

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

The Obama Administration's Export Control Reform Initiative

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I. Purpose of the Reform Effort – National Security

Reform of our export control system, including the munitions, dual-use, and sanctions regulations, is a national security imperative. Our current system is founded on Cold War statutes, policies, and control lists not nimble enough to address current and emerging threats or economic opportunities.

In order to remain effective, our system must leverage multilateral controls to combat proliferation, destabilizing potentially hostile military modernization activities, and terrorism, while facilitating exports to our allies and partners. Just a year ago, Secretary of Defense Robert Gates set out the Administration's conclusion that we could not build an effective export control system unless we fundamentally reform it. The end result of that effort, as outlined by the President, Secretary Locke, and others, is a *single* control list administered by a *single* licensing agency that operates on a *single* information technology platform and is 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."

This competitiveness can be measured to some degree by the impact that controls have on our exports. Three percent or \$39 billion of \$1.3 trillion in U.S. exports in 2010 required a license. However, 17 percent of U.S. exports, or \$217 billion, were impacted by licensing requirements, including exports subject to a license exemption, exception, or no license required. Given the significant footprint that export controls has on our economy, not to mention the compliance burden associated with such exports, which can be multiple times higher in terms of cost

than the export itself regardless of whether a license is required, it is critical that our control policy is focused on the right items.

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. 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 in February 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. Amendments to the Dual-Use Regulations – Encryption, License Exception “STA,” and Wassenaar Updates

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 will be implementation of a new license exception called “Strategic Trade Authorization” (“STA”) by the end of this month. After carefully considering public comments, we will publish an amended rule that will 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 will come new safeguards to ensure that eligible items are not reexported outside of these countries without U.S. Government authorization. Exporters and reexporters will be required to notify the purchaser of the exception’s safeguard requirements, including the prohibition of re-transferring or reexporting without U.S. authorization, while the end user will have to certify its understanding and willingness to comply with such conditions. Thus, we will create a knowledge standard in order to enforce any misuse of the license exception.

At the same time, we have been reaching out to companies in the United States and abroad 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.

On May 20th, we will publish amendments to the CCL corresponding to the changes multilaterally agreed by the Wassenaar Arrangement last year. Publishing this rule so quickly is a significant achievement given the number of ECCN changes that will positively affect both U.S. exporters and national security. Given the President's commitment to multilateral controls and the need to address the foreign availability of items, the rule will allow exporters to compete on a more even playing field with international competitors in technologies such integrated circuits, semiconductor manufacturing and test equipment, encryption, and gyroscopes. At the same time, it strengthens national security by imposing multilateral controls on items that can be used to initiate improvised explosive devices, for undersea military reconnaissance, and mine detection. Improved regulatory efficiency is a key element of the reform process, and we are delivering on it.

This rule will revise 53 ECCNs spanning all the Categories of the Commerce Control List, except Category 0. The biggest change for industry will be in Category 3, where there was a total rewrite of the controls for Analog to Digital Converter (ADC) and Digital to Analog Converter (DAC). Other notable changes in Category 3 include the narrowing of controls for other types of integrated circuits: Microwave Monolithic Integrated Circuits (MMIC) power amplifiers, discrete microwave transistors, and microwave solid state amplifiers. This rule also narrowed the controls over electronic test equipment, e.g., signal analyzers, dynamic signal analyzers, frequency synthesized signal generators; and semiconductor manufacturing equipment.

In Category 5 part I, 5A001.h is moved from NS Column 2 controls to NS Column 1 controls because Radio Frequency (RF) transmitting equipment designed or modified for prematurely activating or preventing the initiation of Improvised Explosive Devices (IEDs) are now listed on the Wassenaar Arrangement's Very Sensitive List (License Exceptions LVS, GBS, and CIV are no longer available for 5A001.h items or CIV and TSR for related software and technology in 5D001.a and 5E001.a). In Category 5 part II, this rule adds a new paragraph .j to the decontrol notes in ECCN 5A002 for equipment where the encryption cannot be used or can only be made useable by means of "cryptographic activation," as specified, as well as adding a new Nota Bene (N.B.) to reference 5A002.a for equipment that has undergone "cryptographic activation." This new note is added to clarify the treatment of equipment with dormant cryptography. Also, this rule adds a new control paragraph 5A002.b (as well as software in 5D002.d) to control systems, equipment, application specific electronic assemblies, modules and integrated circuits, designed or modified to enable an item to achieve or exceed the controlled performance levels for functionality specified by 5A002.a that would not otherwise be enabled.

In Category 6, this rule adds a new control for acoustic seabed survey equipment in 6A001.a.1.a because of the usefulness of this equipment in military reconnaissance. In addition, this rule moves ECCN 6A001.c (diver deterrent acoustic systems) to ECCN 8A002.r, because the specified diver deterrent systems have no capability to detect divers and are only used to deter divers. Also, this rule adds a new paragraph 6A005.g to control laser acoustic detection equipment, as well as a new paragraph 6A006.e to control specified Underwater ElectroMagnetic Receivers (UEMR). The UEMR can be used in civil applications, such as oil and gas exploration, as well as for military purposes such as mine/vessel detection and alerting.

