

15 MR. BRIAN FINCH: Well, thank you and, first of all, I'd
16 like to deliver my appreciation to our hosts today for
17 inviting us to be here. It's a real pleasure and an
18 honor to be able to join you and address some of the
19 very important issues confronting us, particularly
20 incentivization to continue to persist in the security
21 market as well as talk about the ways to manage your
22 liability protection. I think it's also important to
23 recognize, too, as a private sector practitioner who
24 deals with the Department of Homeland Security, to
25 acknowledge that the Science and Technology Directorate

1 has done an excellent job over the past six years of
2 administering the Safety Act, and thanks to people like
3 Ms. Jetton and Undersecretary Buswell and his
4 predecessors that they have done yeoman's work with
5 respect to getting knowledge out with respect the Safety
6 Act and making sure the process flows well. And if you
7 visit the Safety Act website, you'll see some of the
8 awards the program has won, which is a real credit to
9 their ability to outreach to the private sector and
10 encourage the utilization of this program.

11 As part of my role it has been to work with companies to
12 not only educate them about the Safety Act but as well
13 to move them through the process and help to explain it
14 to them, because they often come to us as lawyers
15 saying, what do we do if we come into this marketplace
16 in order to mitigate our potential liability and better
17 ingratiate ourselves with the security marketplace?

18 Both Ms. Jetton and Speaker Hastert indicated quite
19 clearly that this is a liability protection process,
20 that this is a process where if you take your product or
21 service and you bring it forward and you run it through
22 the Safety Act process, you will be given what is
23 essentially a unique level of protection that is found
24 nowhere else within federal law, which is the ability to
25 either cap or eliminate any of your potential liability

1 following a terrorist attack. There are some similar
2 programs that exist in courts of law and limited other
3 examples in other territories of the federal government.
4 The Safety Act is a very unique tool, and thanks to the
5 foresight of Speaker Hastert and his colleagues back in
6 2001-2002, it was a recognition that without something
7 like this companies were not going to come forward with
8 new technologies in order to meet and defeat the anthrax
9 possibilities or the next wave of suicide attackers.

10 Just as importantly from the private sector, and why a
11 lot of companies find themselves moving through the
12 process, is that it's also a recognition that if you go
13 through this Safety Act process, which is a fairly
14 rigorous one -- not unduly onerous but it is rigorous,
15 and the Department of Homeland Security does do its
16 homework when reviewing an application -- that it sends
17 a powerful message to the community of customers who
18 need to acquire security technologies that by the nature
19 of the law that this is a useful and effective
20 technology. It in no way, mind you, represents an
21 official endorsement from the Department of Homeland
22 Security and never should be misconstrued as such, but
23 at the same time if you have that Safety Act approval it
24 sends a message to the educated customer community that
25 this is a technology, a product or a service that has

1 been thoroughly examined by the department and is found
2 to be in compliance with the regulation within the law
3 which states that it must be useful and effective
4 against terrorism. And so educated customers will look
5 at the Safety-approved services and products and say to
6 themselves this is something I can have confidence in
7 that it will help defend me and the public citizens
8 within the United States and even outside the United
9 States against terrorism. So this may well be a wiser
10 investment than potentially another technology. They
11 both could work well, but I have a level of confidence
12 associated with this product or service having been
13 through the application process and earning the
14 appropriate accreditation.

15 Another important point to mention, which Ms. Jetton
16 covered in small part but I think is very important to
17 understand particularly for European and other companies
18 that are looking to expand their presence in the U.S.
19 marketplace, is that when you think of the Safety Act
20 you have to think of not only what it can do for you,
21 but you have to think about how do my customers examine
22 it and what do they think about it and are they aware of
23 it. And as I just mentioned, some view it as a very
24 powerful tool and you see that. It pops up a lot in
25 procurements these days, but I've seen many procurements

