

**Remarks of Kevin Wolf, Assistant Secretary of Commerce  
for Export Administration**

**Exportkontrolltag 2011**

Veranstaltet vom

**Bundesamt für Wirtschaft und Ausfuhrkontrolle**

und dem

**Zentrum für Außenwirtschaftsrecht am Institut für öffentliches  
Wirtschaftsrecht der Westfälischen Wilhelms-Universität Münster**

**Münster, Germany**

**February 25, 2011**

Ich freue mich, dass ich die Gelegenheit habe, auf diesen Exportkontroll-Tagen zu Ihnen zu sprechen. Herzlichen Dank dem BAFA und Herrn Wallraff, Wolfgang, und Pietsch sowie der Westfälischen Wilhelms-Universität für die freundliche Einladung und Ihre Gastfreundschaft. Den gestrigen Westfälischen Abend habe ich sehr genossen. Von den bisherigen Rednern habe ich viel gelernt und ich freue mich darauf, mit möglichst vielen von Ihnen persönlich zu sprechen.

Ich bin sehr dankbar für die Gelegenheit, über das US-Exportkontrollrecht und die Reformpläne der amerikanischen Regierung unter Präsident Obama referieren zu dürfen. Die geplanten Reformen sind ehrgeizig und setzen voraus, dass wir die Anliegen und Bedenken unserer engsten Alliierten verstehen. Dass ich meine Rede in Deutsch beginne soll auch zeigen, dass wir dies ernst meinen. Es ist allerdings fast 20 Jahre her, seit ich meine Lieblingsfremdsprache in den Goethe-Instituten in Göttingen und Freiburg studiert habe. Mein Deutsch reicht leider nicht mehr aus, um fachliche Themen zu diskutieren oder gar einen Witz zu erzählen. Deswegen wechsele ich für den Rest meiner Rede jetzt besser ins Englische.

This is my third trip to Europe in five months to provide an update on and to get suggestions regarding President Obama's Export Control Reform initiative. We appreciate and are considering all the ideas we have received. Indeed, the Administration is now reviewing over 150 public and other comments, including from European countries and firms, to the first proposed changes to our dual-use and munitions control lists that we published in December.<sup>1</sup>

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<sup>1</sup> The first four Federal Register notices describing the first proposed changes to the regulations can be found at:

- a. <http://www.access.gpo.gov/bis/fedreg/pdf/75fr76653.pdf>
- b. <http://edocket.access.gpo.gov/2010/pdf/2010-30966.pdf>
- c. <http://www.pmdtc.state.gov/FR/2010/75FR76935.pdf>
- d. <http://www.pmdtc.state.gov/FR/2010/75FR76930.pdf>

## **I. Purpose of the Reform Effort – National Security**

Before I get into the details of some of these proposed and planned changes to the regulations, let me reiterate that the purpose of the reform effort is to enhance United States national security -- and indeed, that of our allies as well -- by leveraging the multilateral controls to combat proliferation, destabilizing potentially hostile military modernization activities and thwarting terrorism, while facilitating exports to our allies and partners. Last April, Secretary of Defense Robert Gates set out the Administration's conclusion that these goals could only be completely accomplished through fundamental reform. In August, the President, Secretary Locke, and others<sup>2</sup> further described how the end result of the reform effort would be a *single* control list administered by a *single* licensing agency that uses a *single* information technology platform and enforced by a *single* primary export enforcement coordination agency. (The structural reforms will require legislation, but the other two major elements -- working toward a single, positive, "tiered" control list and a single information technology system -- can be achieved without legislation.)

Although the reform effort is not designed to alter any particular trade deficits or surpluses, national security is not limited to military security. As General James Jones, then the President's National Security Advisor, said last June, "The future of the United States' national security in the 21st century is our competitiveness."

And as Secretary of Defense Gates said in his speech setting out the purpose of the reform effort, our "system has the effect of discouraging exporters from approaching the process as intended. Multinational companies can move production offshore, eroding our defense industrial base [and] undermining our control regimes in the process. . . ." He went on to say that our current system "incentivize[s] more creative circumvention strategies -- on the part of the foreign companies, as well as countries that do not have our best interests at heart."

