. Kaufman for your testimony.

I would direct my question, frankly, to any of you. As we reauthorize any statute in this case, we look for what changes we could make that would make it more effective, particularly as it relates to the economy, and I really would like to know from your experience, as you work with this statute on a daily basis, what constructive changes you would recommend that we could make at this time?

Mr. LAMBERT. Again, it is an incredibly functionable statute right now. We have a great deal of flexibility as long as we are informing you and communicating with you about what we are doing.

We believe we have all the authorities in place to meet the demands. If we have tweaks on the edges, I believe it is on us to get back to you and explain what those are, but as a general rule, we think the Act is quite constructive, particularly the changes that were made in 2009, which helped us a lot in cleaning up a lot of the language and streamlining a lot of our processes.

Mr. WOLF. We have no suggestions to make, either. It works very efficiently. We have had nothing but good responses in working

with and educating industry about this and have no recommended changes.

Mr. KAUFMAN. I would agree. The Administration did put forward proposals in 2009 that were adopted in the reauthorization, and we feel that the law works well as written.

Mr. PITTENGER. Let me ask you this: Do you hear complaints from private industry?

Mr. WOLF. No. In fact before coming here today, in anticipation of that question, I polled some of my staff. And other companies have used it and I have not heard any complaints from anyone in industry who used it. To the contrary, with the advice and assistance of my staff from the Commerce Department, it has worked quite efficiently and well. I have not received any complaints.

Mr. PITTENGER. No threats, no challenges—

Mr. WOLF. No, I am unaware of any threats or complaints, formal or informal.

Mr. LAMBERT. Sir, I would add from DOD's perspective that we do get complaints, but it is usually because we are not funding something. We put everything through the same rigorous process. Sometimes, we determine it is not in the best interest of the taxpayer or the warfighter to fund something. That is when we get complaints, but we have never had a challenge or a protest.

Mr. PITTENGER. Thank you.

Mr. Chairman, I appreciate it. I yield back my time.

Chairman CAMPBELL. All right. The gentleman yields back, and seeing no other Members who wish to ask questions—I thought we would run right up against the votes, but we have managed to complete all questioning without the votes.

So I thank the panel very much for being here today.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And without objection, this hearing is now adjourned.

[Whereupon, at 2:55 p.m., the hearing was adjourned.]

A P P E N D I X

May 8, 2013

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STATEMENT

OF

DAVID J. KAUFMAN
ASSOCIATE ADMINISTRATOR
POLICY, PROGRAM ANALYSIS AND INTERNATIONAL AFFAIRS

FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE
THE

HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON MONETARY POLICY AND TRADE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

“REAUTHORIZING THE DEFENSE PRODUCTION ACT”

Submitted
By

Federal Emergency Management Agency
500 C Street, S.W.
Washington, D.C. 20472

MAY 8, 2013

Good morning, Mr. Chairman and Members of the Subcommittee, I am David J. Kaufman, Associate Administrator for Policy, Program Analysis and International Affairs at the Federal Emergency Management Agency (FEMA).

The DPA is the primary source of Presidential authorities to expedite supply of materials and services needed for both military and civil emergency preparedness and response. Expiration of this authority would seriously hinder our ability to prepare for and respond to natural disasters and other threats including catastrophic disasters such as an earthquake, a hurricane or an incident involving a weapon of mass destruction.

The use of DPA authorities has evolved over time. While these authorities are still used, primarily, to support Department of Defense programs, they are also used, today, to support disaster preparedness and response, critical infrastructure protection and restoration that include physical or cyber-based assets, and homeland security activities.

Title I of the DPA authorizes the priority treatment of contracts and orders. The priority rating is rarely invoked by the civil departments but the availability of this authority is essential to ensure timely delivery of needed resources.

The priorities authority has gained increased importance for homeland security purposes. As with rated orders in support of military programs, rated orders for homeland security programs are used to ensure on-time performance when delays could place lives and property at greater risk. Ongoing or recent use of the priorities authority for various homeland security purposes include:

- The U.S. Army Corps of Engineers program to repair and restore floodwalls and levees after Hurricane Katrina;
- Aircraft for U.S. Customs and Border Protection; and
- The emergency preparedness and critical infrastructure protection activities of the Architect of the Capitol.

The priorities authority is also used, on an “as needed basis,” to protect and restore critical infrastructure operations and to respond to and recover from domestic emergencies and disasters. For example, priorities authority has been used to ensure timely delivery of:

- Thermal imaging camera systems for perimeter security at both airport and seaport facilities in the Boston region;
- Equipment to enable the rapid restoration of rail service in the Gulf Coast region after Hurricane Katrina; and
- Components for weather satellites to help detect, monitor, and track severe weather for early warning to protect lives and property.

While use of the priorities authority for homeland security purposes is far more limited than use for military programs, it is still important. The DPA priorities authority is needed to support response to disasters, rapid restoration of critical infrastructure operations, and timely

development of emergency preparedness and critical infrastructure protection measures to protect lives and property.

Along with other FEMA responsibilities to coordinate Federal emergency preparedness and response activities, FEMA provides Government-wide coordination and guidance for use of DPA authorities on behalf of the Secretary of Homeland Security, pursuant to Executive Order (E.O.) 13603. E.O. 13603, which was signed in 2012, delegates Presidential DPA authorities and functions to the heads of various Federal departments and agencies and replaced E.O. 12919 issued in 1994.

