

## **Beyond Control: How to Reform Export Licensing Agencies to Improve Protection of National Security and Economic Interests**

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Testimony before the Senate Subcommittee on Oversight of Government Management, Homeland Security and Governmental Affairs Committee

Washington, DC

April 24, 2008

Last July I had the opportunity to speak with the House Committee on Foreign Affairs' Subcommittee on Terrorism, Nonproliferation and Trade regarding protection of national security and foreign policy interests while facilitating exports. Since then, Department of State has accomplished much in the way of export control reforms. We believe the reforms we have already implemented over the past year and those we will implement within the next year provide the proper balance between defense trade facilitation and national security and foreign policy interests.

The Department of State has been responsible for regulating defense trade since 1935, with the objective of ensuring that defense trade supports U.S. national security and foreign policy interests. The Department's primary mission in this regard is to deny our adversaries access to U.S. defense technology, while facilitating appropriate defense trade with our allies and coalition partners to allow for their legitimate self defense needs and to fight effectively alongside U.S. military forces in joint operations. We carry out our work on the authority of the Arms Export Control Act (AECA) and Foreign Assistance Act of 1961, according to the International Traffic in Arms Regulations (ITAR), including the U.S. Munitions List (USML). The USML covers items specially designed for military applications, and its 20 categories extend from firearms to the Joint Strike Fighter. The Secretary of State has assigned the Bureau for Political-Military Affairs the responsibility for performing this critical national security function for the State Department.

In recent years, the administration of U.S. export controls has become an increasingly complex challenge as a result of our adversaries' increasingly

aggressive efforts to obtain U.S. technology; the demands of conducting extensive joint operations and warfare with increasingly diverse partners in Iraq, Afghanistan and elsewhere; the more globalized and interoperable world economy; and a growing and significant transnational terrorist threat that uses unconventional methods.

All of these trends reflect in the increasing number of licenses received by the PM Bureau and the value of overall licensed trade. In FY 2007, the PM Bureau received approximately 81,000 licensing applications for exports valued at approximately \$100 Billion. In FY 2008, the PM Bureau anticipates that the trend of an average annual eight percent increase will continue. As a global industrial base continues to emerge, the licensing applications received each fiscal year become more complex. This is particularly true in the area of Technical Assistance Agreements (TAA) - the export of defense technology and services, which includes furnishing assistance to a foreign person in the design, development, and production of defense articles. Such agreements reflect the complexities inherent in globalization, reflecting business transactions involving multiple countries and third country nationals, as well as intricate flows of technology. In FY 2007, more than 9,000 TAAs were received and the value of defense services provided with such agreements is roughly equal to or greater than the value of hardware exports. We refer nearly all such agreements to the Department of Defense's Defense Technology Security Administration for review to ensure the proposed activities are consistent with our national security interests.

I am pleased to report that in the past year we have instituted a number of reforms and other initiatives to improve our ability to manage this challenge in a way that protects the U.S., while ensuring our allies have what they need to participate with us in military operations to protect our common interests. These initiatives include enhanced leadership and staffing of our defense trade operations; more robust enforcement activities; innovative new treaties with our closest defense trading partners; and a number of business practice reforms – many of which are formalized in a January 2008 directive from President Bush – that have substantially improved our efficiency. And with continued cooperation from Congress and industry, we aim to introduce even greater reforms in the months ahead.

The secret of any organization's success lies in the strength of its human resources, so filling long-term vacancies and better organizing our defense

trade staff has been one of our top goals at State. In the past six months, we have restructured our operation to create a new position of Deputy Assistant Secretary for Defense Trade and Regional Stability to provide a single point of policy oversight for all aspects of defense trade, be it direct commercial sales or foreign military sales, and appointed the highly-experienced Frank Ruggiero to fill the job. With the arrival of Robert Kovac in December 2007 as Managing Director of our Directorate of Defense Trade Controls and Kevin Maloney in January 2008 as Director of the Office of Defense Trade Controls Licensing, an accomplished senior leadership for the directorate is fully in place after many months of vacancies. Additionally, we have substantially reduced a large number of personnel vacancies at the licensing officer level, greatly increasing our productivity.