Also key to our national security and, thus, the reform effort are the concerns and issues of our close allies. Secretary Gates, for example, went on to state that the "U.S. Government reviews tens of thousands of license applications for export to EU and NATO countries. In well over 95 percent of these cases, we say 'yes' to the export. Additionally, many parts and components of a major piece of defense equipment -- such as combat vehicles or aircraft -- require their own export licenses.

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<sup>2</sup> The speeches of President Obama and other senior Administration officials that set out the reasons for and the goals of the reform effort in more detail can be found at:

- a. <http://www.defense.gov/speeches/speech.aspx?speechid=1453>
- b. <http://www.whitehouse.gov/the-press-office/fact-sheet-presidents-export-control-reform-initiative>
- c. [http://www.aia-aerospace.org/assets/speech\\_jones\\_06302010.pdf](http://www.aia-aerospace.org/assets/speech_jones_06302010.pdf)
- d. <http://www.whitehouse.gov/the-press-office/2010/08/30/video-remarks-president-department-commerce-annual-export-controls-updat>
- e. [http://www.bis.doc.gov/news/2010/white\\_house\\_fact\\_sheet.htm](http://www.bis.doc.gov/news/2010/white_house_fact_sheet.htm)
- f. [http://www.bis.doc.gov/news/2010/seclocke\\_bis\\_update\\_remarks.htm](http://www.bis.doc.gov/news/2010/seclocke_bis_update_remarks.htm)
- g. [http://www.bis.doc.gov/news/2010/hirschhorn\\_coping\\_us\\_export\\_controls.htm](http://www.bis.doc.gov/news/2010/hirschhorn_coping_us_export_controls.htm)
- h. [http://www.bis.doc.gov/news/2010/obama\\_implementation\\_ecr.htm](http://www.bis.doc.gov/news/2010/obama_implementation_ecr.htm)

It makes little sense to use the same lengthy process to control the export of every latch, wire, and lug nut for a piece of equipment like the F-16, when we have already approved the export of the whole aircraft. In short, the time for change is long overdue if the application of controls on key items and technologies is to have any meaning, we need a system that dispenses with 95 percent of 'easy' cases and lets us concentrate our resources on the remaining 5 percent. By doing so, we will be better able to monitor and enforce controls on technology transfers with real security implications while helping to speed the provision of equipment to allies and partners who fight alongside us in coalition operations."

The same principle applies to our effort to revise the U.S. Munitions List. We want to facilitate inter-operability among our allies fighting shoulder to shoulder with us in Afghanistan and working with us elsewhere in the world. This sentiment was expressed clearly by Under Secretary of Defense Ashton Carter just this month when he said, "Exports obviously strengthen our industry's competitiveness, but they also enhance our security – and international security – when they build the capacities of international partners."

The multilateral export control regimes are, of course, vital to our collective security. They are a coordinated approach to ensuring that countries of concern do not gain unauthorized access to high technology items that can undermine our military and intelligence advantages. These partnerships and the controls that we all administer, however, need to be flexible to address the threats and challenges of today and tomorrow. This flexibility requires an updated set of principles on which to base our post-Cold War export control system.

## **II. Core Principles of the Reform Effort**

To these ends, President Obama's reform initiative is built on the following seven principles:

1. *Controls should focus on a small core set of key items that can pose a serious national security or intelligence threat to the United States and its interests.* These include weapons of mass destruction, their delivery systems, advanced conventional weapons, and the critical equipment and technology required to develop or produce them.
2. *Our controls should be fully coordinated with the multilateral export control regimes to be effective.* The regimes' multilateral controls need to focus on key items that are available almost exclusively from the United States and its regime partners, or that give our partners and us a significant military or intelligence advantage.
3. *For those items that are not controlled multilaterally, they must address an existing legal or foreign policy objective, such as preventing human rights abuses.*

