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SUBCOMMITTEE ON EUROPE

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Chairman Wexler, Ranking Member Gallegly, and other distinguished Members of the Subcommittee, it is a pleasure to appear before you today. I'd like to discuss the ongoing efforts of the Administration and the Department of Homeland Security (DHS) to ensure that the Visa Waiver Program (VWP) addresses vital national security concerns, while also providing opportunities to expand participation to key U.S. allies.

The VWP has served the United States and her allies well for nearly two decades. Since 1988, the program has allowed the nationals of designated countries to travel to the United States, visa-free, for business or pleasure for up to 90 days. The VWP was designed to facilitate low-risk travel to the U.S., eliminate barriers to travel for U.S. citizens, encourage economic and cultural exchange, and allow the Department of State to focus its visa screening activities on high-risk areas.

Currently, 27 countries participate in the VWP, and approximately 15 million people enter the United States under the VWP annually. By law, a nation cannot be designated for membership in the program unless it complies with a number of statutory requirements. Chief among these is the requirement that the country's participation not undermine the United States' national security, law enforcement, and immigration interests. Another requirement is that VWP aspirants must achieve a nonimmigrant visa refusal rate that is less than three percent.

In addition, countries that succeed in joining the VWP are evaluated biennially to make certain that their continued designation does not compromise our nation's security, law enforcement, and immigration interests. A biennial review may include, among other things, an examination of a country's counterterrorism capabilities and partnerships with the United States, citizenship

and naturalization laws, passport production and issuance controls, efforts to combat organized criminal activities, general law enforcement cooperation with the United States, extradition procedures and agreements with the United States, immigration laws and practices, and border control mechanisms.

While the VWP has served us well, in several ways the program is a relic of the pre-9/11 era. The VWP's first shortcoming is that its principal focus is on the threat of economic migration, not international terrorism. DHS remains committed to ensuring that foreign nationals do not flout our immigration laws by coming here to work illegally. But after 9/11, our first priority must be to exclude from our country those who would exploit our hospitality to do us harm. The second shortcoming is that the current VWP evaluates security threats on a country-by-country basis, not a traveler-by-traveler basis. The program simultaneously assumes that all nationals of participating countries pose a lesser security threat to the United States, and that all nationals of non-members pose a greater threat. Neither assumption is tenable. We need to act now to close these security loopholes. Equally important is extending the opportunity for VWP membership to key U.S. allies that are unlikely to be able to meet some of the current statutory criteria, such as attaining a three percent non-immigrant visa refusal rate.

To enhance the security of the VWP, the Administration has proposed a suite of seven new security measures. Four of the measures would be mandatory prerequisites for participation in the program: (1) an Electronic Travel Authorization (ETA) system, which would require VWP travelers to register online in advance of travel; (2) more robust data sharing efforts; (3) requirements for timely reporting of blank as well as issued lost and stolen passports (LASP); and (4) guarantees to accept the repatriation of nationals ordered removed from the United States. Three additional measures would not be mandatory, but DHS would take them into consideration as "confidence enhancers" when deciding which aspirants should be admitted to the program: (5) airport security standards; (6) air marshals programs; and (7) common standards for national travel documents.

Let me spend a few moments discussing each of these proposed security measures.

First, unlike foreign nationals who travel on visas, VWP travelers are not required to submit to consular interviews at U.S. Missions abroad before they come to the United States. Nor are they required to complete detailed visa applications, or provide biometrics in advance of travel. As a result, less advance information on these travelers is available to U.S. law authorities. To close this information gap, we have proposed the creation of an ETA system, similar to a system currently used by the Government of Australia. We expect that the U.S. ETA system would require all VWP travelers, in advance of travel, to submit an electronic application through a secure website, which would route the data to DHS Customs and Border Protection (CBP) for processing. If a traveler is not approved by the system, he or she will be directed to contact a U.S. Mission abroad for visa screening and visa issuance. The ETA would only assess a VWP citizen's eligibility to travel to the United States; it would not be a determination of admissibility. Funds used to develop, operate, and maintain the system would be recouped by establishing a fee-for-service payment structure. CBP is spearheading a DHS-wide working group, which is developing a project plan for the ETA system. State Department representatives have also participated in this working group.

Second, the United States should be made aware of persons intending to travel to this country who may present security risks. Thus, VWP members must enter into agreements to share information with U.S. national security, law enforcement, and immigration authorities. Member countries could do so by checking the names of U.S.-bound nationals against their relevant terrorism and law enforcement databases and sharing pertinent information with U.S. authorities on a real-time basis. Or they could allow U.S. authorities to access information in those databases to improve U.S. terrorism screening. In addition, we will be asking member countries not to interfere with the free flow of certain information held by commercial entities, such as passenger name records (PNR).

