

Statement of
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Chairman Luetkemeyer, Ranking Member Beatty, Members of the Committee:

I appreciate the opportunity to testify before the Committee 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, Bureau of Industry and Security (BIS), has several responsibilities 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 analyzes the health of U.S. industrial base sectors. Finally, also under Title VII, the Department submits an annual report to Congress on offsets in

defense trade. All three DPA authorities will expire if not reauthorized before September 30, 2025. I will briefly discuss each of these Commerce Department responsibilities.

I. Defense Priorities and Allocations System

Title I of the Defense Production Act (DPA) 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 were most recently delegated to the Secretary of Commerce for industrial resources by Executive Order 13603, which was issued in March 2012. However, the Department has had this authority under Title I since the DPA was first enacted in 1950.

Today, BIS implements these authorities through the Defense Priorities and Allocations System regulation – commonly known as the “DPAS.” The DPAS establishes procedures for the placement, acceptance, and performance of priority rated contracts and orders for industrial resources, and for the allocation of materials, services, and facilities in support of approved national defense programs. The DPAS 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 located 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. The DPA also provides protection against claims so that persons may not be held liable for damages or

penalties for complying with the DPAS regulation, such as providing preferential scheduling to DPAS rated orders over unrated orders.

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 specific DPAS authority to the Departments of Defense (DOD), Energy (DOE), Homeland Security (DHS), Health and Human Services (HHS), and the General Services Administration (GSA), to place or authorize priority ratings on certain contracts or orders for industrial resources to support programs determined by DOD, DOE, or DHS as “necessary or appropriate to promote the national defense.” While each agency leverages its delegated authority to meet national defense requirements, the Department of Defense remains the largest user of the DPAS, placing an estimated 300,000 DPAS priority-rated contracts and orders per year.

The Commerce Department works closely with the Department of Defense to support the U.S. Armed Forces through the DPAS to ensure the timely delivery of industrial resources needed to support critical operational requirements and ensure our national security goals are met. For example, in February 2024, the Department issued a DPAS rating authorization in advance of the issuance of Department of Defense DPAS-rated prime contracts for unmanned aircraft systems critical for operations in the United States Central Command. This authorization was sponsored by the Department of Defense and allowed the prime contractor to place DPAS rated orders for items it was procuring using its own internal funds in an effort to reduce the build cycle times for the systems critical to DOD that had yet to be put on contract. The DPAS is a vital part of the Department of Defense procurement system. We are very proud of the role we play to support our servicemen and servicewomen through the DPAS.

The Commerce Department may also authorize other government agencies, foreign governments, owners and operators of critical infrastructure, or U.S. or foreign companies to place priority ratings on contracts or orders on a case-by-case basis upon request. Such requests must first be determined as “necessary or appropriate to promote the national defense” by DOD, DOE, or DHS. For example, the Department, in coordination with the Department of Homeland Security’s Federal Emergency Management Agency (FEMA), granted GSA and the Architect of the Capitol DPAS priority rating authority for items needed to support the maintenance and safety of U.S. Government buildings, including Congressional and Supreme Court facilities.

In response to the COVID-19 pandemic, the resources most in demand were health resources under the jurisdiction of the Department of Health and Human Services’ Health Resources

Priorities and Allocations System (HRPAS) regulation. While the Commerce Department's DPAS regulation was not the primary authority utilized in the COVID-19 response, we did authorize the use of DPAS priority ratings to assist with the response. For example, the Commerce Department authorized the use of DPAS for production expansion activities for COVID-19 vaccines, COVID-19 test kits, and N-95 respirators and ventilators.

Since the re-authorization of the DPA in 2018, the Commerce Department has witnessed unprecedented supply chain challenges impacting the U.S. industrial base through our administration of the DPAS regulation. These challenges are attributed to a variety of factors, including impacts to the economy caused by the COVID-19 pandemic and Russia's war of aggression in Ukraine. In response to these challenges, the Commerce Department, in coordination with the appropriate interagency partners, has responded to a significant increase in requests for assistance under the DPAS regulation.

For example, in 2023, the Commerce Department undertook 59 official actions in response to DPAS assistance requests, which is the highest number of official actions undertaken by the Department in the last 34 years. Of these 59 official actions, 54 were rating authorizations which provided specific DPAS rating authority to the authorized requestor. Fifteen of these rating authorizations were issued in support of U.S. Government Agencies, including three in support of Department of Defense programs and one in support of U.S. Government support to Ukraine. An additional 12 rating authorizations were issued in support of Commerce's memorandum of understanding with Canada to provide reciprocal military priorities support, eight of which were

in support of Canadian defense procurements and four of which were in indirect support of Department of Defense programs.