4. *Our control lists must clearly identify which items are controlled and be easily updated* as technology emerges, matures, or becomes widely available. Robust compliance with the regulations and aggressive enforcement of violations cannot occur if the lists of items controlled are not clear and understandable. Indeed, two of the notices the Administration published in December asked the public to provide comments on how to describe more clearly many items on the control lists. Much of the work on the reform effort in 2011 will be focused on making the lists more clear, relevant, and current.
5. *In addition to having clear regulations, our licensing processes must be predictable and timely*, and our licensing policies must be flexible to address new threats. The export control regulations and processes for licensing controlled items should not prevent United States companies from being reliable and predictable suppliers of approved end items to acceptable foreign buyers.
6. *Our enforcement capabilities must be enhanced* to address non-compliance and increase our capacity to interdict unapproved transfers.
7. *Our controls must take into consideration counterterrorism policy* and the need to export items that support homeland security priorities, such as enabling foreign countries' access to modern screening technology for airports.

Taken together, these principles provide a basis for fundamental reform and are aimed at eliminating a core weakness of our current system, which encourages the design-out of U.S. technology, parts, and components and thus undermines our inter-operability with allies and partners.

### **III. The First Two Specific Amendments to the Dual-Use Regulations – Encryption and License Exception “STA”**

The first major change to the dual use regulations to further the goals I have described occurred last year when the Commerce Department amended its encryption regulations to permit the export of most mass market electronic products that contain encryption functions and other encryption products without the need for a license or government review. (“Mass market” electronic products containing encryption include cell phones, laptops, and disk drives.) Exporters and manufacturers of the encryption products are now allowed to self-classify the products and then export them without a license or government review if they register on-line with the Commerce Department and submit an annual self-classification report. This rule is expected to decrease technical reviews by approximately 70 percent and semi-annual reporting by up to 85 percent, while continuing to ensure that the U.S. Government has the information it needs and that we are consistent with our Wassenaar partners.

The second significant change in dual-use licensing policy to further the goals of export control reform would be the creation of a new license exception called "Strategic Trade Authorization." We currently are reviewing all the public comments we have received on the proposed version we published in December. If, following this review, we decide to proceed along the lines of that proposal, the authorization would allow the license-free export, with conditions, of most dual-use items to two baskets of countries and items:

1. For exports to almost all European countries, Australia, Canada, New Zealand, Japan, South Korea, and Argentina, almost all items on the Commerce Control List that do not require a license for statutory reasons would be eligible for export under the exception. This change is a first step in implementing Secretary Gates' vision of dispensing with the easy cases to focus on items and end users which require more scrutiny.
2. For certain other countries, Wassenaar Basic List items would be eligible for export under the exception.

With these reduced licensing requirements would come new safeguards to ensure that eligible items are not reexported outside of these countries without U.S. Government authorization. Exporters and reexporters would be required to notify the purchaser of the exception's safeguard requirements, including the prohibition of retransferring or reexporting without U.S. authorization, while the end user would have to certify its understanding and willingness to comply with such conditions. Thus, we would have created a knowledge standard in order to enforce any misuse of the license exception. At the same time, we have already started reaching out to companies in the United States that may benefit from the proposed new exception to discuss the requirements, and we plan to enhance our outreach and compliance activities to guard against misuse. These safeguards are actually higher walls. They remove a license requirement for exports to countries that do not pose a national security concern but eliminate the ability to reexport – without Commerce authorization – to countries about which we would want additional information.

#### **IV. The List Review Effort**

As described in several speeches last year and in the notices published in December, the Administration has developed a three-tiered set of control list criteria to screen all items on the two primary lists of controlled items – the dual-use list and the munitions list. Once this list review effort is complete, there will be even more changes to the licensing policies for dual-use items in addition to License Exception STA and then also for munitions list items.

