

**Before the Committee on Foreign Affairs
U.S. House of Representatives**

**Hearing on
“Export Controls, Arms Sales, and Reform:
Balancing U.S. Interests, Part I”**

**Statement of
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Chairman Ros-Lehtinen, Ranking Member Berman, and Members of the Committee, I am pleased to be here today on behalf of the Department of Commerce and Secretary Locke. The issues we are here to discuss are of vital importance to our national security, our sustained economic viability, and the American people. We find ourselves in a rapidly changing world with emerging threats from often unseen sources. Because of this, we must find common ground upon which we can protect our nation.

The current export control role of the Department of Commerce

Let me begin with an overview of the Bureau of Industry and Security’s (BIS) role in the export control system. BIS is a national security agency and export controls are by far the largest set of responsibilities in our portfolio. We also have an important role in monitoring the health and competitiveness of the defense industrial base, which provides our fighting men and women with the cutting-edge technologies they need to defeat our adversaries. President Obama’s

export control reform initiative recognizes that our export control policy must keep sensitive items out of the hands of end users that undermine our national security and must ensure interoperability with allies, but also that it not undermine our defense industrial base. For these reasons, it is important to highlight that this initiative is first and foremost a national security-based mission to modernize our export control systems, but also will serve to ensure the vitality of U.S. manufacturers and businesses in the global economy.

BIS controls exports and re-exports of dual use items—that is, items that have both commercial and military applications —pursuant to the Export Administration Regulations (EAR). BIS is charged with controlling the export of these and similar technologies to promote our national security interests and foreign policy objectives.

Working in close collaboration with our colleagues at the Departments of State, Defense, and Energy, BIS policy and technical personnel evaluate over twenty thousand export license applications each year to ensure that items proposed to be sold abroad are destined for appropriate end users for appropriate end uses. BIS, with the assistance of these departments, also regularly updates the Commerce Control List (CCL) to ensure it reflects current technology levels and market realities.

In addition, we expend considerable resources on educating the regulated community about the existence and requirements of our regulations and on enforcing the EAR, including a dedicated corps of special agents located domestically and abroad.

Changes at the Department of Commerce

List Review and Licensing Policy

The Administration has made the goal of its Export Control Reform initiative the establishment of a single licensing agency, administering a single control list, operating on a single information technology platform, and enforced by a single primary export enforcement coordination agency. An interim but essential step toward achieving this goal is to harmonize

the U.S. Munitions List (USML) with the CCL, for the items we control and the means by which we control them are the cornerstone of an effective export control system.

Under Secretary Tauscher has already mentioned the Department of Defense-led review of the USML. As part of this process, less critical items can be moved to the somewhat more flexible licensing system implemented through the EAR. These items are primarily parts and components for military end items. Many of the items to be moved, such as brake pads and nutplates, are inherently similar to comparable items subject to the EAR. I want to stress that all items specially designed for a military application will remain subject to control by BIS unless there is consensus among agencies, including the Department of Defense. To implement this policy, we will create a new control series within the Commerce Control List that facilitates exports that enhance our interoperability with allies and partners but applies a strong policy of denial for such exports to the countries identified in section 126.1 of the International Traffic in Arms Regulations. This is a key feature of harmonizing our U.S. Government licensing policies to ensure that they meet our national security requirements while ensuring interoperability with our allies.

The USML is not the only focus of the Administration's attention. While the CCL is largely a "positive" list, we seek to make it more clear and precise. In December, State and BIS sought public comment on making USML and CCL entries more clear and based on objective facts, parameters, characteristics, and technical thresholds that are recognized and employed worldwide. The BIS notice also sought information on the foreign availability of CCL items to assist the U.S. Government in further differentiation of controls by tier.

We are re-crafting the CCL into a three-tiered structure that allows controls on items to cascade over their life-cycles, based upon their sensitivity and foreign availability. This change will facilitate more quickly adding controls to new items and technologies while correcting a long-standing deficiency of transitioning items off the control lists when they no longer warrant control. Items in the highest tier—those that provide a critical military or intelligence advantage and are available almost exclusively from the United States—would require a license to all destinations.