Improving our administration of defense trade controls requires more than just good people. It also demands undertaking a fresh and imaginative approach to the structure of our work, and two such examples of this are our recently concluded Treaties on Defense Cooperation with the United Kingdom and Australia, which the President has submitted to the Senate for Advice and Consent.

The treaties recognize the UK and Australia as two of our closest allies and largest defense trade partners, and will permit without prior written U.S. authorization the export of USML items, with certain exceptions, to both countries for combined military and counter-terrorism operations, joint research, development and production projects, mutually agreed special military projects and items for the U.S. military's use. The State Department will maintain its authority of which end-users can have access to USML items under the treaties by vetting an approved community of defense-related entities in both countries. Both the UK and Australia have agreed to prevent the re-export and re-transfer of such items outside the approved community without U.S. approval. If ratified, the treaties will be self-executing; and we have already prepared implementing arrangements to identify which defense articles, projects, and recipients are within the scope of the Treaties. These arrangements would become effective on the date of entry into force of the Treaties.

These treaties should become good examples of the Department's managing risk to fulfill its dual obligations to build partnership capacity and to protect

U.S. military technology via exports controls. In the past two years the Department has processed roughly 23,400 license applications for the United Kingdom and Australia, with only 15 licenses denied, none of which were for exports to either government. Given these facts, we are comfortable with creating a license free zone for mutually agreed end-users and projects with the UK and Australia. Among the benefits we expect to see from implementing these treaties is a reduction in the overall growth rate in license applications received, freeing us up to adjudicate other license applications even more expeditiously.

We have also focused intently on improving our business practices with a series of reforms, many of which are formalized in President Bush's Export Control Directive in January 2008. Many of the reforms included in the directive address the recommendations put forward last year by the Coalition for Security and Competitiveness. The package of reforms required under this directive will improve the manner in which the U.S. Department of State licenses the export of defense equipment, services and technical data, enabling the U.S. Government to respond more expeditiously to the military equipment needs of our friends, allies, and particularly our coalition partners.

The Directive mandates the commitment of additional financial and other resources, as well as procedural reforms, which will expedite the processing of export license applications for items controlled by the U.S. Munitions List. Although license processing times will be reduced as a result of this directive, the Administration is committed to ensuring that existing measures to prevent the diversion of such items to unauthorized recipients remain strong and effective.

Under the new procedures, the Secretary of State will implement guidance to ensure the review, analysis, and decision on export authorization requests for International Traffic in Arms Regulations (ITAR)-controlled articles, services, and technologies will be completed within 60 days from the submission of a completed license application. Certain national security exceptions, such as the need to perform end-use verification or notify Congress of the proposed export, will be outlined specifically. These guidelines will be available publicly.

In addition, we have instituted a mandatory review of any case related to our war efforts in Afghanistan and Iraq that is pending for greater than seven

days. We also now have concurrent review of TAA applications with DOD, which has proven to expedite the review of such items.

According to the directives, we will also soon provide a plan to the Office of Management and Budget outlining the resources required to carry out the directive without an increase in budgeted funds. The plan includes the financial and personnel resources necessary for the Directorate of Defense Trade Controls to execute its range of responsibilities, and will address the authority for and implementation of additional self-financing mechanisms, which will provide 75% of the Directorate's mission.

The President also directed that we implement a policy to grant access to third country and dual nationals from other NATO countries, European Union Member States, Japan, Australia, and New Zealand to certain licensed defense exports without the need for a separate export authorization. This policy was implemented in December 2007 with a Federal Register publication that permits these employees to be considered authorized under an approved license or TAA. This will alleviate the need for companies to seek non-disclosure agreements for such nationals and recognizes the low risk of transferring technologies to nationals of these countries under an approved license or TAA.

