

THE PRESIDENT'S EXPORT COUNCIL

WASHINGTON, D.C. 20230

November 16, 2011

President of the United States of America
The White House
Washington, DC 20500

Dear Mr. President,

The President's Export Council (PEC) believes that the modernization of our export control regime is a vital component of an improved regulatory network that will enhance and advance US national security interests while also ensuring a level playing field for US industry. We applaud your leadership in launching the Export Control Reform (ECR) initiative and for renewing visible public support for the ECR through the transition and departures of Secretaries Locke and Gates and commend the Administration on the progress made to date.

It is our belief that US national security interests should drive and inform any policy decisions related to ECR. We also believe that a more efficient and transparent regulatory framework will have a secondary but important effect, namely an increase in export activity that will help to create jobs and strengthen U.S. industry.

In our letter of September 16, 2010, we made the recommendation that your Administration consult with this Council and its Subcommittee on Export administration (PECSEA) on matters related to the ECR. We are encouraged by the adoption of this recommendation and are glad to inform you that we have had meaningful dialogue and support from your Administration, in particular from the Bureau of Industry and Security, including the convening of a successful PECSEA field hearing held in Miami, FL in September 2011. We gained critical insight during this hearing on the impact of the current regulatory environment on industry, as well as the expected impact of implementing some parts of ECR, including potential relief for small- and medium-sized enterprises (SMEs). This insight has informed the recommendations that we detail to follow.

1. **Completion of the USML/CCL Review.** This is a complex and challenging process but one that could have the most dramatic impact on reforming the system by reducing the regulatory burden and documentation required of exporters. From industry's perspective, this migration represents a fundamental change to the way that export controls are understood and practiced, and would enhance US national security interests by serving the goal of a "smaller yard with higher fences." A significant amount of progress has been made in creating the regulatory framework to implement ECR through the creation of the "600 Series" in the Commerce Control List (CCL) and rewriting categories of the US Munitions List (USML). A critical part of completing this review is the formal 38(f) Notification process to the Congress of the proposed items to be removed from existing USML categories. The PEC believes that the Administration at the highest levels should set a firm goal of notifying the preponderance of USML categories to the Congress no later than March 31, 2012.

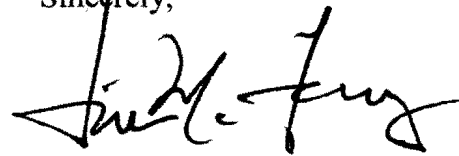
2. **Regulatory Clarity and Harmonization of Definitions.** The export regulatory network is in many ways the result of decades of compromises and arrangements that have led, in many cases, to ambiguity and excessive complexity. It is our view that the overly complex nature of the existing regulations across the multiple agencies that have jurisdiction over various types of exports has created an “interpretive burden” which is dramatically higher than the licensing burden itself; the time, energy and resources that companies (particularly SMEs) must dedicate to determine whether a license is required far exceeds the resources expended in the application process itself. This lack of clarity also exacerbates the complexity of the compliance burden both for the enforcing regulatory agencies as well as for exporters. The Administration should continue to provide clear guidelines to regulatory drafters and propose a clear vision for how the regulations should be streamlined, including (as appropriate) the harmonization and/or clarification of key definitions in the existing regulations.
3. **Single IT System.** There has been a great deal of attention on the “four singles” the Administration initially proposed as the framework for the ECR initiative. While we believe that the Administration should continue to move forward on the overall long-term effort, we are of the view that it should focus its near-term efforts on establishing a single IT system, to include a common license application process across the US Government (USG), including the Departments of Commerce, State and Defense. This will streamline and introduce commonality between the agencies and will help set the stage for a common portal through which exporters can access the system for licensing and compliance. While there appears to be a clear pathway towards this goal among the Departments of Commerce, State and Defense, we further suggest that a more focused, interagency effort could be dedicated to this goal with a specific, measurable timetable for completion identified and agreed upon by all the relevant agencies.
4. **Outreach and Education.** While this has been a common thread in many of our previous recommendations, we feel that it is worth another mention as the successful implementation of ECR will depend heavily on a successful educational campaign. During the PECSEA Miami field hearing we heard testimony from many companies that illustrated this point as the evolution of the regulatory network will inevitably result in new rules being implemented in parallel and as replacement to existing regulations. The continued development of the BIS web site as a portal for online training and one-stop location for information on export control issues will be critical, as would a well organized outreach campaign to provide interested stakeholders, including key government agencies such as Customs and Border Protection (CBP), the immediate support and accurate information required to update internal processes and controls to implement and comply with the new regulations. A good example of a successful outreach campaign to the exporting community by the Department of Commerce may be found in the implementation of the electronic Automated Export System (AES) to replace the paper filing of Shipper’s Export Declarations (SEDs) by the Census Bureau.
5. **Trusted Exporter Program.** The Administration should explore alternative mechanisms to authorize exports that require a license today, such as a Trusted Exporter Program (TEP). A TEP would provide incentives for exporters to invest in their compliance programs, in

exchange for an easier path to exports for their products and technologies. It would also allow USG to prioritize scarce resources on higher risk transactions with an audit mechanism in place to ensure compliance of participants in the program. The advantage of such a program is that it is scalable and could benefit small and large exporters alike. A good example already exists on the inbound side with programs such as CBP's Customs and Trade Partnership Against Terrorism (C-TPAT), which provides an easier path to imports for companies that voluntarily agree to implement internal processes and to be audited by CBP on the efficacy of these processes in deterring the introduction of contraband via US commerce. A TEP also is ideally suited to deal with the "deemed exports" issues that are a particular struggle to understand and address properly for Academia.

These recommendations share a common underlying trend; increased compliance by an informed and educated public as a result of a streamlined regulatory network. Informed compliance and the ability to focus limited enforcement resources on the most critical exports and highest risk exporters would certainly advance our national security interests.

It is the view of the PECSEA that none of the above may be achieved without the proper continuity of political support and purpose by all branches of USG involved in the reform process. It is equally critical that there be continued collaboration between the Administration and key congressional oversight committees to work on areas of mutual interest and develop an agreed-upon path forward for export reforms. It is also our opinion that to accomplish these reforms and to implement them successfully, the Administration needs to make the right investments and commit sufficient resources to the lead Agencies. The Department of Commerce, in particular, will need to have the right level of personnel and resources to ensure a smooth transition for licensing items transferred from the USML to the CCL, to transition to a single IT system, and to lead a successful and proactive outreach initiative with US industry.¹

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McNerney". The signature is fluid and cursive, with a large initial "J" and "M".

Jim McNerney

¹ Please note that this letter has been prepared by the private-sector appointed members of the PEC.