Items available from regime members that provide a substantial military or intelligence advantage will be in the second tier. We plan to implement this concept initially through a new License Exception Strategic Trade Authorization, or STA. STA would permit exports of certain dual-use items in this tier to our most trusted allies and friends subject to certain safeguards, while requiring consignees receiving controlled items to obtain authorization to reexport such items to a non-STA country. Consignees must provide the shipper a written statement prior to the shipment of any item under STA, and the written statement must include an agreement not to reexport or transfer the items without authorization. This statement will provide a new enforcement hook to prosecute companies that seek to misuse U.S. items. We believe that the proposed license exception STA has the potential to eliminate approximately 3,000 low-risk licenses that BIS issued last year.

CCL items that provide a significant military or intelligence advantage but are more widely available will be in the lowest tier. We envision this tier to be eligible for additional authorizations. This tier will also identify controls that may need updating, including possible decontrol because of their foreign availability, consistent with our multilateral obligations.

The preparation of the STA proposal began the process of identifying items for the highest tiers. We will now start identifying those items that may fall into the lowest tier to determine appropriate licensing and control policies. At the same time, we will continue to maintain controls on items for foreign policy reasons, such as specially designed implements of torture, and maintain comprehensive controls and sanctions on terrorist-supporting countries like Cuba, Iran, North Korea, Sudan, and Syria.

We already have demonstrated through our new encryption review process developed as part of the reform effort that streamlining license requirements can actually enhance national security. We have reduced the number of individual transactions requiring technical review prior to export by seventy percent in exchange for registration and an annual report on a company's encryption products. The result is that the Department of Defense gains access to more comprehensive data while reducing the transactional burdens on U.S. companies.

Additionally, we are developing a process, similar to the one under Category 21 of the USML, that would allow Commerce to impose a license requirement on any item not currently

controlled. This would ensure that our regulations are nimble enough to control an emerging technology of national security or foreign policy interest, another new feature that enhances our system.

Once the USML has been turned into a positive list and both it and the CCL have been tiered, we will have two aligned control lists that can be combined into a single U.S. control list. As a result, the lists of controlled items will also be more clear, current, and tailored. American exporters will thus become more reliable and predictable. They and their potential customers will be able to determine more easily what is and is not controlled for export to which destinations and why. National and economic security will, as a result, be enhanced. We are optimistic that with congressional support these alignment actions can be completed within the next 12 months.

A single, tiered, positive list is critical in allowing us to build higher walls around the export of our most sensitive items while allowing the export of less critical items under less restrictive conditions. This single list can best be administered by a single licensing authority with broad legal powers in order to manage this system in a manner that is transparent, predictable, and timely and will also provide the USG, Congress and industry a single point of entry into the licensing process.

We also are working on several other initiatives to produce a more streamlined, user-friendly control list. This includes developing a single license application form that the Departments of Commerce, State, and the Treasury will use, and harmonizing definitions of key terms such as “technology” and “specially designed” across the spectrum of export control and sanctions regulations.

Outreach

To those in the exporting community who seek to comply with the rules—and we recognize that compliance takes a substantial commitment of resources—we owe the level playing field that results when everyone subject to export controls is aware of that fact. For that reason, we seek to expand our outreach to the exporting and re-exporting community.

We have initiated a transshipment initiative designed to assist exporters identify red flags when shipping to and through transshipment countries, which can also help us identify end users of concern in order to stop shipments in transit using our temporary denial order authority and for our Entity List. In fact, the expansion of our Entity List has been a motivating factor in getting foreign companies to change their illicit behavior, particularly because many of our trading partners amend their public screening lists when we make changes to ours. And to enhance exporter knowledge of parties of concern, my agency has worked with the Departments of State and the Treasury to consolidate all screening party lists, including the Entity List, into a single list available for download on www.export.gov/ecr. This makes it easier for exporters, especially small- and medium-sized businesses, to comply, reduces honest mistakes that might let items get in the wrong hands, and makes it harder for illicit front companies to procure controlled items.

Compliance and Enforcement

Enforcement activities also have a high priority in the reform program in several important respects. BIS evaluates dual-use exports to ensure they comply with the EAR. We have worked with our colleagues at the Census Bureau and at U.S. Customs and Border Protection to enhance exporter compliance through new electronic validations to the Automated Export System (AES). To enhance our knowledge and review of foreign transaction parties, Commerce has established a new office to incorporate intelligence, enforcement, and export analyses into licensing decisions.