The control list criteria are based on transparent rules, which will reduce the uncertainty faced by our allies, U.S. industry, and its foreign partners, and will allow the government to more effectively target enforcement activities. Applying the criteria, the U.S. Munitions List and the Commerce Control List will each eventually be split into three tiers:

1. Items in Tier 1 will be those that provide a critical military or intelligence advantage to the United States and are available almost exclusively from the United States, or are items that are a weapon of mass destruction.
2. Items in Tier 2 will be those that provide a substantial military or intelligence advantage to the United States and are available almost exclusively from our multilateral partners and allies.
3. Items in Tier 3 will be those that provide a significant military or intelligence advantage but are available more broadly.

This flexible construct will improve the nation's national security and permit the government to adjust controls in a timely manner over a product's life cycle in order to keep lists targeted and up-to-date based on the maturity and sensitivity of an item. Those items in the lowest tier will be ripe for review by multilateral regimes to ensure that the international control lists keep pace with technological change and availability outside the regimes.

Just as importantly, we will use the new criteria to identify unilaterally controlled items that warrant multilateral control. This is especially true with emerging technologies. We will therefore create "holding" export control classification numbers (ECCNs) on the Commerce Control List, similar to Category XXI of the U.S. Munitions List, to ensure we can impose quickly controls on new technologies that do not fit into an existing entry but that should be controlled prospectively.

Before the lists can be tiered, however, they must be clear about what they control. We are restructuring the munitions list and, where necessary, the Commerce Control List to create "positive lists" of controlled items. A "positive list" describes controlled items using objective criteria such as horsepower, microns, wavelength, speed, accuracy, hertz or other precise descriptions rather than broad, open-ended, subjective, catch-all, or design intent-based criteria.

The Commerce Control List generally controls items based on technical parameters. Items not meeting a specified threshold are not subject to control. But we can do better. Certain entries contain generic, open-ended wording or apply a "specially designed" criterion that is undefined. Earlier this month, we received more than 100 public comments on how to make our control lists more positive, and we are combing through the suggestions as part of the effort to make the control lists more clear and precise.

The revisions to the U.S. Munitions List are a much more difficult and time-consuming effort because many of the controls do not contain a technical or objective basis for determining when an item – particularly a part or a component – is subject to its controls. Instead, the U.S. Munitions List relies heavily on a design intent structure, even where the function of an item may not be uniquely or inherently military. We therefore have established a systematic process to turn the USML into

a positive list. The following is a brief description of the process.

1. The first step is to decide what items really require control under the International Traffic in Arms Regulations, which impose far less flexible controls than do the Export Administration Regulations administered by the Commerce Department. In general terms, only those items that have exclusive or predominant government or military use and provide at least a significant military or intelligence advantage to the United States will be identified as items the Administration believes should remain on the list. For example, there is no civilian use for depth charges or torpedoes; they accordingly will be retained on the U.S. Munitions List. Alternatively, while some diesel engines clearly have a military utility, few are predominantly or exclusively used by governments or militaries. As a result, many will move to the more flexible Commerce Control List.
2. Once these items are identified, experts will then establish objective, positive control lists consistent with the three-tiered criteria. This includes specifying the specific parts and components that are subject to ITAR control. The focus for parts and components will be on those that have significant, inherent military or intelligence applicability as opposed to essentially civilian items whose form or fit has been altered to fit into a military end item. Indeed, when revising the lists of defense articles, the review teams must abide by various guidelines, one of which is that revised USML categories should not contain any (a) generic controls for generic "parts," "components," "accessories," "attachments," or "end items" or (b) other types of controls for specific types of defense articles because, for example, they were "specifically designed or modified" for a defense article.
3. Those items not meeting the munitions list standard will be transferred to the control of the Department of Commerce after appropriate congressional notification. If items are controlled on both lists, a performance parameter will distinguish which set of regulations applies.

