

22 MS. ALLISON JETTON: Thank you, Bengt, and thank you to
23 MSB for helping sponsor this conference, and thank you
24 very much to all of the attendees.

25 I've been very impressed by all of the thoughtful

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1 questions and the dialogue that we've had over the last
2 day and a half, and I really hope that by sharing the
3 U.S. perspective in our legislation we can continue that
4 dialogue and improve our understanding. I'm going to
5 sort of segment my part of the panel into two parts.
6 First directed towards companies, because the U.S.
7 Safety Act is not limited in who can apply for
8 protection. And, secondly, speaking more towards the
9 government perspective, because the Safety Act is
10 limited in who it's intended to protect. First a little
11 of the general background. The Safety Act, or Support
12 Antiterrorism by Fostering Effective Technologies Act of
13 2002, was actually passed as part of the Homeland
14 Security Act. It took us a little while to get the
15 regulations implementing the Safety Act finalized, but
16 we've seen really robust numbers of applications since
17 the act came to be. Basically it's intended to foster
18 the development and wide deployment of effective
19 antiterrorism technologies through a dual system of risk
20 mitigation and litigation management. It provides
21 important liability protections for manufacturers and
22 sellers of antiterrorism technologies, but it's
23 important to note that the protections only apply to
24 claims arising out of or related to an act of terrorism
25 as defined by the act and declared by the secretary.

1 We'll get into that a little bit.

2 For industry, it's important to understand that it's
3 really designed to remove barriers and create market
4 incentives for the development and deployment of
5 antiterrorism technologies. In terms of what is an
6 antiterrorism technology under the act, it is any
7 technology that is developed, designed, modified,
8 procured for specifically preventing, detecting,
9 deterring, responding to an act of terrorism or
10 otherwise limiting the harm that such an act might
11 cause. In terms of who is eligible to apply what kinds
12 of technologies we look for, it's a really wide field.
13 Products, services, software, other types of
14 intellectual property including standards are all
15 eligible, and it's really across all industries. Cyber
16 security, critical infrastructure protection, blast
17 mitigation, vulnerability assessments and other
18 services, security services, and similar types of
19 technologies that follow in the antiterrorism field.

20 In terms of who is eligible, the Safety Act liability
21 protections are available to a seller as defined in the
22 final rule which is basically anyone that sells or
23 otherwise provides an antiterrorism technology. And the
24 "otherwise provides" language is significant because it
25 also means that services provided internal to an

1 organization or by quasi-governmental entities are also
2 eligible. In terms of the types of protection, there
3 are basically three levels, and the levels are
4 significant because they determine the amount of legal
5 liability protection that you get. The highest level is
6 certification. We look at seven criteria and then three
7 additional conditions. Basically what certification
8 means is that this is a highly effective technology that
9 we believe will continue to have long-term effectiveness
10 against terrorism. It provides a statutorily created
11 government contractor defense, which means that in the
12 event of an act of terrorism your liability is
13 potentially zero.

14 The next act of Safety Act protection is designation,
15 which is an evaluation for seven criteria, technical
16 criteria, and your liability is essentially your
17 insurance amount. We do both a technical and an
18 economic evaluation of the technology and the company
19 portfolio, which helps us set cost realism based
20 assessments of insurance. Basically an amount that
21 would not unreasonably distort the price of the
22 technology based on currently available terrorism risk
23 insurance and the market value.

24 The third type of protection is a developmental test and
25 evaluation designation, and this is specifically

1 designed for prototype technologies that haven't yet
2 been tested operationally or perhaps we only have
3 limited operational test data. And the goal is to
4 further test them and gain that data so we can look at
5 them for a full application for either designation or
6 certification.

7 In terms of the legal provisions, it's definitely
8 focused on kind of the American style of litigation, but
9 it provides numerous protections, not only to the seller
10 of the antiterrorism technology, but also to upstream
11 manufacturers or component parts and downstream users,
12 meaning that if for example the technology was a
13 product, all of the pieces that go into that technology,
14 those manufacturers could not be sued. Only the seller.
15 And in terms of those who purchase and use that
16 antiterrorism technology, similarly they cannot be sued.
17 It goes back to the seller. So it provides a wide range
18 of upstream and downstream liability with the single
19 seller concept.

20 Also there's a cap, as I discussed a little bit earlier,
21 with regard to the different levels. For the
22 certification level it's the government contractor
23 (unintelligible) which means your liability is
24 potentially zero. For designation and developmental
25 test and evaluation designation, your liability is

1 capped at your insurance amount. In addition there are
2 other legal liability mitigations and litigation
3 management strategies, such as you have an exclusive
4 federal cause of action in federal court which means
5 that you don't have the kind of differing judgments that
6 happen when you sue in Arkansas instead of New York in a
7 state court. So we expect that the body of law
8 supporting the Safety Act, if it's ever triggered, would
9 be much more consistent than if it were tried at state
10 court.

11 In terms of where the Safety Act applies, the act has no
12 geographical restriction in the statutory language which
13 means that the Safety Act applies as far as U.S. law
14 applies. This could include acts on foreign soil, and
15 specifically the act includes that it may be with a
16 domestic United States air carrier, a United States flag
17 vessel or other type of situation in or outside the
18 United States. In the final rule the department
19 provides further information and that the focus of the
20 language is on where the effects of the act of terrorism
21 are felt, where the harm is caused. It's important to
22 think about this especially as we continue to identify
23 challenges with protecting our citizens against cyber
24 terrorism because, especially in those situations,
25 identifying the place where the attack started could be

1 quite difficult.