In Category 7, this rule adds a new Note for 7A002.a.2.b to exclude 'spinning mass gyros' from 7A002 controls. In Category 9, the control for adjustable flow path geometry technology is moved from 9E003.a.10 to 9E003.i, and it is revised to be more precise.

This rule also adds definitions in Section 772.1 for "cryptographic activation," "radiant sensitivity," and "tip shroud," and amends the existing definition for "information security" to include "cryptographic activation," as well as revising the definitions for "frequency switching time" and "object code." Finally, this rule adds a Statement of Understanding related to Used Goods at the end of Supplement No. 3 to Part 774, which states, "The specifications in the Commerce Control List apply equally to new or used goods. In the case of used goods, an evaluation by the Bureau of Industry and Security may be carried out in order to assess whether the goods are capable of meeting the relevant specifications."

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.

We've started this process with License Exception STA. All items eligible for STA will be considered Tier 2 items. Certain items have been identified for potential carve-out because they meet the Tier 1 criteria. Other items, such as special instruments of torture, will be carved-out for overriding foreign policy reasons, regardless of what tier they fall. But such carve-outs for foreign policy reasons will be the exception rather than rule. Our next task after STA is published is to finalize the tiering exercise, with a focus on what items should be considered Tier 3.

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 a "holding" export control classification number (ECCN) 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 year, 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.
4. Former defense articles transferred to the Department of Commerce will be controlled on a new Commerce Munitions List (CML) if the item does not meet the control parameter of an existing ECCN controlled for more than Anti-Terrorism reasons.

Let me emphasize that the transfer of jurisdiction over less significant military parts and components will not de-control them because they will be controlled for export to certain 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.

This is because of the flexibility that that CCL offers that the USML cannot. These advantages include:

1. eliminating 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. resolving 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, because a *de minimis* threshold will apply to CML items;
3. ending 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. reducing 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.

The publication in December of proposed revisions to the U.S. Munitions List controls in Category VII for military vehicles was 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 “specially designed” parts and components – may, subsequent to satisfaction of the congressional notification requirements, be transferred to the jurisdiction of the Commerce Department. When we are finished with all categories of the ITAR, perhaps, as many as 30,000 or more generic parts and components subject to a license requirement in 2010 may no longer require control on the USML, but will remain controlled under the EAR.

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, with Category 1 – Firearms – being the likely next proposed rule.

For our part, we are preparing a proposed regulation to create the Commerce Munitions List and licensing policies associated with defense articles moving to Commerce jurisdiction. We are creating a new 600 series of ECCNs in the CCL that will embody the CML with a nomenclature that tracks the Wassenaar Arrangement's International Munitions List (IML) in order to cross-walk with our international commitments. As the first set of items to be populated into the CML will be tanks and military vehicles, it will number 606 with the "06" tracking IML category 6. The 600 series will be classified into one of the 10 existing CCL categories (most likely Category 0, which corresponds to miscellaneous items) and use the A through E subparagraphs to designate whether the item is a commodity, software, or technology. For example, parts and components will be designated as ECCN 0A606 while technology related thereto will be controlled in ECCN 0E606.

End items will be specifically called out for control and subject to an initial license requirement. Exporters may petition the U.S. Government on their license application for the end item to be made eligible for License Exception STA.

Certain parts and components may also be specifically identified. However, the majority of parts and components moving from the USML will be controlled on the CML because they are "specially designed" for an end item in that ECCN or its corresponding entry on the USML. In order to avoid confusion, we are defining the term "specially designed" based on objective criteria in order to make clear for industry, licensing officers, enforcement agencies, and administrative law judges what we intend to control. We anticipate that parts and components will be eligible for STA treatment immediately, which should result in significant relief for U.S. exporters. Exporters will also be able to petition the U.S. Government to have a part or component reclassified into a 699 ECCN controlled for anti-terrorism reasons because of the insignificance of the part.

Commerce intends to apply a *de minimis* rule of 10% to CML items because of their "specially designed" nature. In addition and regardless of the classification within the 600 series, including 699 ECCNs, a licensing policy of presumptive denial will apply for CML exports to proscribed countries in section 126.1 of the ITAR.

We hope to have the proposed CML rule published this summer. In the interim we will be briefing congressional committees on our plan. Once we address public comments, the Department of State will notify congressional committees on those items planned for transfer and we will publish revised USML and CCL entries.

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.

V. “Specially Designed”

As I just mentioned, generic “parts,” “components,” “accessories,” and “attachments” will be controlled in the 600 series’ “x” subparagraphs if they were “specially designed” for an end item in that 600 series ECCN or a defense article in a corresponding USML category. “End items” not specifically enumerated will be controlled in the 600 series ECCN if they were “specially designed” for a particular function or purpose or to have a type of capability. The term will also be used (sparingly) on the revised USML categories.