The publication in December of proposed revisions to the U.S. Munitions List controls in Category VII for military vehicles is the first step in this direction. It and other proposed munitions list revisions that we will be publishing during 2011 will propose eliminating the generic controls on "parts" and "components" and, instead, specifying which parts and components the list controls, such as turret rings and torsion bars. This means that items like commercial pivot blocks, windshield wipers, and brake pads that are modified for military vehicles, but that provide no significant military advantage, will be transferred to the more flexible controls under the Commerce Department's regulations. In fact, we estimate that about 74% of items previously licensed in Category VII – mostly generic parts and components – may, subsequent to satisfaction of the congressional notification requirements, be transferred to the jurisdiction of the Commerce Department.

For U.S. exporters and foreign end users, such changes in jurisdictional status would be significant because it would:

1. eliminate ITAR registration requirements for many small and medium-sized commercial manufacturers that make only small tweaks to allow their core products to be used on a defense article;
2. resolve most issues arising from the “see-through” rule, which renders foreign-made civilian or military end items subject to U.S. reexport control requirements if they incorporate any such U.S.-origin parts or components, regardless of value or significance;
3. end the requirement to enter into and get approved the complex Manufacturing Licensing Agreements or Technical Assistance Agreements to share all data and services, no matter how insignificant, that are directly related to such items; and
4. reduce the amount of compliance time needed for determining the jurisdictional status of parts and components – i.e., whether they are governed by the rules of the International Traffic in Arms Regulations or the Export Administration Regulations.

Thus, the transfer of jurisdiction over less significant military parts and components would not de-control them because they will be controlled for export to some destinations, end uses, and end users under the Commerce Department’s Export Administration Regulations. It would, however, make U.S. companies more competitive. And it would make it easier for the U.S. and its allies to make their systems more inter-operable because U.S. suppliers can be more reliable, quick, and predictable with respect to less significant items for military use, which are the vast majority of controlled items exported to close allies.

The Department of Defense, along with representatives from Commerce, State, and other relevant departments, is systematically rewriting the other 19 categories of the USML, based on public comments received on the Category VII rewrite and a request for comments on turning all other categories into positive lists. Our goal is to publish proposed new “positive” categories on a rolling basis this year. We will then identify corresponding CCL controls for those items no longer warranting USML control, notify congressional committees, and publish revised regulations.

After completing the tiering and positive list processes, we will have two structurally aligned sets of control lists that ultimately can be combined into a single list that is administered by a single licensing agency.

So to sum up, agencies are working to revise the USML and the CCL so that they:

1. Are “tiered” consistent with the three-tiered criteria the U.S. Government has established to distinguish the types of items that should be controlled at different levels for different types of destinations, end uses, and end users;
2. Create a “bright line” between the two lists to clarify jurisdictional determinations and reduce government and industry uncertainty about whether particular items are subject to the jurisdiction of the ITAR or the EAR; and
3. Are structurally “aligned” so that they later can be combined into a single list of controlled items when the single licensing agency is created.

The task of translating subjective judgments into objective criteria is the key to the success of the entire tiered, positive list review and revision effort. Once this process is complete, a corresponding licensing policy will be assigned to focus agency reviews on the most sensitive items.

1. A license will generally be required to all destinations for items in the highest tier.
2. Most of the items in the second tier will be authorized for export to multilateral partners and allies under license exemptions or a type of general authorization that we are still reviewing internally.
3. For less sensitive items designated as Tier 3 items, a license will not be required more broadly.

## **V. Other Export Control Issues**

### **A. Controls That Will Not be Affected By Reform**

The U.S. Government will continue its aggressive and comprehensive sanctions against Iran, Cuba, North Korea, Syria, and most of Sudan. The U.S. Government also has no plans to change its prohibitions on the export of munitions list items to China or controlled dual-use items for military end use in China.

### **B. End-User Screening List**

Another higher wall that we have developed is a consolidated end-user screening list. In the past, exporters and reexporters needed to navigate more than ten different U.S. Government lists in order to screen their transaction parties to ensure they were not in violation of a Commerce, State, or Treasury export and sanctions regulations. Sometimes these lists were not timely updated on websites. This created burdens for companies in terms of time and cost, and it may even be that some companies did not bother to check the lists at all because of these impediments, thereby creating avenues for the export of controlled items to parties of

concern, including terrorist-supporting individuals.