1 where the procuring entity has said in no uncertain
2 terms, if you are not a Safety Act-approved provider of
3 services or products for security, you may not even
4 submit a bid to compete in this process. And while it's
5 certainly not widespread, it is certainly increasing.
6 And without a doubt you're going to see that becoming
7 more and more of a regular presence or at the very least
8 you must apply for Safety Act protections as part of the
9 bidding process. Potentially even being Safety Act
10 approved. In another lane of the Department of Homeland
11 Security, there's a law being administered known as the
12 Chemical Facility Anti-Terrorism Standards law or CFATS.
13 What that functionally is is that any facility in the
14 United States that possesses or utilizes certain
15 chemicals has to impose a wide range of security
16 measures, from vehicle barriers to access control to
17 inventory control, cyber security requirements, et
18 cetera. And a lot of the facilities that are regulated
19 by this process are very large, heavily invested
20 companies, petrochemical, large chemical refineries, et
21 cetera. And they're spending 20, \$30 million per
22 facility, and they'll oftentimes have 10, 12 facilities
23 initial in security upgrades. These are the educated
24 customers that I was alluding to. So they look at the
25 marketplace, and I've been speaking with a number of
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1 their chief security officers, and they've all said the
2 same thing. When we look now for a new truck barrier or
3 an interoperable communication system so our internal
4 security services can communicate with others in
5 addition to law enforcement, we're looking to buy only
6 Safety Act-approved products. So this is not just a
7 process that applies to sales to the Transportation
8 Security Administration, Coast Guard, FEMA, et cetera.
9 It's all customers within the United States,
10 particularly those that are going to be buying large
11 amounts of security equipment. And when you get into
12 critical infrastructure, I think everybody in this room
13 knows enough to know that's a lot of dollars being
14 expended by the private sector, where you're going to
15 see Safety Act coming to the forefront. And even I
16 think one other area to mention here as well is that
17 when we're talking about innovation, along the lines of
18 the CFATS program, one of its potential requirements
19 that was just announced yesterday is the use of
20 inherently safer technologies or ISTs, and these are
21 chemicals and other processes that pose less danger to
22 the public should they be released into the atmosphere
23 or they be ignited whether due to accident or terrorist
24 activity. And these are the types of innovative
25 products and services that scream out for Safety Act

1 protections. For instance, we actually assisted one
2 company that makes a fertilizer that's less detonable.
3 And it's a product that when fuel oil is added to it or
4 other types of accelerants are added to it, it doesn't
5 carry the same explosive force as traditional ammonium
6 nitrate. And as I think people who are familiar with
7 terrorism now, ammonium nitrate is a favorite tool of
8 terrorists. Well, this is a product that again was
9 exactly what we were thinking of when it came to the
10 Safety Act. It's a product that carried a lot of
11 security benefits, would help out reduce the risk to the
12 public, and while there were some potential liabilities
13 associated with it, the company said to itself, this is
14 exactly what we need to use for the Safety Act because
15 we want to manage our liability, get this great product
16 out and encourage wider utilization. And now, thanks in
17 part to the Safety Act process, it is going into full
18 production and being more widely used. So it's a
19 tremendous success story thanks in part to the
20 utilization of the Safety Act. And again I mentioned
21 earlier the distinguishing characteristic. One of the
22 more widespread utilizations of the Safety Act is in the
23 services area when it comes to security guards. A lot
24 of armed and unarmed security guards throughout the
25 United States, their parent companies are Safety Act

1 approved. I see Securitas on a lot of the buildings
2 around here. They're an example of a Safety Act-
3 approved company within the United States. And again
4 you're seeing their customers demand that they be Safety
5 Act approved. It may be a little surprising to you, but
6 in the United States large shopping centers where lots
7 of families and young children spend their time on the
8 weekends and evenings, most of the owners of those large
9 shopping centers require that their security guard
10 vendors be Safety Act approved because they know it's
11 one of the few ways that they can manage their
12 liability. By their very nature they're an open system,
13 easily accessible. You can't conduct very much
14 screening. So what you need to rely upon are guards who
15 have a proven process for oversight, management,
16 training, ongoing quality control. And going through
17 the Safety Act process helps validate the fact that they
18 in fact have those processes in place.

19 Another reason why we often see companies going through
20 the Safety Act process as well was mentioned earlier:

21 The liability situation. I don't have a phone book in
22 my room, but if you go to your average American hotel
23 and you look at the back cover, you will see an
24 advertisement for a personal injury lawyer. And that's
25 just indicia of how litigious the United States is.