The President directed the National Security Council to work with State, Defense, and Commerce to issue revised guidance regarding interagency coordination of the commodity jurisdiction process. The goal is to provide for a timely mechanism to complete commodity jurisdiction requests or resolve interagency disputes within 60 days. We are working with the NSC and our colleagues from Defense and Commerce to make this process work smoothly.

The President also directed State to establish an interagency committee to serve as a forum to facilitate timely consideration and resolution of interagency disputes on defense export authorizations and commodity jurisdiction decisions. The committee will be chaired by the Deputy Assistant Secretary for Defense Trade and Regional Security, with membership at the Deputy Assistant Secretary level. State and Defense will be permanent members of the committee, with Commerce participating when commodity jurisdiction issues are addressed, and Homeland Security participating when the committee addresses compliance, enforcement, and specific commodity jurisdiction issues relating to technologies of homeland

security concerns, and other issues as determined by the Secretary of State. Other executive branch agencies may be invited to participate as necessary by the Secretary of State or as directed by the President.

The Directive also provides instruction to State to finish upgrading its electronic licensing system, with the goal of ensuring that all reviewers (within State and in other agencies) can electronically receive, distribute, and respond to the full range of documentation and material that is required or requested in support of the licensing process, including commodity jurisdiction requests. It ensures U.S. industry may interact, as appropriate, with the State Department on a fully electronic basis. In addition, by July 22, State, with assistance from Defense, Commerce, and Homeland Security, will provide the NSC with a plan to achieve electronic interoperability among these departments and with other relevant executive branch agencies.

Our efforts to accomplish these actions are well underway, and we look forward to engaging with U.S. industry as we work to implement these efforts over the coming months. Our results so far have been striking. At the beginning of FY07 DDTC had over 10,000 pending applications. By the end of March this year, we reduced the number to approximately 3,500. More strikingly, we now only have 68 cases over 60 days old, 41 of which are in the process of Congressional notification. In the summer of 2007, we had approximately 700 cases over the 60 day mark. It should be noted there always will be a significant number of cases in the processing pipeline (this simply reflects the hundreds of new applications we receive daily) and some cases will be difficult from a national security and foreign policy perspective. We have also reduced average processing time for each license by nearly 50 percent in the past year, going from nearly 36 to 18 days.

But we can do better, and we will. An important key to our success will be an effective and efficient partnership between the State Department and the Congress in the regulation and oversight of America's defense trade. In the weeks ahead, we hope to sit down with our partners here on the Hill to explore additional reforms that we can undertake together that will improve our government's overall efficiency, including greater use of information technology to support quicker and more transparent information sharing between the Congress and the Executive branch and clearer timelines and benchmarks for our decision-making process.

Finally, we can not just focus our efforts on improving our licensing operations. An important component of our mission is ensuring the enforcement of U.S. law to ensure that end-users of U.S. military equipment and technology using the equipment within the restrictions that we might impose. Last summer, the Department of Justice appointed the first National Export Control Coordinator to support a nationwide export enforcement initiative. We have been working closely with the coordinator since his appointment and continue to experience a growth in the number of export enforcement cases for which we are asked to support both the FBI and ICE. In FY 2007, law enforcement actions (DHS-ICE) pursuant to the AECA and the ITAR resulted in 165 arrests, 138 indictments, and 97 convictions. The focus of these cases continues to involve efforts related to China, Iran and terrorist groups.

In the end, U.S. export control policy is designed to enhance our national security and foreign policy interests, which of course includes protecting sensitive technology and preserving our economic strength and industrial base. Those two standards are sometimes in conflict. What we as your government owe the American people is designing a system that adjudicates such conflicts efficiently and transparently. We hope, with your help and support, to continue to reform our system with that goal in mind in order to protect our national interest.