Although a core element of the positive USML review exercise is to avoid using design-intent based control parameters for generic items, the U.S. Government cannot completely eliminate “specially designed” as a control standard for two primary reasons – (1) the term is used in the regimes’ control lists upon which most of the CCL is based and (2) a basket category for controlling less significant items “specially designed” for defense articles that move to the CCL is still necessary. Creating a positive list of the tens of thousands of such parts, components, accessories, and attachments is not practicable. Moreover, it is used 264 times in the current CCL. Editing each entry, even if they do fall in various groups, and getting even informal regime comments – in addition to public comments – on such edits is not realistically possible in 2011. Adopting the Missile Technology Control Regime’s definition of “specially designed” as the standard for the definition applicable to items controlled by the other regimes or that would move from the USML to the CCL is unacceptable to all the agencies for various reasons.

The U.S. Government has the national authority and discretion to define “specially designed” so long as the same scope of control remains. A single, clear definition is necessary for most of the key goals of the export control reform effort to be realized. Specifically, this single definition must:

- a. preclude multiple or overlapping controls of similar items within and across the two control lists;
- b. be capable of being easily understood and applied by exporters, prosecutors, juries, and Hill staff through the use of objective and clear requirements that do not rely upon a need to investigate and parse the intentions of the original designer of a part or do market research regarding the predominate market applications for such items;
- c. not be inconsistent with definitions used by the international export control regimes;
- d. not include any item specifically enumerated on either the USML or the CCL and, in order to avoid a definitional loop, do not use “specially designed” as a control criteria;
- e. not be inconsistent with First Circuit’s definition in *United States v. Lachman*, 387 F.3rd 42 (1st Cir., 2004);

- f. be capable of excluding from control simple or multi-use parts such as springs, bolts, and rivets, and other types of items the U.S. Government determines do not warrant significant export controls;
- g. be applicable to both descriptions of end items that are “specially designed” to have particular characteristics *and* parts and components that were “specially designed” for particular end items;
- h. be applicable to materials and software because they are “specially designed” to have a particular characteristic or for a particular type of end item;
- i. not result in a roll back to 600 series control or other higher end controls of items, particularly current EAR99 items, that are now controlled at lower levels; and
- j. not, merely as a result of the definition, cause historically EAR controlled items to become ITAR controlled.

BIS will be publishing next month for public comment a draft definition that we believe meets all these objectives. We encourage industry and others to review it closely and let us know whether they agree or have suggestions to accomplish the goals better.

VI. Summary of List Review Effort and Goals

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 dual-use 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, such as STA.
3. For less sensitive items designated as Tier 3 items, a license will not be required more broadly, although the Administration has not finalized the extent of this control policy.

VII. 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. 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. Once developed, the Administration will seek to implement the form through a single portal for public submission of license applications.

C. 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.

To assist exporters screen its customers, we have developed a U.S. Government-wide 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.

D. Compliance

Along with licensing efficiencies and education efforts, compliance will become an even higher priority. 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 the Automated Export System. This will expedite the clearance of exports and facilitate our compliance reviews.

We are about to supplement our export management and compliance program with new best practices for exporting through transshipment hubs. We will also seek to use 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.

E. Enforcement

On the enforcement front, 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.

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. Our hope is that Commerce licensing officers will be linked to the Department of Defense's USXPORTS system by Spring 2012. This activity, along with work on a consolidated portal for submission of a single licensing form and connectivity to intelligence and AES systems will result in the long-term in a more efficient process for reviewing transactions and providing responses back to the public in a more timely manner.

VIII. Conclusion

President Obama is committed to export control reform. My colleagues in the other agencies and I are committed, too. In the coming months, we will issue numerous dual-use and munitions list regulations that will fundamentally reshape our export control system. These actions will increase our national security, enhance U.S. competitiveness, and facilitate multilateral cooperation and trade among allies and other partners.

IX. Additional Information

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.bis.doc.gov/news/2011/wolf_exportkontrolltag.htm
- b. <http://www.defense.gov/speeches/speech.aspx?speechid=1453>
- c. <http://www.whitehouse.gov/the-press-office/fact-sheet-presidents-export-control-reform-initiative>
- d. http://www.aia-aerospace.org/assets/speech_jones_06302010.pdf
- e. <http://www.whitehouse.gov/the-press-office/2010/08/30/video-remarks-president-department-commerce-annual-export-controls-updat>
- f. http://www.bis.doc.gov/news/2010/white_house_fact_sheet.htm

- g. http://www.bis.doc.gov/news/2010/seclocke_bis_update_remarks.htm
- h. http://www.bis.doc.gov/news/2010/hirschhorn_coping_us_export_controls.htm
- i. http://www.bis.doc.gov/news/2010/obama_implementation_ecr.htm