

**Acting Assistant Secretary Kelly at the House Committee on Foreign Affairs**  
**Hearing on Export Control Reform**  
**2172 Rayburn House Office Building, Washington, D.C.**  
**Wednesday April 24, 2013. 10:00 a.m.**

Good morning Mr. Chairman, Ranking Member Engel, and Members of the Committee. I welcome the opportunity to speak with you today about the Administration's export control reform initiative.

The President strongly believes that we must improve the current export control system so that it strengthens U.S. national security and advances U.S. foreign policy interests. He also believes that we must create an efficient and predictable system using modern business practices and information-sharing mechanisms to help our exporters become more competitive now and in the future.

For decades, the U.S. export control system supported national security objectives by keeping our most sophisticated technologies out of the hands of Cold War adversaries with significant success. In many cases, the United States was the sole producer of those technologies and could control their export with relative ease. Where there were foreign producers of such items, the United States was able to convince their governments to similarly control sensitive technologies because of common threats.

Today, we no longer face a monolithic adversary like the Soviet Union. Instead, we face terrorists seeking to build weapons of mass destruction, states striving to improve their missile capabilities, and illicit front-companies seeking items to support such activities.

In addition, the United States is no longer the sole source of key items and technologies. Today, cutting edge technologies are developed far more rapidly than forty or fifty years ago, in places far beyond our borders. Many U.S. companies must collaborate with foreign companies to develop, produce, and sustain leading-edge military hardware and technology if they are to survive as viable businesses.

Our export control system has not kept pace with these changes. I will mention a few examples that illustrate the problem. As of 2009, the U.S. Munitions List, administered by the Department of State, and the dual-use control list administered by the Department of Commerce had not been comprehensively updated since the early 1990s in the first Bush Administration. Our munitions licensing policies

required individual licensing for most countries for items on the U.S. Munitions List. For example, not only the F-16 aircraft, but nuts and bolts in the F-16, and conversations between the exporter and the end-user about how to use them, required individual licenses. Our system required us to spend as much time on proposed exports to our closest allies as we spend on proposed exports to the rest of the world, and as much time on our “crown jewel” technologies as on the nuts and bolts of those technologies.

By 2009, our munitions licensing system was processing over 80,000 license applications per year. The military forces of our allies faced unpredictable and, in some cases, quite lengthy delays in their efforts to obtain U.S. defense articles so that they could work efficiently alongside U.S. forces in theatres of conflict. U.S. exporters have seen growing efforts by foreign competitors to replace or remove U.S. defense articles from their products. By doing so, foreign companies do not have to deal with the U.S. munitions licensing system, or obtain U.S. permission if they want to reexport a product containing any U.S. defense article – even something as small as a bolt. The “ITAR-free” trend also helped create and sustain foreign competitors at the prime and sub-prime levels.

In August 2009, President Obama directed a White House task force to examine how to modernize our export control system to better address current threats, and to navigate the rapidly changing technological and economic landscape of the 21<sup>st</sup> century. The task force included representatives from the Departments of State, Defense, Commerce, Energy, Treasury, Justice, Homeland Security, and the Office of the Director of National Intelligence.

The task force completed its initial review of our export control system in early 2010 and found numerous deficiencies. In addition to the problems I mentioned previously, agencies had no unified computer system that permitted them to communicate effectively with each other, let alone with U.S. exporters. Exporters faced numerous paperwork requirements. Licensing requirements were confusing, which delayed U.S. exporters and made them less competitive in overseas markets. The task force found that this confusion helps those who might evade our controls. The task force noted instances of enforcement actions that were ineffective and wasteful, mostly due to poor communication among the various export enforcement entities.

To address these deficiencies, in early 2010 the task force put forward recommended reforms in four key areas: licensing policies and procedures; control lists; information technology; and export enforcement.

The President accepted these recommendations and directed agencies to implement them as mapped out in a three-phase implementation plan. In the first phase, we made core decisions on how to rebuild our lists, recalibrate and harmonize our definitions and regulations, update licensing procedures, create an Export Enforcement Coordination Center, and build a consolidated licensing database.

Agencies are currently engaged in the second phase of work, which is the implementation of all of those decisions. State, Commerce, and Treasury will adopt the Department of Defense's secure export licensing database – called "USXports" – as the initial step to creating a government-wide computer system dedicated to supporting the export control process. I am pleased to report that the Department of State shortly will implement the new system for munitions licensing.

Much of our effort has centered on revising the U.S. Munitions List and the Commerce Control List. In essence, this part of the reform will ensure that those items of greatest concern from a military perspective will remain on the USML, and thus be subject to the strictest licensing requirements, while items of less sensitivity will be moved to the Commerce Control List (CCL).

I want to emphasize a key point: *items moving to the CCL will remain controlled.* They are not being "decontrolled." In specific circumstances, they will be eligible for export under Commerce's more flexible licensing mechanisms. Overall, I am confident that the new lists will permit State to continue to perform its national security and foreign policy mandates in export licensing, including the review of license applications under the Commerce system.

I will also note that we are making tremendous progress in the effort to rewrite the categories. We have published twelve rebuilt USML categories in the *Federal Register* in proposed form for public comment. The proposed rules for the seven remaining categories have been drafted and are currently either undergoing or awaiting interagency review so that we can then publish them for public comment.

We have benefited significantly from this public process, which has included sharing the draft proposed rules with Congress before their publication. The inputs we have received – from Congress and from industry – have bolstered the careful and considered process we have undertaken in rebuilding the lists. This has also brought Congress into the process earlier, a key feature of our improved Congressional notification process for list review and arms sale issues.

The Department sent a formal Congressional Notification to the Hill for Categories VIII (Aircraft) and XIX (Engines) on March 11, and published these rules in final form on April 16. This statutory notification came at the end of informal consultations on these specific rules that began in the fall of 2011. This is the first pair in a series of final rules that will put in place the rebuilt export control lists. Notifications and the subsequent publication of other final rules will occur on a rolling basis. Our goal is to publish the revised USML in its entirety by the end of this year.

In addition to revising the control lists, we are updating our regulations in other ways to further streamline the licensing process. For example, we published a revised definition of “specially designed” on April 16. We will also be revising the definitions of “public domain,” and “defense services”, and we are drafting new exemptions for replacement parts and incorporated articles, as well as revising and clarifying the exemption for exports made by, or made for, the U.S. Government. These rules will appear during the next several months.

In the third and final phase of work, the Administration will work with Congress to seek legislation to bring the reform initiative to its logical conclusion by creating a single export control agency. The Administration still has much more work to do to complete our work in the second phase, which is a pre-requisite to the third phase, so no decision has been made yet on when we will approach this effort. We will continue to fully engage Congress on this issue.

I want to thank you for your continued support the Administration’s Export Control Reform initiative. We look forward to working with you to accomplish this initiative that promises to bolster our national security, strengthen foreign policy goals, and protect and increase American jobs.

With that, I want to thank you for inviting me to testify and am happy to answer your questions.