To date, use of the priorities and allocations authorities has been limited, primarily, to resources falling under the jurisdiction of the Department of Commerce (DOC). These include most manufactured goods and services. DOC has delegated authority to the Department Homeland Security (DHS) to place priority ratings on contracts and orders to support emergency requirements, critical infrastructure protection and restoration, and homeland security programs.

FEMA is continuing to work with the six departments that have been delegated priorities and allocations authority by the President to ensure effective use of this authority. We will continue to work with the appropriate Federal departments and agencies to ensure the proper implementation of DPA authorities and continue to incorporate the DPA in planning for emergencies requiring timely delivery of resources, as a tool in the toolbox to prepare for, respond to, and recover from disasters.

Without the DPA, a critical statutory authority to ensure timely procurement of materials and services to protect and restore critical infrastructure operations – whether they are key transportation capabilities, floodwalls or levees – would be lost. Without the DPA, DHS and other Federal agencies would have no authority to prioritize contracts for resources needed to respond to and recover from a natural disaster or act of terrorism. In closing, I urge that Congress reauthorize the DPA authorities that remain critical to our homeland security.

Thank you Chairman Campbell for the opportunity to appear before you today, and I would be pleased to answer any questions you or other members of the Subcommittee may have.

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**TESTIMONY OF
MR. BRETT B. LAMBERT
DEPUTY ASSISTANT SECRETARY OF DEFENSE,
MANUFACTURING & INDUSTRIAL BASE POLICY**

**BEFORE THE UNITED STATES HOUSE
SUBCOMMITTEE ON
MONETARY POLICY & TRADE**

May 8, 2013

**Statement of
Mr. Brett Lambert, DASD(MIBP)
on the
Reauthorization of the Defense Production Act
before the
House of Representatives Subcommittee on Monetary Policy & Trade
May 8, 2013**

Thank you for this opportunity to discuss the role of the Defense Production Act (DPA) in supporting our Nation's defense needs.

The DPA provides important authorities for the Department of Defense (DOD) both to ensure timely delivery of equipment and services essential to our armed forces and to promote domestic industrial capabilities to produce superior defense systems at affordable costs. My testimony today will focus on the priorities authority provided in Title I and the business incentives provided in Title III; however, I will also note that Title VII provides a number of important authorities that support our capabilities to maintain and strengthen our defense industrial base.

Ensuring Timely Performance of Contracts

Title I of the Defense Production Act is vital to ensure timely DOD access to industrial resources during both peacetime and periods of conflict. Title I authorizes the President: (1) to require acceptance and priority performance of contracts and orders and (2) to allocate materials, services, and facilities, as necessary or appropriate to promote the national defense.¹ These Presidential authorities are delegated to the Department of Commerce with respect to industrial resources. Commerce has re-delegated to DOD authority under the Defense Priorities and Allocations System (DPAS) to place priority-rated contracts and orders for industrial resources in support of DOD Approved Programs and the Department uses it as a standard contracting provision for most weapon system related procurements that require industrial resources.

DPAS priority ratings help to assure that rated orders will be performed on time. For the most part, contractors and suppliers act on their own to fulfill their obligations under rated orders, without further action required by the Government. However, when problems occur that cannot be resolved by the contractors and suppliers, the DPAS provides for Special Priorities Assistance (SPA), whereby problems can be resolved with the assistance of DOD or, ultimately, the Department of Commerce.

Although important in peacetime, the DPAS as implemented under Title I authority is indispensable in times of conflict. It provides the ability and flexibility to address the critical procurement needs of the warfighter. Even though Title I and DPAS were first enacted over 60 years ago, experience with providing direct support to the operations in Afghanistan and Iraq demonstrates their continued importance. The DPAS played an important role during these

¹ The DPA defines the term "national defense" to mean programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity.

operations in expediting delivery of equipment needed to counter new threats and protect the lives of our armed forces. The DPAS was instrumental in speeding the deployment of new and increased quantities of personal body armor, Counter Improvised Explosive Device (IED) systems, Mine Resistant Ambush Protected Vehicles (MRAPs), and Intelligence, Surveillance and Reconnaissance (ISR) platforms, night vision equipment, submarine environmental controls, weapon targeting systems, and many more items needed to support our Armed Forces.

Cooperation with Foreign Partners

The authority to provide preferential treatment for foreign defense orders in the United States, when such treatment promotes national defense interests, is increasing in importance with the growing number of joint nation operations. Among the consequences of globalization and industrial restructuring are the creation of multinational defense companies and an escalating degree of mutual defense interdependence. Reciprocal industrial priorities systems agreements with our foreign partners, referred to as Security of Supply arrangements, encourage them to acquire defense goods from U.S. suppliers, promote interoperability, and simultaneously provide increased assurance that the DOD's non-U.S. suppliers will be in a position to provide timely supplies to DOD during peacetime and times of conflict. From the U.S. standpoint, such arrangements are made possible by the Title I priorities and allocations authorities.