1 When there is an accident, it's obviously not my fault.
2 It didn't matter that I was drunk and stole a bulldozer.
3 Somehow it was the construction yard's fault, not mine,
4 so I'm going to sue. And you see that regularly.
5 Unfortunately, particularly following the course of
6 terrorist events. It so happened that pre-9/11 those
7 claims generally weren't allowed. There were a number
8 of claims that followed the 1993 attack on the World
9 Trade Center, the Oklahoma City bombing in 1995, where
10 the manufacturers of the products used in the bombings
11 were sued, saying they manufactured an inherently
12 dangerous product. They had a responsibility to the
13 public at large. Their product was defective and they
14 knew it. And in those instances the court claims were
15 dismissed, where the courts basically said, look, nobody
16 knew that this was going to be transformed into a
17 terrorist weapon. You didn't owe any specific duty to
18 the plaintiffs in these cases, the victims. In part
19 because why are you responsible for terrorists coming
20 and taking your product, doing something to it and
21 turning it into a weapon? That's not your
22 responsibility, manufacturer. That's the responsibility
23 of the terrorists. And that, dare I say, is common
24 sense and good judgment on the parts of those courts.
25 Well, post 9/11 that situation entirely flipped. You
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1 had a number of claims arising out of the 9/11 attacks
2 against the security providers, against the airport
3 owners, against the manufacturers of the airplanes. And
4 they tried to assert those claims. If the U.S.
5 government writ large couldn't envision hijackers
6 turning airplanes into suicide weapons, why should it be
7 the responsibility of the airframe manufacturer? Why
8 should it be the responsibility of the building owners
9 to anticipate such an event and to design their
10 buildings against a low hard strike by a fuel laden
11 airplane? Seemed like reasonable defenses, common
12 sense. Unfortunately, common sense didn't necessarily
13 prevail in those claims, and courts of law allowed those
14 claims to proceed. And they said you should have known;
15 there has been a pattern of terrorist activities. You,
16 airframe manufacturer, should have known that a
17 hijacking in the cockpit could lead to disastrous
18 results. So we're going to potentially hold you liable.
19 And that's a very dangerous precedent, and that's in
20 part what led to Congress pushing forward the Safety Act
21 and the aggressive utilization and implementation by the
22 Department of Homeland Security, by the Safety Act. If
23 you think about it from a pure numbers perspective,
24 people who participate in the victims compensation fund
25 that was established by the U.S. Government post-9/11

1 for families of victims of 9/11, they're getting paid on
2 average \$2 million from the U.S. taxpayer system. If
3 you sued the airlines, which a number of people did --
4 some of those claims are still going forward and
5 actually settled -- the average compensation was
6 \$5 million per victim, so far more than double what you
7 could expect from the government. And I think the
8 speaker would probably agree with me here that we're not
9 likely to see another victims' compensation fund if
10 there should be another unfortunate terrorist event. I
11 think the national treasury simply wouldn't support it
12 at this point nor would there be a willingness
13 necessarily to bail out companies who should have known
14 better. So it's a dangerous situation, and again the
15 speaker clearly mentioned the 1993 case where the
16 terrorists were only held a third liable and the Port
17 Authority of New York-New Jersey was held two thirds
18 liable for a truck bomb that almost devastated the World
19 Trade Center. That's the type of precedent companies
20 are living with at this point. That's the situation
21 they face, and that's what's encouraging the greatest
22 utilization of the Safety Act. Finally, it's important
23 to note there are no limitations on who can apply. And
24 just as importantly, there are no limitations on who can
25 take advantage of the Safety Act. Again, it's important
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1 to note, if you are a Swiss company selling to a Houston
2 football franchise or to an amusement park in Florida,
3 you can still take advantage of the Safety Act. Even if
4 you sell or utilize the scanning technology here in
5 Europe for cargo that's in transit to the United States,
6 if something bad happens and there are claims made in
7 the United States and our cargo was destroyed, lives
8 were lost, business was interrupted, those claims can
9 still be protected under the Safety Act so long as they
10 are litigated under U.S. law. So it's a very broadly
11 applied law, there's a tremendous amount of potential,
12 and if you are looking to develop technologies, continue
13 deployment of technologies or expand into new markets
14 particularly related to the United States, I would urge
15 you to take a strong look at the Safety Act, not only to
16 protect yourself, to protect your shareholders and the
17 future of the business, but also to give yourself an
18 understanding of what your customers look at and what
19 they need. Just like they want a user-friendly product
20 that's effective, they also want to know that this
21 product has some liability protections in place that you
22 can take advantage of and that has been through a
23 process that helps provide indicia of effectiveness, and
24 that is the Safety Act. Thank you.

25 PROF. BENGT SUNDELIUS: Thank you for this information

1 about a very important piece of legislation that
2 obviously has effects far beyond the United States. I
3 imagine many Europeans in the room now are thinking
4 about what are the fine print and what are the
5 consequences for European businesses and industry. And
6 I welcome you to formulate some questions for a little
7 while here. Also I invite the global viewing audience
8 to think about some questions about the consequences
9 worldwide of the U.S. Safety Act.

10 As you heard yesterday when the ESRIIF report was
11 presented by the chairman, it also became clear that
12 under the auspices of the ESRIIF work some thinking had
13 been done on a so-called European Security Label. One
14 of the persons doing part of this thinking is Mr. Mark
15 Miller. He will explain to us a bit about the thinking
16 behind the European Security Label proposal.