Within these 2023 activities, the Commerce Department, in coordination with the Department of Defense, also issued two rating authorizations in support of NATO and 26 rating authorizations in support of our foreign military partners, including 24 rating authorizations in support of Department of Defense's Security of Supply Arrangement partners, such as Israel, Italy, and the Republic of Korea. One of the rating authorizations issued to a Department of Defense Security of Supply Arrangement partner was ultimately in support of defense systems that would be transferred to the Ukrainian Ministry of Defense.

The Department has also worked with FEMA to provide DPAS rating authority in support of approved national defense programs for U.S. Government agencies. For example, the Commerce Department provided DPAS rating authority to the U.S. Forest Service, in support of the Wildland Fire Protection Program; the Federal Aviation Administration, in support of National Air Space operations and critical telecommunications infrastructure; and the GSA in support of Land Port of Entry facility construction projects. These examples demonstrate how the DPAS remains critically relevant to support our national defense, including military and homeland security requirements.

If the DPA's Title I authority were to lapse, the Commerce Department would no longer be able to support procurement on behalf of an entity other than the U.S. Armed Forces. Without DPA Title I, Commerce would rely only on the limited priority authority delegated to it 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 U.S. Armed Forces and may not be used to support emergency preparedness and homeland security programs. In addition, the Selective Service Act does not provide contractors with protection against claims.

II. Defense Industrial Base Assessments

Title VII, Section 705 of the DPA provides the President with the authorities to obtain information to assess the capabilities of the U.S. industrial base to support the national defense. Through Executive Order 13603, the Department of Commerce is responsible for using its unique designated authority to obtain such information and perform such assessments. The Commerce Department uses industry-specific surveys to obtain essential information including employment, financial, production, research and development, export control, and other data – information unavailable from any other source. Using this information, the Department of Commerce and its interagency partners can, for example, monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities.

Over the last 38 years, the Commerce Department has conducted over 60 industrial base assessments and 150 surveys on a wide range of topics on topics ranging from healthcare products; information and communications technology (ICT); electro-optical (EO) satellite imagery; textiles, apparel, and footwear; semiconductors; and strategic materials; among others, developing unique insights into U.S. industry base capabilities to support national defense.

For example, in 2010, the Department released an assessment on Counterfeit Electronics which identified weaknesses in industry and USG procurement practices and testing procedures as well as communication within and across all industry and USG organizations. The assessment was prompted by increasing system and platform failures in military applications due to counterfeit electronics. The findings of the assessment eventually led to Senate hearings on counterfeit electronics and statutory changes in the purchasing and testing of electronics by the USG, in an effort to stop counterfeits from entering the supply chain. Commerce, along with our interagency partners, supported the development of the revisions to the Defense Federal Acquisitions Regulations (DFAR) regarding counterfeits. The visibility that the assessment brought to this critical issue also led to various industry associations developing new protocols for inventory management, recordkeeping, and reporting practices to help limit counterfeit infiltration.

More recent Department activities highlight how survey information collected through our DPA authority supports data-driven policies and actions in areas critical to our long-term economic and national security.

The Department is currently working on several surveys and assessments, including: (1) an assessment of the U.S. civil space supply chain network; (2) an assessment of the public health industrial base; (3) an assessment on the use of PRC-origin current-generation and mature-node semiconductor devices in supply chains that support U.S. national security and critical infrastructure; and (4) a survey of frontier Artificial Intelligence (AI) developers and computing

cluster providers. When completed, information from these surveys and assessments will provide the Department and the U.S. Government with insights needed to understand the health and viability of the assessed industry sectors to support national defense. The assessments provide findings and recommendations for government policymakers and industry leaders to ensure our national defense, by understanding and supporting a healthy and economically competitive U.S. industrial base.

The Department was tasked in Section 9904 of the Fiscal Year 2021 National Defense Authorization Act to use the DPA to survey the U.S. microelectronics industrial base, and delivered an initial assessment in December 2023 (Section 9904 Phase I). We are continuing to evaluate the capabilities and challenges to producing microelectronics in the United States: in the current phase of this assessment, the Department is gathering data from providers of the equipment and materials necessary to manufacture microelectronics in the United States.