We have a longstanding bilateral priorities support agreement with Canada, and DOD has established bilateral Security of Supply arrangements with other key allies and trading partners, including Australia, Italy, Finland, the Netherlands, Sweden, and the United Kingdom, that commit each nation to establish and maintain a reciprocal priorities system and to provide the other nation reciprocal access to that system. We are exploring similar bilateral arrangements with other countries. During the past decade, Defense has worked closely with Commerce on numerous occasions to authorize our foreign partners to place DPAS priority ratings on their contracts and orders with U.S. suppliers to support their operational requirements, often linked to deployments in Iraq and Afghanistan.

Supporting the Needs of Armed Forces

From the onset of the conflicts in Afghanistan and Iraq, DOD saw a need for lighter and stronger personal body armor. However, the capability to ramp up production of such body armor was constrained by the limited availability of Small Arms Protective Insert plates that provide the hard armor component of the Improved Outer Tactical Vest. From 2002 to 2006, we used a Priority Allocation of Industrial Resources (PAIR) Task Force with multi-service and Department of Commerce participation to prioritize DOD requirements and then used the DPAS to direct the manufacture and distribution of this product in order to support our highest priority requirements. By 2006, U.S. manufacturing capacity had grown sufficiently to satisfy all rated order delivery requirements, eliminating the need for further SPA directives.

In 2003, in support of Operation Enduring Freedom, the Department asked Commerce to issue a Directive to a key supplier supporting the Predator program that required the supplier to satisfy the orders it had received related to the Predator ahead of other competing rated orders based on urgent operational requirements. Commerce issued the Directive the same day it was

requested and the critical supplier was able to meet the required delivery date because the directive "reprioritized" work in its facility, moving the Predator-related order to the front of the production queue.

In 2006, we also used the DPAS to accelerate production of Counter IED systems. Insurgents in Iraq had changed tactics, planting more powerful bombs and using different triggering methods to defeat vehicle armor and evade U.S. countermeasures. To counter this threat, the Department dramatically increased its investment in electronic jamming technology to detect and disarm IEDs. To ensure production priority, the Secretary of Defense approved the use of the highest rating authority available under the DPAS, known as the "DX" rating, to support the rapid delivery of Counter IED systems.

In 2007, we formed an MRAP PAIR Task Force to review and prioritize DOD requirements for materials used in MRAPs and competing programs. We identified potential industry bottlenecks and quantified our vehicle component requirements for items such as steel plate, axels, and tires. By combining the information accumulated from these activities, we were able to identify production capacity gaps in industry that would impact the MRAP and other DOD vehicle and armor programs. This knowledge of the industrial base, along with the Secretary's highest rating authorization for the MRAP enabled us to clearly and quickly communicate the Department's prioritized requirements to industry. As lower-rated programs were impacted by the surge to meet MRAP demand, we also increased industrial capacity through information sharing, capital investment, developing new sources, and by accelerating changes to specifications and standards that permitted increased production rates without sacrificing quality.

In late 2008, we received an urgent request from the DOD's Central Command to increase production of ISR systems. In this case, we determined that simply elevating priority status to the highest level would not effectively address constraints among competing, equally important, acquisition programs. We mitigated many of the production constraints through the use of the SPA process. However, in one case involving the procurement of hundreds of sensor arrays/antennas from a contractor in a Security of Supply country, we were able to accelerate delivery to meet operational requirements, despite the fact that the DPAS has no standing outside the United States. We made the foreign supplier aware that DOD had a reciprocal Security of Supply arrangement with the partner nation and the foreign supplier agreed to meet DOD's required delivery dates.

In 2010, the Department engaged with industry to address numerous delivery issues on behalf of the Special Operations Command (SOCOM) to expedite the fielding of night vision systems in Afghanistan. An Industrial Capability Assessment was done to determine industry's ability to deliver these systems quickly and an arrangement was brokered between the Command and competing Service requirements to preserve access for all while meeting the urgent needs of SOCOM. The assessment provided insight into industry constraints and enabled the prioritization of delivery requirements by using DPAS priority rating authority to reconcile competing Service needs.

In 2012, a partner nation asked for help expediting the refurbishment of submarine environmental control systems. These atmospheric controls were urgently needed by both U.S. and the ally's navies to avoid disruptions of fleet deployments, but the contractor was limited in its ability to meet the needs of both customers. The Department mediated the dialog between the buying activities and contractor to improve refurbishment rate. Additional Government Furnished Equipment was supplied to the contractor to improve throughput rates and both nations' schedules were aligned to improve contractor efficiency.

In 2013, the Army requested SPA on behalf of a supplier of 120mm Enhanced Mortar Targeting Systems (EMTAS). The purpose was to expedite delivery of bearings, used in these systems. The Joint Chiefs of Staff had highlighted the military importance of deploying these systems to Afghanistan as rapidly as possible under a "Joint Urgent Operational Need" (JUON) statement. The Department worked with the EMTAS supplier, the bearing vendor and Commerce to develop a plan for expediting delivery. This plan was implemented in a matter of a few days under a Department of Commerce Directive.

The above examples, which span over ten-years and two wars demonstrate the enduring importance of the DPA's Title I authority in supporting both our Armed Forces and those of allied nations.

