THE PRESIDENT'S EXPORT COUNCIL

WASHINGTON, D.C. 20230

June 6, 2012

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

Dear Mr. President,

As stated in our letter of November 16, 2011, the 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 recognize that your Administration has been a strong proponent of reforming the current export control system with specific measures aimed at making the current processes more effective and efficient in safeguarding our national security and keeping the United States competitive, and applaud the continuity of purpose in keeping export control reform as a top policy priority through various changes at the Cabinet level in key agencies. Your continued commitment and support for the reform initiative has already delivered tangible regulatory and policy improvements.

The Administration has achieved important milestones toward the goal of establishing a 21st century regulatory network that focuses public resources on areas that pose the highest risks to our national security interests. A few highlights include the Strategic Trade Authorization (STA) license exception implemented by the Department of Commerce (DOC), and the proposed creation of the "600 series", which establishes a framework of controls under the DOC for items transferred from the U.S. Munitions List (USML) to the Commerce Control List (CCL). There has also been significant progress toward the clarification and harmonization of key terms and definitions used by the various agencies involved in regulating and enforcing U.S. export control policy; when completed, these clarifications will support a more efficient and streamlined export control process that will reduce the "interpretive" burden for exporters, particularly for small and medium-sized enterprises (SMEs). Finally, there are two other areas where progress should be noted. The first is the issuance of the "1248 Report" required under the National Defense Authorization Act of 2010. This report lays the groundwork for returning jurisdiction of certain communications satellites, parts and components, to the DOC. The PEC supports the findings and policy recommendations of the report. The second area with notable progress is the Technology Release process overseen by the Department of Defense (DOD). This was an issue addressed in a previous recommendation and we are pleased to note that the Deputy Secretary of Defense signed a policy memorandum directing organizational changes to the technology release process that should help increase transparency and predictability in the process.

As significant as the achievements may be, there remain important steps to overcome. Some of these steps have been addressed in previous recommendations, mainly the completion of the review necessary to migrate items from the USML to the CCL, and the accompanying Notifications to the Congress under Section 38(f) of the Arms Export Control Act. The PEC had

previously recommended to you that the predominance of the items on the USML proposed for transfer to the CCL be notified to the Congress by the end of March, 2012. We continue to believe, Mr. President, that this particular action is at the heart of your reform initiative and urge you, in consultation with the Congress, to proceed with the required Notifications for the completed categories that have been briefed to the Congress. In particular, the PEC is interested in the status of rules (proposed and not yet proposed) that have the largest impact on commercial industry, such as USML Categories VIII, XI, and XII. We also believe that developing a single IT system and a well-organized outreach and education program is an important step to reducing the regulatory burden on SMEs and help them begin or increase their export activity. We respectfully resubmit these concerns for your consideration and look forward to receiving an update on these matters at our next scheduled meeting, should you deem it feasible and practical.

Some of the concerns are more recent, such as the Department of State's (DOS) proposed International Traffic in Arms Regulations revision for arms brokering. This proposed change is so sweeping in its scope and jurisdictional reach that we are concerned it could have unintended consequences contrary to the Administration's efforts at export control reform, and it could impose significant and disproportionate burdens on the small business community. DOS is in receipt of voluminous written commentary from the defense, aerospace and high-tech communities, among others, so our comments here shall be brief. In short, it is the PEC's view that, as currently drafted, the proposed brokering regulation would result in an extraordinary expansion of regulatory authority in how it defines an arms "broker" as well as what constitutes "brokering activities". We further believe that the broad extraterritorial reach of the proposed rule will have a negative impact on competitiveness and has the potential to create additional compliance burdens for industry that do not exist today. We recommend that DOS seriously consider some of the aforementioned industry commentary before the revisions are finalized, and to the extent possible, we remain committed to providing additional private sector insight should this be deemed appropriate.

Through your leadership, the Administration has made significant progress on the Export Control Reform Initiative. We appreciate the strong support provided by the Administration, and in particular the DOC's Bureau of Industry and Security, to the activities undertaken by our Subcommittee on Export Administration. We congratulate you once again on the achievements to date and look forward to the successful completion of the reform initiative.

Sincerely,

Jim McNerney

Please note this letter was prepared by the private sector appointed members of the PEC.