2 So again foreign companies are eligible to apply. We've
3 had a number that have in fact applied and received
4 Safety Act protections. And also that the insurance,
5 you can certainly have foreign insurance. We want the
6 very best technologies for U.S. citizens, and it really
7 doesn't matter where they come from. There are no
8 geographical restrictions in the act.

9 Switching gears a little bit to focus on some of the
10 benefits we've seen as a government, from a policy
11 perspective, I'd like to share with you just a number of
12 reasons why we feel the Safety Act has been so
13 beneficial in the United States. There are five reasons
14 basically that other governments may wish to consider
15 the Safety Act. And first is enhanced global and
16 national security through increased availability of
17 effective antiterrorism technologies. Second is an
18 increased size of viable industry for antiterrorism.
19 Third is improved quality of antiterrorism technologies.
20 Four is increased market diversity, basically the
21 different types of companies that are entering the
22 antiterrorism market. And fifth, increased innovation
23 and market competitiveness. And I'll discuss each one
24 in turn.

25 First, U.S. Government policy supports technology as a

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1 front line defense against terrorism. Our Congress
2 wisely after September 11 looked at what we could do,
3 anything that would better protect the American public
4 against the consequences of an act of terrorism. And
5 there's kind of some anecdotal stories that have been
6 passed around, but that numerous defense contractors had
7 these technologies that they couldn't deploy because it
8 was either too risky; it would be a business-losing
9 venture if you were ever sued or that the terrorism risk
10 insurance simply was not available. And so the Safety
11 Act was intended to address those two situations. Some
12 might say that it was intended to be a unique solution
13 for a uniquely American problem, but what we've seen is
14 in the other incidents after 9/11 in other countries
15 that litigation continues to be an increasing risk for
16 companies with antiterrorism technologies.

17 The incentivizing effect of the U.S. Safety Act, as I
18 said before, extends only as far as U.S. law, which is
19 not everywhere. Further, the Safety Act is only
20 intended to prevent harm to U.S. citizens, U.S.
21 institutions and U.S. interests. Other governments have
22 to consider how they will protect their citizens from
23 harm, and the effect of other countries considering
24 similar types of legislation or policies that similarly
25 incentivize the deployment of these antiterrorism
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1 technologies could help improve the security not only
2 for their own citizens but globally. The intent by the
3 Safety Act is to encourage the widespread availability
4 of effective antiterrorism technologies, and again this
5 is in the civilian sector where the impact of an act of
6 terrorism is likely to be most severe. Companies may
7 not deploy antiterrorism technologies if they believe
8 the risks are too high. And a hypothetical example
9 would be the London Olympics. Many perceived that the
10 likelihood of an act of terrorism might be higher and
11 may choose not to bid on contracts for antiterrorism
12 technologies to be deployed there simply because it
13 would be too risky for their business. Even in these
14 trying economic times, it doesn't make sense to bet the
15 business on one contract. And that's the exact type of
16 situation that the Safety Act is designed to prevent, to
17 help encourage and protect for those types of
18 deployments. As a result governments without Safety
19 Act-type protection may not have the benefit of having
20 the best, most effective, widest field of antiterrorism
21 technologies available. This is reasons two and three,
22 that having the Safety Act or something like it may
23 increase the size of viable industry at the same time it
24 increases the quality of antiterrorism technologies that
25 are available.

1 Reason four is that the impact of the Safety Act has
2 increased market diversity. We're not talking about
3 benefits to just large multinational companies. In
4 fact, the greater majority of our Safety Act awards have
5 been to small and medium size business. This is very
6 important because the Safety Act, in setting the
7 insurance premiums, takes into account the total
8 corporate profits and the revenue generated from that
9 particular technology. When you think about a small
10 business that's just starting up, and they may derive
11 their sole revenue from that one technology, the cost
12 realism approach of setting the insurance value is of
13 huge business impact for them because it means that they
14 may be able to enter the market when without the Safety
15 Act they could not. So reason four, that it increases
16 the market diversity. And again this is true for larger
17 businesses, but the impact is greatest for small
18 businesses.

19 Reason five is increased innovation and competitiveness.
20 After 9/11 we saw a number companies that came forward
21 for the first few Safety Act technology applications,
22 and in some cases they took existing technologies and
23 adapted them or modified them for new commercial
24 applications and antiterrorism. What we didn't expect
25 at the time the Safety Act was passed was kind of the

1 impact that it would have upon new technologies and on
2 the commercial world. We've seen a number of new
3 technologies have been developed specifically for
4 antiterrorism after 9/11, but the private sector is
5 starting to require Safety Act in some instances in
6 order to bid on its contracts. This is particularly
7 true in New York and New Jersey, which has experienced a
8 lot of the litigation after not only the 1993 World
9 Trade Center bombings but September 11. As greater
10 recognition and awareness of the Safety Act increases in
11 the private sector, companies that are vulnerable to
12 antiterrorism or to terrorism are looking at how they
13 can increase their security posture, and requiring
14 Safety Act in order to bid on those contracts is
15 becoming increasingly more common.

16 In closing, the Safety Act has been successful in
17 achieving its aim of incentivizing the development and
18 deployment of antiterrorism technologies. We have over
19 250 technologies now that have been either designated or
20 certified under the Safety Act, and the market benefits
21 that we've seen alongside the Safety Act have been
22 exciting to watch. These benefits aren't just unique to
23 America. I think that they can be easily generalizable
24 and achievable elsewhere. As we work to increase our
25 global security, this is something that foreign

1 companies and foreign governments may wish to consider.

2 So thank you.

3 PROF. BENGT SUNDELIUS: Thank you very much for that

4 introduction. Now we welcome back Mr. Speaker.

5 Mr. Finch will join later. The persons that were

6 instrumental in shepherding this through, very

7 complicated legislation, I'm sure. Tell us your

8 thinking and your processing.