Disaster Preparedness and Mitigation

The DOD used the DPAS to support U.S. civilian infrastructure requirements – specifically to accelerate levee reconstruction work in New Orleans. The Greater New Orleans Hurricane and Storm Damage Risk Reconstruction System is critical infrastructure vital to national economic security and national public health and safety. The system protects one of the world's largest ports and navigation infrastructure through which fifty five percent of the country's petroleum supply is imported. It also protects refineries, military bases, a metropolis of over 1,000,000 people, and several other populated areas. The Army Corp of Engineers submitted a SPA request to use the DPAS to accelerate reconstruction in order to comply with a Congressional directive to complete the project by June 2011. Since this was a civil works project, we requested and received the support of the Departments of Homeland Security and Commerce. As a result, DPA priorities authority helped expedite efforts to strengthen and protect critical infrastructure against hurricane damage, thus reducing the threat to life and property.

As required by the 2009 DPA reauthorization. The Department has collaborated with other Federal departments to expand the use of priorities and allocations authority beyond industrial resources to promote a consistent and unified Federal priorities and allocations system where practicable.

Transitioning New Technologies to Defense Use

Title III of the DPA authorizes various actions by the President to develop, maintain, modernize, restore, and expand the productive capacities of domestic sources for critical components, critical technology items, materials, and industrial resources essential for the execution of the national security strategy of the United States. Title III authorities were initially

used during the Korean War era to establish the industrial infrastructure needed to transition aircraft production into the jet age and for other industrial base needs. Jet aircraft production required vastly increased quantities of such materials as aluminum and titanium. Much of the U.S. processing capabilities for these and dozens of other key materials can trace their roots to Title III projects that were undertaken during the 1950s. The national defense and the U.S. economies are still reaping enormous benefits from these historical Title III actions.

Today's Title III projects continue to support the transition to new and next-generation technologies that are essential to meeting national security requirements identified by Government customers. Once a critical need for an innovative technology is established by a Government acquisition program, DPA Title III has the ability to provide a variety of financial incentives to industry to make investments in production capabilities that will increase capacity to meet the national defense requirement. In the 1950s, the use of Title III authorities contributed to major transformations in the U.S. industrial base. Today Title III efforts are typically more limited in scope but are still extremely important in ensuring future U.S. production capabilities and technological leadership in critical markets.

Title III projects help promote the use and insertion of new technologies for defense purposes in several ways. First, Government purchases and purchase commitments reduce the financial risks that discourage potential new producers from creating new capacity. Second, the new production capabilities stimulated by Title III incentives are generally more efficient and result in lower production costs and product prices. Third, Title III projects commonly generate information about the performance characteristics of new materials and support testing and qualification to promote the broader use of these materials in defense systems.

Without Title III efforts to promote and incentivize the transition of new technologies to affordable use, beneficial use of new technologies can be delayed for many years. Potential producers do not invest in efficient production capacity without proven demand and potential users do not demand new technologies due to high cost and lack of assured supply. Title III projects effectively overcome these market barriers to production expansion and technology adoption, accelerating insertion into defense applications.

Ensuring Needed Production Capabilities

The primary objective of every Title III project is to improve domestic production capabilities to support national defense requirements. New, expanded, and modernized domestic industrial capabilities: (1) reduce the risks of foreign dependencies caused by geo-political factors or other economic issues; and (2) strengthen the economic and technological competitiveness of U.S. manufacturers. Improvements in production capabilities, due to Title III projects, have resulted in reduced production costs, lowered acquisition prices, and improved product quality. Domestic production sources supported by Title III actions provide an added element of trust regarding product integrity. Trusted sources are increasingly important for such products as microelectronics, in which malicious defects can be extremely difficult to detect.

The broad impact of Title III projects in supporting production of state-of-the-art defense systems and in strengthening domestic production capabilities for lead-edge technologies is illustrated in the following four examples:

1. In April 2013, a new manufacturing facility that produces specialized materials for lithium ion batteries opened in California. The facility, created with Title III support, will provide a secure, domestically-owned, and domestically-based source of materials that are critical to the production of batteries for Government satellite and space programs. These materials, which have never before been manufactured in the United States before, will enable production of satellite batteries that last more than 10 years with more than 60,000 charge-discharge cycles. Title III support has enabled a U.S. manufacturer to expand from manufacturing lithium ion cells exclusively for high-technology medical applications to become a leading designer and supplier of lithium ion cells for aerospace and other military applications.
2. Another Title III project is supporting development of production capabilities for a next-generation military GPS device, which is the smallest, lightest weight and lowest power-consuming device of its type available today. It enables the creation of GPS receivers that provide significant size, weight and power reduction for military systems in use around the world. Title III support has been a critical element of the “low-cost GPS program,” which has already saved the Government an estimated \$100 million and is expected to save DOD more than \$300 million more in savings and cost avoidance over the next five years.
3. A Title III project involving GaN on SiC X-Band Monolithic Microwave Integrate Circuits (MMIC) caps a decade of substantial investment from the Government and the contractor (including DARPA’s Wide Bandgap Semiconductor program), readying GaN technology for insertion into a broad range of military system and delivering better value to the taxpayer and warfighter. Benefits of GaN technology includes enabling radar systems to track a target 78 percent farther in range with the same accuracy or, for a different mission, reduce the radar antenna size by half while more than doubling the radar search area. Over the course of this program the contractor’s GaN process yield improved by more than 3X. The improved yield (along with other fab operations improvements) corresponds to a greater than 76 percent reduction in the cost of a MMIC power amplifier since the start of the program. In addition to the improved yield they accumulated over a million hours of reliability data, demonstrating reliability that supports military system lifetimes with significant margin. As a result of this initiative, GaN technology is mature and available for immediate insertion in a variety of defense systems.
4. Another Title III project has been instrumental in re-establishing the infrastructure, facilities, and equipment necessary to support a production capacity of 160,000 pounds per year of high-purity beryllium metal. High-purity beryllium is used extensively in structures and instruments found in defense weapon systems where stiffness, low weight, good thermal and electrical conductivity, and dimensional stability are required. Essential strategic uses, where no suitable substitute exists for high-purity beryllium, include: airborne Forward Looking Infrared (FLIR) systems for fighter aircraft and attack helicopters; guidance systems on existing strategic missiles; surveillance satellites; ballistic missile defense systems; and