Third, passports issued by VWP countries are attractive targets for terrorists, criminals, or others who seek ready access to the United States. Accordingly, it is vital to U.S. interests that information on lost or stolen VWP passports is reported to the United States in a timely manner. To increase the efficiency and effectiveness of passport reporting, we propose that member countries report promptly *all* lost and stolen passports – not just blank, but also issued – to the United States. Reporting should occur as soon as possible after the government learns a passport

has gone missing, ideally within a matter of days. Member countries also should designate points of contact to expeditiously answer questions about passport validity so that encounters with reported lost and stolen passports can be rapidly resolved at U.S. ports of entry.

DHS supports the use of Interpol's stolen lost travel document (SLTD) database as a mechanism for LASP data collection. We would agree to accept LASP reporting through Interpol provided that the quality and frequency of reporting by VWP countries meet U.S. needs, and that the SLTD proves effective for border enforcement at U.S. ports of entry. DHS is working to ensure the automated screening of all inbound air travelers' advanced passenger information system (APIS) data against Interpol's SLTD database. DHS intends for this capability to be deployed incrementally to all U.S. airports beginning in October 2007. Establishing this capability will add a significant new screening mechanism for identifying individuals traveling to or from the United States on *male fide* travel documents.

Fourth, removal of aliens from the United States can be difficult, as it normally is predicated on the country of origin accepting its citizens for repatriation. Because of the ease with which VWP nationals can travel to the United States, we propose that VWP members, as a requirement for program participation, accept repatriation of their nationals who are ordered removed from this country. Removal should take place no later than three weeks after a final order of removal has been issued. Member countries should cooperate with the United States to promptly verify the identity and citizenship status of their nationals who are the subject of removal proceedings.

In addition to these four mandatory requirements for VWP membership, DHS would consider a number of discretionary security factors when deciding which countries to admit into, or retain in, the VWP. One is that VWP members and aspirants meet certain heightened standards of airport security. These standards may include ensuring that airport employees undergo background checks, issuing tamper-resistant credentials to airport employees, limiting access to the airport's secure areas to persons who have undergone background checks and have the appropriate credentials, screening baggage according to DHS Transportation Security Administration standards, and permitting CBP's Immigration Advisory Program (IAP) to operate at certain airports.

A second factor would be cooperation in the operation of effective air marshals programs. In particular, U.S. federal air marshals (FAMs) should be permitted to operate on foreign-flagged carriers that fly to, from, or over the United States. Also, FAMs must be permitted to carry weapons onboard all international flights, just as they do on domestic flights within the United States. Alternatively, a country may wish to develop and deploy its own air marshal program, with assistance from the United States.

Another discretionary security factor would be enhanced security features in VWP countries' travel documents, including an array of production and issuance control standards. Best practices could include a notation on all travel documents issued to replace lost or stolen passports, as well as a unique non-recurring identification number that is affixed when the document is manufactured (not when it is personalized). In addition, emergency and temporary passports should be made to document security standards that are as stringent as those used for ordinary passports, and passports should be issued by a central authority or through a small number of regional or local authorities that are subject to stringent audit and accountability mechanisms.

All seven of the new security measures, mandatory and discretionary alike, would apply to both current and future VWP members. Countries seeking admission to the program for the first time would need to implement these measures before they could join. As for current members, the new security measures would be phased in on a rolling basis over approximately two years, in conjunction with the statutorily mandated biennial security reviews.

Most of this testimony has focused on the need to add heightened security requirements to the Visa Waiver Program. But the Administration's other principal policy objective – bringing flexibility to the VWP – deserves mention, too. The twin goals of security and flexibility are not mutually exclusive. In fact, they are complementary. Expanding the circle of countries that could be considered for membership in the program will create incentives for aspirants and members alike to enter into arrangements that are desirable from a security standpoint. That is why the Administration favors VWP legislation that would offer complete flexibility on the visa refusal rate requirement, not simply increase it from three percent to some marginally higher rate.

Under the Administration's proposal, an aspirant's visa refusal rate would still be an important factor in deciding whether to admit that country to the program. But a rate below three percent would no longer be an absolute, inflexible prerequisite for membership.

DHS is committed to further strengthening the VWP's security features and expanding the program's membership. DHS is also pleased with the collaborative relationship the Administration and Congress have enjoyed in working together to achieve our shared goals of strengthening the program's overall security and creating a path to membership for valuable U.S. allies. Ensuring that secure, legitimate visa-free travel to the United States is available to our allies is in everyone's interest. We must all work together to maintain a VWP that simultaneously promotes unhindered travel, while not compromising our country's national security, law enforcement, or immigration interests.

Mr. Chairman and Members of the Subcommittee, I want to thank you for the opportunity to present this testimony today. I would be pleased to respond to any questions you might have at this time.