Our new consolidated electronic screening list, comprising almost 24,000 entities, allows exporters to download one file into a database to electronically screen transaction parties. The initiative ensures that exporters are screening up-to-date parties in a cost-conscious manner, thereby increasing vigilance against illicit transactions. You can download this consolidated file from our export control reform website at [www.export.gov/ecr](http://www.export.gov/ecr).

C. Harmonizing Definitions and Single Application Form

Other initiatives that will lead to a more streamlined system will include (a) harmonizing definitions across all the export control and sanctions regulations, and (b) developing a single license application form for the Departments of Commerce, State, and Treasury.

D. Outreach

A core principle for higher fences is an informed regulated community, and outreach activities, including today's event, play a vital role in creating such a community. Our Bureau, for example, has a comprehensive outreach program, from publications to seminars to one-on-one counseling. We have also expanded our footprint through on-line training and webinars. We need to spread the word even farther, however, particularly to those who may not even realize they are subject to controls.

Every exporter must classify its exports and should screen its customers against such lists as the Denied Persons List and the Entity List. Commerce has a responsibility to assist exporters and reexporters. To that end, we are mining Automated Export System data to identify exporters and foreign transaction parties of interest. We are working with other bureaus and agencies, and with such private sector entities as freight forwarders, to educate exporters. We are employing such outreach techniques as foreign language seminars. In addition, U.S. companies that apply for visas to bring non-U.S. workers to the United States need to verify that they will not be releasing controlled technology to the worker without first securing any required U.S. government authorizations.

We continue to work with the Census Bureau and with Customs and Border Protection on new electronic tools to help exporters make timely and accurate submissions to our Automated Export System, which is the electronic clearinghouse for all exports from the United States. This will expedite the clearance of exports and facilitate our compliance reviews.

E. Enforcement

Along with licensing efficiencies and education efforts, enforcement will become an even higher priority. For example, the new Comprehensive Iran Sanctions, Accountability, and Divestment Act gave permanent law enforcement authorities to our export enforcement agents for the first time. This enhances our

ability to deter and prosecute violators of the Export Administration Regulations.

To ensure coordination with other enforcement agencies, the President signed an Executive Order last November to mandate the participation of BIS, the Federal Bureau of Investigation, military security agencies, Immigration and Customs Enforcement, and the Intelligence Community in an Export Enforcement Coordination Center to share information and leverage resources. Agencies are actively working out the standard operating procedures to operate the new EECC.

We will also seek to use specific compliance tools, such as the Entity List and Temporary Denial Orders, to ensure U.S. items do not fall into unauthorized hands. The Entity List is a great example of addressing compliance concerns by using a scalpel, rather than hammer. We can pinpoint companies and individuals that are violating our rules and stop such behavior through the use of market forces. The impact of being singled out will limit their business opportunities and either force them out of the business or force them to change their practices.

At the same time, we recognize that even companies that have good intentions, domestic and abroad, can make mistakes. We promote the submission of voluntary self-disclosures (VSDs) in these and other instances. We view VSDs, along with internal compliance programs, as important mitigating factors. Given the volume of exports and reexports that are subject to the EAR, we must rely upon industry for the bulk of compliance. You are the front-line troops in that effort. You and your co-workers know your products, their end uses, and your customer base.

#### F. Information Technology System

We plan to upgrade our internal IT systems to make them more user-friendly for exporters and leverage the resources and information of agencies across the U.S. Government.

## VI. Conclusion

President Obama is committed to export control reform. We and our colleagues in the other agencies are committed, too. These actions will increase our national security, enhance U.S. competitiveness, and facilitate multilateral cooperation and trade among allies and other partners. We will accomplish these reforms through more efficient regulatory processes, enhanced outreach to exporters and reexporters, and better focused compliance and enforcement activities. Thank you again for inviting me today and I look forward to hearing your feedback and ideas.