reflectors for high flux, nuclear test reactors. Beryllium imports are unable to meet the purity levels required for many critical defense applications.

While Title III projects target national defense needs, they generally result in more broad-based benefits to the U.S. economy. The benefits I just cited – reduced foreign dependencies, greater economic and technological competitiveness, as well as the creation of high-tech American jobs – are all important to the U.S. economy. Title III projects can also support other important goals, such as reduced energy consumption and CO₂ emissions.

An example of this is a Title III project that was undertaken to improve production capabilities for monolithic microwave integrated circuits (MMICs) needed for next-generation radar systems resulted in improved production capabilities for solid state lighting (SSL), using light emitting diodes (LEDs). LED lighting reduces energy consumption by three quarters compared to fluorescent lighting, while reducing CO₂ emissions and use of toxic mercury.

Another Title III project to improve production capabilities for reactive plastic CO₂ absorbent material, used to improve breathing equipment for diving, has also resulted in improved anesthesia technology for use in operating rooms. This innovative Title III material absorbs more CO₂ and fewer anesthetics than granular absorbent. It also eliminates temperature concerns and the toxic waste associated with granular lithium.

Most people in this hearing room are carrying a device, which performs better and is cheaper, due to a third Title III project that was completed several years ago. The project involved manufacturing capabilities for gallium arsenide wafers. The primary purpose of this project was to support defense needs for advanced integrated circuits, but gallium arsenide devices are also important components in cell phones. U.S. Title III contractors more than doubled their share of the world market for gallium arsenide wafers over the course of the Title III effort and reduced wafer prices by more than one third. So, everyone's cell phone is cheaper, performs better, and is more likely to contain integrated circuits fabricated using domestically-produced wafers, due to Title III actions.

These three examples are representative of the many commercial spill-over benefits resulting from Title III projects, beyond the benefits to our national defense.

Title III Projects

Each Title III project is a cooperative Government/Industry business partnership involving shared funding and planning. Project goals and contract terms are tailored to the market and technological conditions for each industrial resource or critical technology item. Potential Title III projects undergo a rigorous vetting process to ensure that they are both eligible for Title III action and likely to result in commercially viable production capabilities. Eligibility is based primarily on a Determination, required by the Defense Production Act, that specific criteria have been met. A project may not be initiated unless the President determines that:

1. The targeted resource or item is essential to the national defense;

2. Industry cannot reasonably be expected to provide the needed resource or item in a timely manner, without Title III action.

Once a potential project is determined to be eligible for Title III action, it is assessed in terms of various market factors. For example, Title III generally targets materials that are required by multiple defense programs. Title III action to address an industrial resource shortfall is particularly important, when the cost of addressing the shortfall cannot be justified by individual programs. Multiple defense programs have benefited from Title III projects involving such items as radiation-hardened microelectronics, structural composite materials, and high-performance batteries. Market conditions are also assessed to determine how best to structure and incentivize a possible Title III effort and whether production capabilities resulting from such an effort would remain economically-viable after the Title III commitment has concluded.

Title III provides a number of important tools to support needed improvements in domestic production capabilities. The purchase and purchase commitment authorities provide the foundation for virtually all Title III actions. Purchases are used to assist in the creation of new production capabilities, and purchase commitments are used to guarantee a market for new production output. Title III also authorizes installation of Government-owned equipment in production facilities and the development of substitutes for strategic and critical materials. These authorities are used, as appropriate, to supplement purchase and purchase commitment actions. Title III also includes loan and loan guarantee authorities, but these authorities have not been used since the Title III Program was resurrected in the 1980s. It might be noted, however, that all Title III actions must now be supported using appropriated funds; so, previous concerns regarding off-budget loans and loan guarantees no longer apply to use of these Title III authorities.

Current Title III Initiatives

There are currently forty-one Title III initiatives. Thirty-seven of these are under contract, and the other four are expected to be under contract by the end of the fiscal year. Many of these projects can be grouped into three broad categories – electronic materials and devices, advanced structural materials and power and energy. There are also projects involving ammunition, optical materials and devices, machining technologies, and a variety of other technologies.

The electronic materials and devices projects involve enabling technologies, without which potential advances in microelectronics would be far more limited. These materials offer advantages in terms of faster device performance, greater resistance to radiation and temperature, reduced power requirements, reduced circuit size, increased circuit density, and the capability to operate at higher frequency levels. Advances in electronic materials enable new capabilities for defense systems and improvements in old capabilities. The advanced structural materials offer improvements in terms of strength, weight, durability, and resistance to extreme temperatures. Power and energy initiatives focus on technologies such as flexible solar cells, advanced battery technologies and fuel cells that enable advanced operational capabilities and reduce operational and maintenance costs. These benefits are particularly important in aerospace applications.

