

Bureau of Industry and Security  
U.S. Department of Commerce

**Remarks of Eric L. Hirschhorn,  
Under Secretary for Industry and Security**

BIS Annual Update Conference  
August 31, 2010

Good morning, and welcome to BIS's twenty-third annual Update conference. Let me first thank Bernie Kritzer, Kirsten Mortimer and her staff, and the many BIS and U.S. government colleagues who have contributed to this conference.

I'd like to introduce the BIS management team. Please stand when I call your name. We have Assistant Secretaries David Mills and Kevin Wolf, Deputy Under Secretary Dan Hill, Chief of Staff Sharon Yanagi, Deputy Assistant Secretaries Matt Borman and Rob Luzzi, our incoming Deputy Assistant Secretary for Export Enforcement, Don Salo, Director of Administration Gay Shrum, and Chief Information Officer Eddie Donnell.

This year, BIS's day-to-day administration of the EAR must be considered against the backdrop of President Obama's export control reform initiative. This extraordinary effort has been overseen by the White House on a daily basis. Its champions include the three key cabinet secretaries principally responsible for reviewing export license applications—Secretary Locke, Secretary Clinton, and Secretary Gates. I would especially like to thank Brian Nilsson of the National Security Council staff for his important contributions. Much credit also is due to the agency representatives who serve on the Task Force that has done much of the actual work.

Once we have implemented a reformed export control mechanism, I expect to see a system based on three overarching principles—three “E”s, if you will. These are efficiency, education, and enforcement.

### **Efficiency**

An effective export control system must protect U.S. national security. This means military security—first and foremost—but that is not all. As General James Jones, the President’s National Security Advisor, has declared, “The future of the United States’s national security in the 21st century is our competitiveness.” Unfortunately, our regulations can undermine national security if they’re unduly complicated and burdensome. That encourages foreign customers to seek foreign suppliers and American companies to seek foreign partners who aren’t subject to U.S. export controls. If we over control, we risk diverting our licensing and enforcement resources from the most significant items and the most dangerous end users.

Our approach rests on two fundamental principles: First, the rules should be transparent and predictable. Second, we must have streamlined processes and higher fences to control sensitive items appropriately while facilitating exports of less sensitive items to

destinations and end users that don't pose substantial national security, proliferation, or similar concerns.

Let me start with the first principle—transparent and predictable regulations.

The Commerce Control List generally controls items based on technical parameters. Items not meeting a specified threshold are not subject to control. There typically is no corresponding technical basis, though, for determining when an item is subject to the U.S. Munitions List. Instead, the USML relies heavily on the concept of “design intent,” even where the *function* of an item may not be uniquely military. The vehicle pivot arms and brake pads mentioned by Secretary Locke offer good examples of how that concept works in practice.

Our system should make clear when an item, regardless of the intent of its designers, is subject to control. As Secretary

Locke has indicated, we are restructuring the USML and, where necessary, the CCL, to create “positive lists” of controlled items.

We are beginning by turning Category VII of the USML into a positive list of tanks, military vehicles, and elements of such goods that warrant control as defense articles. The results, as Secretary Locke reported, have been excellent. BIS and our colleagues from State and Defense soon will conduct similar reviews of the other USML and corresponding CCL categories.

Additionally, we will divide each control list into a three-tiered structure, with licensing policies corresponding to the specific tiers. We anticipate that as technology advances over time, items will drop to lower tiers or off the control list altogether.

Other initiatives that will lead to a more streamlined system will include (1) harmonizing definitions across all the export

control regulations, (2) rationalization, and (3) merging export control I.T. systems.

Our work on harmonizing definitions is in its early stages. The encryption rule we published in June exemplifies the second initiative—rationalization. Its goal is to give us useful data about encryption products while providing a more efficient review process. This regulation demonstrates that it's possible to enhance national security while increasing the competitiveness of U.S. companies.

EAR license applications are reviewed by State, Energy, and Defense as well as by Commerce. Currently the four departments use different I.T. systems, have access to different data, and can't directly communicate among one another. This soon will change. We and our sister agencies are developing a single I.T. system that will allow free and immediate data-sharing. Defense is currently using this system, State will begin doing so early next year,

Commerce should be on board later in 2011, and other agencies will follow.

For now, the industry interfaces for license applications will continue to be D-Trade for USML items and SNAP-R for CCL items. When the control lists are combined in Phase III, we expect to have a single application form that is linked to the common I.T. system.

Our second efficiency principle is to establish streamlined processes and higher fences—to control items requiring review while facilitating exports of less sensitive items to destinations that don't pose significant national security concerns. As the new control lists are created, we will tailor our licensing policies to focus on the most sensitive items and on destinations and end-users of concern. We are preparing a regulatory proposal that would provide more flexible licensing authorizations as we move down the tiers.

At the same time, we will expect more of companies that benefit from these streamlined licensing policies. The more sensitive the item, the more intensive should be the controls. These higher fences will include more frequent end-use checks and may, in some instances, require identifying markings on items subject to reexport controls.