Domestically, we are expanding our enforcement operations to take advantage of the permanent law enforcement authorities conferred on our agents last year as part of the Comprehensive Iran Sanctions Accountability and Divestment Act. These enforcement tools enable us to prevent diversions and vigorously prosecute violators. For example, we disrupted a foreign network procuring electronic components of the type found in improvised explosive devices in Iraq and Afghanistan; prevented the unauthorized export of civil aircraft to Iran and Syria; and caused the grounding of other civil aircraft in both countries that had been previously reexported to those destinations.

BIS investigations in FY 2010 resulted in the criminal conviction of 31 individuals and

businesses for export violations. The penalties for these convictions came to more than \$12 million in criminal fines, more than \$2 million in forfeitures, and more than 522 months of imprisonment. BIS investigations also resulted in the completion of 53 administrative export and anti-boycott cases against individuals and businesses and more than \$25.4 million in administrative penalties for violations of the EAR. BIS also issued or reissued Temporary Denial Orders (TDOs) against ten companies and three individuals, and issued six denial orders. The TDOs helped to disrupt Syrian and Iranian acquisition and use of aircraft subject to the EAR, and illegal Chinese procurement of dual-use electronics.

BIS worked with our sister agencies and the Congress in bolstering the U.S. Government's criminal penalties, by harmonizing the various different statutory criminal penalties to the same maximum. This is an important step to bolster our enforcement authorities and, as Secretary Gates has said, to build a "higher wall" around our controlled items.

Internationally, Commerce actively participates in bilateral engagements with key trading partners to increase international understanding of dual-use export controls and prevent the diversion of U.S. items. We meet annually with counterparts from India, Mexico, China, Hong Kong, Singapore, and the United Arab Emirates (the UAE), among others. Many of these same countries also host BIS Export Control Officers (ECOs) who conduct end-use visits for dual-use items. We have recently expanded our footprint in Asia so that in addition to our ECOs in India, Russia, Hong Kong, and the UAE, we have added a second ECO in China and a new ECO in Singapore; the Singapore ECO also will have responsibility for Malaysia and Indonesia. These checks, augmented by Sentinel visits from Export Enforcement Special Agents stationed domestically and U.S. Foreign Commercial Officers in embassies and consulates around the world, provide added assurance that U.S. items are not misused or illicitly diverted.

We have made some important changes to our enforcement philosophy, too. In the past, BIS typically has imposed penalties on *companies* involved in export violations. Now where a violation is the deliberate action of an *individual*, we consider seeking penalties against that individual—including heavy fines, imprisonment, and the denial of export privileges—as well as against the company. The same is true for supervisors who are complicit in deliberate violations by their subordinates.

At the same time, we recognize that even companies that have good intentions can make mistakes. We promote the submission of voluntary self-disclosures (VSDs) in these and other instances. We view VSDs, along with robust internal compliance programs, as important mitigating factors.

The Export Enforcement Coordination Center

In November 2010, the President signed an executive order authorizing the Department of Homeland Security to establish an Export Enforcement Coordination Center consisting of representatives from BIS, the Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, the Intelligence Community, the military law enforcement agencies, and other agencies involved in export controls and enforcement. Agencies will share information and leverage their resources to enhance compliance with export control laws and regulations.

The Coordination Center is an important step in the Administration's reform effort. The Administration also believes there should be—as part of the legislation to implement the four singularities—a primary export enforcement coordination agency to consolidate certain investigative agencies with shared enforcement responsibilities. Our export enforcement resources will be better utilized by creating a dedicated export enforcement unit as a companion entity to the single licensing agency, still working collaboratively with our other export enforcement, law enforcement, and intelligence authorities.

The Role of the Congress in Export Controls

This brings me to my final point and a central issue before this committee today. The Administration has recognized from the outset that it needs to partner with Congress to ensure the goals of the reform initiative are met. This includes continuing to brief Committee members and staff on a regular basis, providing updates on the reform efforts, and seeking your input on regulations and potential legislation in the future. Success in our joint effort will strengthen our national security and, in doing so, strengthen our economy as well.

Thank you for the opportunity to testify on this important topic. I would be pleased to

answer any questions you may have.

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