I have already mentioned several ongoing or recent Title III projects. A sampling of other Title III projects includes:

- Establishment of the world's first manufacturing production facility of carbon nanotube (CNT) yarn and sheet material. This project's emphasis is on expanding flexible, scalable, and modular production processes; improving product quality and yield; and reducing manufacturing costs. Carbon nanotubes exhibit extraordinary strength and unique physical properties and result in lighter weight and greater ballistic protection for the Warfighter and vehicle armor, stronger, lighter structural components, as well as enhanced EMI & EMP protection.
- The upgrade and refurbishment of the facilities of the sole domestic source for heavy forgings required by the U.S. Navy and other DoD services. The DoD applications for these forgings include propulsion shafts for surface and sub-surface naval vessels, periscope tubes, ring forgings for bull gears, and reactor vessels. Heavy forgings are unique and require a 10,000 ton, open die forging press (the largest in North America) in order to produce parts that begin with ingots that are up to 11 feet in diameter and weigh up to 600,000 lbs. The focus of this Title III project is to address production constraints and single points of failure that are critical to maintain the supply of heavy forgings to the DoD.
- The scale up for production of Polyhedral Oligomeric Silsesquioxanes (POSS™). POSS has been demonstrated to enhance the performance of polymers in such applications as radiation shielding for space-based microelectronics, photo-resistant material for semiconductor manufacturing, food packaging, optical lenses, and aircraft tires.
- Establishment of a long-term, viable, world-class domestic manufacturer of high-energy density lithium-ion (Li-ion) batteries that is responsive to customer requirements with respect to performance, reliability, quality, delivery, and price. High energy density lithium-ion batteries are suitable for a number of military systems including enhancing the endurance of Unmanned Aerial Vehicles (UAVs) and providing portable power to support the mission for the dismounted soldier, long endurance autonomous systems, tactical vehicles, unattended sensors, and reconnaissance and surveillance systems. The intent is to create a flexible production line capable of producing multiple battery form factors for both military and commercial applications, as well as achieving performance results needed to meet unique Warfighter requirements.
- Establishment of a domestic source for the production of light-weight ammunition cartridge casings using a high-strength polymer material. Ammunition casings produced with this material may provide significant advantages over traditional brass casings, such as decreased combat carrying weight for ground and air operations, with cost savings obtained through reduced fuel consumption, as well as lower transportation/shipping and material costs. Other potential benefits may include increased muzzle velocities, improved weapons accuracy, and prolonged barrel and weapon life. The initial focus of the project is the development and qualification of lightweight .50 caliber machine gun

rounds that can be utilized in conventionally fielded weapon systems at a comparable cost to standard brass ammunition.

Title VII Authorities

I also wish to express support for DPA Title VII authorities. Title VII contains miscellaneous provisions, including enforcement mechanisms, which help protect the Nation's security. Of particular importance are Section 705, which provides authority to collect industrial base information; Section 708, which provides authority to enter into voluntary agreements (and antitrust protections for participants in such agreements); Section 721, which authorizes the President to suspend or prohibit a foreign acquisition or merger with a U.S. firm, when the transaction provides a credible threat to U.S. national security (reviews of foreign acquisitions under Section 721 are conducted by the interagency Committee on Foreign Investment in the U.S. (CFIUS)); and Section 722, which establishes the Defense Production Act Committee, an interagency body that advises the President on the effective use of the delegated authority under this Act.

Conclusion

The U.S. industrial base continues to be a cornerstone of our national defense structure and the Defense Production Act continues to provide unique and important authorities to establish, expand, maintain, and modernize critical elements of this base. Title I priorities authority plays an extremely important role in ensuring timely access to domestic production capabilities to meet critical defense needs. Title III authorities are important to expedite the transition of new advanced technologies into defense systems and to make these technologies more affordable. While the primary purpose of Title III actions is to support the national defense, these actions also contribute to a stronger, more-competitive U.S. industrial base.

Most provisions of the Defense Production Act are not permanent law and must be renewed periodically by Congress. DOD supports a reauthorization of all the existing DPA provisions which are scheduled to expire in September of 2014.

This concludes my prepared testimony. Again, I appreciate this opportunity to reiterate the importance of Defense Production Act authorities.

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Statement of

Kevin J. Wolf

Assistant Secretary of Commerce for Export Administration

Before the

Subcommittee on Monetary Policy and Trade

Committee on Financial Services

U.S. House of Representatives

May 8, 2013

Chairman Campbell, Congressman Clay, Members of the Subcommittee:

I appreciate the opportunity to testify before the Subcommittee this afternoon on the important role the Defense Production Act (DPA) continues to play in supporting our national defense. I will focus my comments on the non-permanent DPA authorities in Titles I and VII that are relevant to the Department of Commerce and the activities of the Department under those authorities.

The Department of Commerce plays several roles in implementing DPA authorities related to the defense industrial base. First, under Title I, the Department administers the Defense Priorities and Allocations System. Second, under Title VII, the Department submits an annual report to Congress on offsets in defense trade. Third, also under Title VII, the Department analyzes the health of U.S. defense industrial base sectors. All three DPA authorities need to be reauthorized before September 30, 2014. I will briefly discuss each of these roles.