BIS will closely scrutinize Automated Export System transactions to ensure that exporters are complying with the EAR. We may require foreign consignees to provide end-use assurances against diversion and similar undertakings from, or at least notification to, subsequent purchasers. We will be stepping up outreach, domestically and abroad.

Finally, the Administration is preparing legislation that would combine the administrative enforcement and licensing activities of BIS, the State Department's Directorate of Defense



Trade Controls, and the Treasury Department's Office of Foreign Assets Control into an independent licensing agency. We will seek action on this legislation in the near future.

## **Education**

This sold-out Update conference demonstrates the exporting community's abiding interest in compliance. In addition to outreach publications, seminars, and one-on-one counseling, the Bureau in recent years has expanded its effort to include such cutting edge strategies as on-line training and webinars. Yet we need to spread the word even further—particularly to those who may not even realize they're 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. BIS has a responsibility to assist exporters, particularly small and medium-sized businesses, to do this. To that end, we are mining Automated Export System data to identify

exporters 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 and CommerceConnect. Moreover, we continue to work with the Census Bureau and Customs and Border Protection on new electronic tools to help exporters make timely and accurate submissions to AES. This will expedite the clearance of exports and facilitate our compliance reviews.

### **Enforcement**

Concurrently with licensing efficiencies and education efforts, enforcement will become an even higher priority. I already have discussed some actions we are taking to erect higher fences. Let me mention several additional enforcement initiatives.

The new Comprehensive Iran Sanctions, Accountability, and Divestment Act confers permanent law enforcement authorities on

our export enforcement agents for the first time. This enhances our ability to deter and prosecute violators of the EAR.

To ensure coordination with other enforcement agencies, we participate in the National Export Enforcement Coordination Network. Working with colleagues from the Federal Bureau of Investigation, military security agencies, Immigration and Customs Enforcement, and the Intelligence Community, we are sharing information and leveraging resources. As the President told you a few minutes ago, he soon will issue an executive order making this coordination center permanent. The order will mandate participation by all relevant law enforcement agencies and the intelligence community.

At the same time, we recognize that even companies who have good intentions can make mistakes. We long have promoted 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.

I ask that you carry a message back to your senior management and those who market your products: We are working to create a more efficient export control system and to ensure that those subject to it are aware of that fact. Also, where appropriate, we will seek to minimize penalties for companies that have good internal compliance programs and make demonstrably unintentional errors. But—and this is an important but—we are planning increased efforts against individuals who flout the rules and against companies whose inadequate internal compliance

programs tell us that they are indifferent to whether they follow the rules.

Finally, I mentioned that the proposed single licensing agency would include the administrative enforcement functions of BIS, the Department of State, and the Treasury Department. The Administration also plans to seek legislation to transfer BIS's criminal enforcement functions to Immigration and Customs Enforcement, which would have a separate unit dedicated to enforcement of the export control and embargo laws.

### **Defense Industrial Base Activities and Treaty Compliance**

No discussion of BIS activities would be complete without addressing our vital role in supporting national security through defense industrial base-related programs and treaty compliance activities. I'm going to offer a few words about developments in the former area and Kevin Wolf will talk about the latter.

A core mission of the Bureau is to help ensure the health of our defense industrial base—which, as General Jones and Secretary Gates have noted, is essential to ensuring that our military men and women have the cutting-edge technologies they need.

BIS has four core programs aimed at supporting the defense industrial base: studies, priorities and allocation, foreign acquisition reviews, and advocacy. Recent and current studies cover such diverse topics as the impact of counterfeit electronics on weapons system reliability, the impact of Space Shuttle termination on the domestic economy, the effect of controls on green technology exports, and dependence on foreign suppliers in critical sectors.

In the priorities area, we recently have issued a notice of proposed rulemaking for a Defense Priorities and Allocations

System regulation. The new rule will implement recent amendments to the Defense Production Act.

Our participation in the Committee on Foreign Investment in the United States, which reviews foreign acquisitions of United States businesses, continues to be frequent and vigorous.

Finally, we contribute to the defense trade advocacy process and recently updated our regulation on reports of defense trade offsets.

### **PECSEA**

Before I conclude, I'd like to put in a plug for the President's Export Council's Subcommittee on Export Administration, or PECSEA. Our August 6 Federal Register notice seeks members for this high-level, policy-oriented group—which, by the way, is an active working committee that advises the Commerce Department and the Administration on key export control issues.

We're particularly interested in industry people at the CEO, COO, or Senior Vice Presidential level, as well as in having a diverse group of members. The notice expires in a few days, so please don't tarry.

### **Conclusion**

As you heard earlier, President Obama is committed to export control reform. We and our colleagues in sister agencies are committed, too. These actions will increase our national security *and* enhance U.S. competitiveness. 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 for your attention. I hope you find our Update program informative.