Furthermore, as a result of the Section 9904 Phase I assessment and increasing concern about PRC-based capacity to produce legacy chips, the Department is evaluating the uses of PRC-manufactured legacy chips in critical industries and U.S. government supply chains. The goal of the legacy chips assessment is to gather more information on companies' visibility into their supply chains with regard to the use of legacy chips in general, and those manufactured in the PRC by PRC-headquartered entities specifically.

To support the legacy chips assessment, a survey was distributed to both end-users and suppliers. End-users in five critical industries—aerospace/defense, automotive, biomedical, industrial, and

information & communications technology— provided information about their products that contain legacy chips, their understanding of the origin of these chips, their direct purchases of legacy chips, and purchases of components that contain legacy chips. Chips suppliers that have experience working with PRC-based semiconductor foundries provided information about their experiences, including use of alternate suppliers outside of PRC, cost differences, and visibility into the end uses of these chips.

As previously referenced, in January, the Department issued a survey to ask U.S. AI developers how they are developing advanced AI models and what they are doing to keep those models safe and secure. Data collected from this AI survey will inform the development of safety and security standards for frontier AI models, which in turn will help to promote adoption, including into critical infrastructure and technologies used for national defense.

Commerce believes the data collected from the AI survey will help spur AI innovation by helping to develop guardrails and common-sense standards that AI developers can adopt so that they perform their work with confidence. Similarly, the American people and the American government can feel more comfortable in adopting this exciting technology knowing that it is being rigorously tested for safety and reliability.

In the last six years, the Department has also utilized its DPA authority to conduct surveys to support multiple investigations under section 232 of the Trade Expansion Act of 1962, as amended. The surveys provide detailed industry information that is otherwise not publicly available and is necessary to conduct analysis for the investigations. The surveys also provide an

opportunity for organizations to disclose confidential and non-public information needed by the Department to conduct a thorough investigation. This valuable data guides decision-making and informs the development and implementation of effective policy initiatives that protect U.S. national security.

In 2018, the Department investigated whether imports of uranium threaten to impair the national security of the United States. Based on the findings of the investigation, supported by survey data, the President established the Nuclear Fuel Working Group (NFWG). The NFWG found that it is in the U.S. national security interest to preserve and grow the assets and investments of the entire U.S. nuclear enterprise.

In 2019, the Department investigated whether imports of titanium sponge threaten to impair the national security of the United States. To support the investigation, the Department collected survey data from titanium sponge and semi-fabricated titanium product producers and downstream consumers of titanium products. Based on findings of the investigation, the President set forth measures to address this threat, including the establishment of a titanium sponge working group (TSWG) that proposed measures to ensure access to titanium sponge for national defense and critical industrial purposes in the United States.

Similarly, as a result of the findings of the 2021 NdFeB Section 232 investigation, the Administration is developing plans to bolster domestic production throughout the supply chain, promote demand for U.S.-produced magnets, engage with allies and partners on supply chain resilience, support the development of a highly skilled workforce, and support research to

mitigate supply chain vulnerabilities, along with other efforts. In addition, to ensure continued support for the domestic NdFeB magnet industry in face of unfair competition from the People's Republic of China (PRC), the Biden-Harris Administration continues to monitor the domestic supply chain and work with our interagency partners to take appropriate actions to strengthen the U.S. rare earth element and magnet supply chain.

Through its DPA authority, the Department develops custom surveys that focus on key information that does not exist elsewhere and is protected by DPA provisions. This confidential, valuable data guides decision-making and informs the development and implementation of effective policy initiatives that protect U.S. national security.

III. Offsets in Defense Trade

Also under Title VII, pursuant to section 723 of the Defense Production Act of 1950, the Department of Commerce reports to Congress annually on the impact of offsets in defense trade on the U.S. industrial base. 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 may be directly related to the purchased defense article or service, or it may involve activities or goods unrelated to the defense sale.

To prepare the offsets in defense trade report, the Department collects data annually from U.S. firms involved in defense exports with associated offset agreements. This year, the Department submitted its 28th report to Congress on offsets in defense trade, with data covering the 1993-

2022 period. U.S. industry is required to submit 2023 offset data to the Department in June 2024 in accordance with the offset reporting regulation (15 C.F.R. part 701). The Department will analyze this data and present its findings to Congress in 2025.

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 U.S. national defense needs, including military and emergency preparedness programs, coalition partners, and increasingly, our federal interagency partners. The DPA also facilitates valuable assessments of the health of key sectors of the defense industrial base and the impact of offsets in defense trade.

The Department of Commerce is eager to work with Congress to reauthorize the non-permanent provisions of the Defense Production Act.

Thank you for the opportunity to testify before you today. I look forward to your questions.