I. Defense Priorities and Allocations System

Title I of the Defense Production Act authorizes the President to require acceptance and priority performance of contracts and orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense. These authorities to prioritize contracts and require allocations for industrial resources were most recently delegated to the Secretary of Commerce by Executive Order 13603 which was issued in March 2012. However, the Department has had similar authority since the DPA was first enacted in 1950.

Today, the Bureau of Industry and Security implements these authorities through the Defense Priorities and Allocations System regulation (15 CFR Part 700) (most commonly known as the “DPAS”). The DPAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders and for the allocation of materials, services and facilities and is regularly used to support the acquisition of industrial resources needed to support U.S. national defense requirements, especially by the Department of Defense.

All companies in the United States must comply with the provisions of the DPAS regulation. The key elements of the DPAS regulation are mandatory acceptance of rated orders, preferential scheduling, and extension of priority ratings throughout the supply chain. Under the DPAS, there are two levels of priority designated by the symbols “DO” and “DX.” All “DO” rated orders have equal priority with each other and take preference over unrated orders. All “DX”

rated orders have equal priority with each other and take preference over “DO” rated orders and unrated orders.

A “priority rating” on a contract or order notifies a supplier that the contract is supporting an approved national defense program and that the supplier must accept and give the order priority over unrated commercial orders (or lower rated orders in the event of competing “DX” and “DO” orders), as necessary, to meet the required delivery date. A contractor in receipt of a rated order, in turn, places “priority rated orders” with its subcontractors for parts and components.

The Department of Commerce has delegated authority to the Departments of Defense (DOD), Energy (DOE), and Homeland Security (DHS), and the General Services Administration, to place priority ratings on contracts or orders for industrial resources to support programs determined by DOD, DOE, or DHS as “necessary or appropriate to promote the national defense.” The Department of Commerce may also authorize other government agencies, foreign governments, owners and operators of critical infrastructure, or companies to place priority ratings on contracts or orders on a case-by-case basis. Such requests must first be determined as “necessary or appropriate to promote the national defense” by DOD, DOE, or DHS.

Let me briefly highlight a few examples of the Department's work in administering the DPAS.

The Department of Defense remains the primary user of the DPAS. My Department has worked closely with DOD to support the U.S. Armed Forces through the DPAS to expedite the delivery of industrial resources needed to support critical operational requirements, including the

Interceptor Body Armor, counter-improvised explosive devices, and the Mine Resistant Ambush Protected vehicle programs. In addition, Commerce, in coordination with the Department of Defense, has authorized foreign defense ministries to place priority ratings on contracts and orders with U.S. suppliers for equipment needed to support coalition operations in Iraq and Afghanistan. My Department is very proud of the role we have played through the DPAS to support our servicemen and servicewomen and to assist our coalition partners.

The Department has also worked closely with the Department of Homeland Security's Federal Emergency Management Agency through the DPAS to support emergency preparedness and critical infrastructure protection and restoration requirements. For example, the Department worked with DHS to authorize the U.S. Army Corps of Engineers to use the DPAS to support the repair and expansion of the Hurricane Protection System for the Louisiana Gulf Coast Region. The Corps of Engineers placed priority ratings on hundreds of contracts to expedite delivery of pumps, structural steel and concrete for levees and floodwalls, and other related flood control infrastructure to reduce the risk of floodwaters from future natural disasters. The Department has also worked with DHS to authorize other Federal agencies (including the Department of State, the Federal Bureau of Investigation, and Commerce's National Oceanic and Atmospheric Administration) to place priority ratings on orders to expedite the delivery of industrial resources needed to enhance the protection of government facilities and to support systems designed to detect and track severe weather.

These examples, and the testimony from my colleagues, demonstrate how the DPAS remains critically relevant to support our national defense, including military and homeland security requirements.

Since the 2009 reauthorization of the Defense Production Act, the Department has also collaborated with the five other federal departments that are delegated priorities and allocations authority with respect to other resources (Agriculture, Energy, Defense, Health and Human Services, and Transportation) and with DHS to develop and implement a consistent and unified Federal priorities and allocations system to the extent practicable. The new rules being developed by the other departments for the resources under their priorities and allocations jurisdiction are based primarily on DPAS guidance and procedures and incorporate several key elements of the DPAS, including: mandatory acceptance of rated orders, preferential scheduling of rated orders to meet delivery requirements, and extension of priority ratings by contractors to lower-level suppliers and subcontractors. The Department of Commerce is also in the process of updating the DPAS regulation based on our collaboration with our interagency partners.

II. Offsets in Defense Trade

Pursuant to Section 723 of the DPA, the Department reports to Congress annually on the impact of offsets in defense trade. Offsets in defense trade encompass a range of industrial compensation practices required by foreign governments as a condition of the purchase of defense articles and services from a non-domestic source. This mandatory compensation can be directly related to the purchased defense article or service or it can involve activities or goods unrelated to the defense sale.

The Department collects data annually from U.S. firms involved in defense exports with associated offset agreements in order to assess the impact of offsets in defense trade. In February 2013, the Department submitted its 17th report to Congress on offsets in defense trade, with data covering the 1993-2011 period. U.S. industry is required to submit 2012 offset data to the Department in June 2013 in accordance with the offset reporting regulation (15 CFR Part 701). The Department will analyze this data and present its findings to Congress later this year.

III. Defense Industrial Base Studies

Under Section 705 of the DPA and Executive Order 13603, the Department also conducts surveys and assessments of defense-related industries and technologies. These assessments are usually requested by the Department of Defense. Using these industrial base studies, the Departments of Commerce and Defense can, for example, monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities. The studies also provide detailed data that are unavailable from other sources.

Currently, the Department of Commerce has a number of studies underway, including an assessment of the U.S space industry supply chain. Commerce has partnered with NASA, the U.S. Air Force, and the National Reconnaissance Office to gain an understanding of the complicated network supporting the development, production and sustainment of products and services across the defense, intelligence community, civil and commercial space sectors. Additionally, Commerce is assessing the cartridge and propellant actuated device (CAD/PAD) industry, and the underwater acoustics and transducers industry. When completed, these

assessments will provide the requesting agency or agencies with information needed to understand the health and viability of the studied sector.

Summary

In sum, the DPA provides authority for a variety of programs at the Department of Commerce of substantial importance to our nation's security. The DPAS continues to facilitate the timely delivery of industrial resources to support the Department of Defense, coalition partners, and increasingly, to meet Homeland Security requirements. The DPA also facilitates valuable assessments of the impact of offsets in defense trade and the health of key sectors of the defense industrial base.

The Department of Commerce looks forward to working with the Subcommittee to reauthorize the non-permanent provisions of the Defense Production Act.

Thank you.

CHARRTS No.: HFSC-01-001
House Committee on Financial Services
Oversight & Investigations Subcommittee
Hearing Date: May 08, 2013
Subject: Reauthorizing the Defense Production Act
Congressman: Congressman Grimm
Witness: DASD (M&IBP) Lambert
Question: #1

Defense Production Act

Question: Mr. Lambert, as part of your responsibilities under the Defense Production Act, you oversee policies that ensure timely delivery of equipment and services essential to our armed forces carrying out various missions and ensuring the safety of our troops in combat. On that note, I would like to ask you about two Department of Defense (DoD) means of contracting. First, I would like to ask you about the use of Lowest Price Technically Acceptable (LPTA) contracting for various technologies, specifically for protective equipment such as helmets, body armor and eye protection. Many firms use both their own capital as well as government Research and Development funding to produce these various products. However, when looking at critical safety system for our troops in combat could the use of LPTA result in our troops having inferior safety equipment?

Answer: As part of Better Buying Power 2.0 the Department is placing more emphasis on where LPTA is used and the requirement to define technically acceptable appropriately to ensure adequate quality. In March 2011, the Director of Defense Procurement and Acquisition Policy issued guidance entitled, "Department of Defense Source Selection Procedures." The policy provides a uniform simplified approach for conducting competitive source selections. This guidance describes two variations in technique that may be employed in the source selection process - the "tradeoff" approach and the LPTA approach. Both of these approaches fall within the "best value" continuum described in the Federal Acquisition Regulation and apply to competitively negotiated source selections. An approach that has been determined to be "technically acceptable" means that the proposed products have been demonstrated to meet our minimum performance requirements. We believe LPTA is appropriate when acquiring commercial or non-complex services or supplies that are clearly defined and anticipated to entail lower risk for the contractor. There is no reason to believe that LPTA is likely to result in our troops having inferior safety equipment.

CHARRTS No.: HFSC-01-002
House Committee on Financial Services
Oversight & Investigations Subcommittee
Hearing Date: May 08, 2013
Subject: Reauthorizing the Defense Production Act
Congressman: Congressman Grimm
Witness: DASD (M&IBP) Lambert
Question: #2

Reverse Auctions for Critical Safety Items

Question: I would also like your thoughts on the use of Reverse Auctions for Critical Safety Items. While this method of procurement might reduce DoD costs in the short run I am concerned I may have a much large monetary and human cost in the long run. For example, the use of cheaper protective system could lead to more preventable combat injuries sustained by our troops. The human cost being the obvious long term effects of such injuries on their quality of life and the taxpayer cost being substantially higher cost to the Department of Veterans over the course of many years. With that being said what steps do you think should be taken to ensure that possible other costs are taken into account when considering whether Reverse Auctions are, in total, the most effective way of procuring military safety equipment?

Answer: Reverse auctions are a technique available to program managers, item managers, and contracting officers, to meet DoD requirements. The quality or performance standard for a particular item is established in the solicitation and evaluated independent of price. The reverse auction technique is utilized to "negotiate" prices with offerors with technical solutions that have already been determined to meet the government's quality or performance requirements. The Department has used the approach successfully for various commodities such as socks, t-shirts, identification tags and fuel.

For "critical safety items," the technique could be used only after the Department has determined that a particular company's product meets quality or performance standards established by the Government, for the item to be procured. In that regard, the Department would be purchasing a product that first and foremost, meets mission needs, independent of any decision to negotiate via the reverse auction process. Reverse auctions are used at the discretion of the contracting officer and the requirements office. If reverse auctions are selected as the negotiation approach for a critical safety item, there should be no "additional" long term costs to the Department as suggested by your question.

