

**The Administration's Export Control Reform Plans
Remarks by General Jones, National Security Advisor
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Introduction

Thank you for your kind introduction. I also want to extend my thanks to Senator Murray and Senator Bond for their leadership in the creation of the Senate Aerospace Caucus. It is an excellent means of ensuring that our aerospace industry remains strong and agile and viable, given how critical it is to our national and economic security. And thank you to Marion Blakey as well for all the work that you and your team have done in helping organize this event. I also want to extend a warm welcome to our Canadian colleagues.

I appreciate the opportunity to talk with you today about the President's export control reform initiative, building on Secretary Gates' comments in April and the brief overview that Secretary Donley provided at your inaugural meeting in May.

Export controls are a critical tool in our national defense, and, more specifically, our non-proliferation efforts. Our national security requirements in the 21st century include a much broader array of factors than in the past. Our economic security is part of our national security. The future of the United States' national security in the 21st century is our competitiveness. Export controls have a far-reaching impact on our broader national security interests, as they affect the health and competitiveness of our industrial base and our interoperability with our allies. Most significantly, they enhance our ability to provide our men and women in uniform with the best tools possible, while ensuring that those tools do not find their way into the hands of the adversaries they may face.

Yet, despite their importance, export controls have not received the sustained high-level attention they deserve, and as a result, our export control system has not changed to meet the new requirements of a changed world. Export control reform is a unique issue where there is unanimous interagency agreement. The United States has one of the most stringent export control systems in the world. But as Secretary Gates said, being stringent is not the same as being effective. Our system was designed during the Cold War for a bi-polar world that no longer exists, with a very different economy from the one we have today. For its time, the system worked well, based on some fundamental assumptions:

- Weapons development was done by a limited community of dedicated people and companies that could be identified easily and effectively controlled.
- Weapon systems were exported as finished products, and in some cases we specifically created lower technology “export versions” of weapons systems that we initially never intended to sell.
- “Specifically designed for military use” – a term still used in our munitions controls today – meant what it says: items were intended only for military use having little or no civilian use.
- Commercial systems with possible military use were readily distinguishable from items specifically designed for military use.

- Advanced technologies were developed for the military, and only later did they find their way into commercial applications. Now, in many instances, the reverse is true.
- There was little if any reason to export any of these technologies or systems to embargoed countries.

Based on the realities of that time, our export control system developed into three different systems – one for munitions, that is, military, items administered by the State Department, another for commercial items that had possible military uses administered by the Commerce Department, and a yet another for embargoed items administered by the Treasury Department.

But, as we all know, there have been tremendous political, economic, and military change since our current structures were established:

- We live in a 21st century multi-polar world.
- Industries and competition are now global.
- Shrinking defense budgets and the high cost of individual weapons systems often make procuring only for our own use insufficient to support the development, design and production costs.

- Advanced technology development trends have almost completely reversed – now they are predominantly from the commercial sector. This reality is reflected in our military’s commercial-off-the-shelf procurement policies.
- Our existing embargos now have some exceptions for certain technological exports that advance U.S. interests. For example, certain Internet software applications to facilitate the free flow of information and also civil aircraft parts and components for commercial safety-of-flight.
- The Cold War ended, and with it, the block structure of the West versus East that permitted us to develop the consensus that the previous export control systems work against the Eastern Block.

The bottom-line is that the world has changed dramatically. Procurement patterns have changed, markets have changed, the threats we face are different, and the economy is global. What has not changed, however, is the basic structure and premise of our export control process. We have made improvements over the years, particularly in working with our trading partners in the multilateral export control regimes, but those changes have been patch-work, with tailor-made fixes to address specific problems, rather than being the result of a more holistic and coordinated approach to our entire system. As a result, our system today is made up of a number of antiquated systems cobbled together over time, leaving us with a seriously fractured overall approach to export controls.

We should be striving for a system that prevents harmful exports while facilitating useful ones. Our current system is not meeting that objective. In fact, our system itself poses a potential national security risk based on the fact that its structure is

overly complicated, contains too many redundancies, and tries to protect too much. In short, we are hard to work with. As Secretary Gates has often said, we need to have a “higher fence around a smaller yard.”

Our approach to reform reflects the realities of our current system. We have:

- Two different control lists with fundamentally different structures, administered by two different departments;
- Three different primary licensing agencies, none of which sees the others’ licenses, and each of which has unique procedures and, significantly, their own unique definitions for the same terms;
- A multitude of enforcement agencies with overlapping and duplicative authorities; and
- A number of separate information technology (IT) systems, none of which are accessible to or easily compatible with the other. In fact, we have one licensing agency with no IT system that can receive license applications or issue licenses.

This Administration has determined that we need fundamental reform in all four of these areas. Details of this decision were announced by Secretary Gates in a speech on April 20, when he outlined the Administration’s three-phase implementation plan, covering all four of these areas, to accomplish reform for our national security.

Phases I and II will result in fundamental reform of our system while maintaining our current interagency structure. We have assessed that we can do virtually all these items via Executive action, with some legislative changes we would like to make in the enforcement area. We are doing all of this work in close consultation with Congress. Our Phase I and II actions also establish the necessary framework for Phase III, when we would deploy the following “Four Singularities:”

- A Single Control List;
- A Single Licensing Agency;
- A Single Enforcement Coordination Agency; and
- A Single IT system.

Phase III will require legislation. We have not had comprehensive export control legislation in over 30 years. We need a partnership with Congress to get this done.

I want to talk today about our plans across the three phases, highlighting some specific actions that we have taken or have in-process in Phases I and II of our implementation plan.

Implementation Plans

Control Lists – There is growing friction between our two control lists, the U.S. Munitions List and the Commerce Control List. This is because the lists are still

designed to address the Cold War-era assumptions I mentioned earlier, when technologies were developed first for the military and only later converted to commercial applications. That is no longer true, but these assumptions remain as the underlying basis of our control lists. As a result, jurisdictional disputes involving the two lists have diverted attention from the more important issue of whether an item should be controlled and how.

I issued new commodity jurisdiction guidelines to the departments in June of last year, which was a step in the right direction, but we need to do much more.

Getting the control lists right has been our highest priority in Phase I, as everything else flows from what we control. This is also the most challenging area, so we have addressed it first.

In Phase I we have developed independent objective criteria to create a tiered control list structure, with the “crown jewels” and WMD in the top tier and then cascading down the tiers as the technology or product life cycle matures. This approach has several clear advantages:

- First, it will ensure that we have a way to quickly add new items and technologies, as appropriate, but equally important, will also provide a means for eventually removing items from our lists as technologies age and are no longer in need of being controlled. You may be surprised to learn that, as part of our review, we uncovered a copy of the very first Munitions List, dated 1935, that includes military railway trains. What may surprise you even more is that these trains remain on the Munitions List today.

- Second, it will help us to prioritize our controls, with the most stringent controls on the highest tier items and more flexible licensing mechanisms in the lower tiers, to include program licenses, a type of license I know is of great interest to the aerospace community. Currently a bracket or screw used in an F-18 is treated the same for control purposes as the aircraft itself. I think we can all agree that an advance fighter jet poses a much higher threat than a screw that is merely cut to a specific length.
- Third, it will help us prioritize how we process license applications. All items are not equal, yet our current licensing processes are very much like a production line, each license application processed in the order it is received. The tier of control will help us determine how we process a license application. For example, fingerprinting ink controlled to prevent human rights abuses should not receive the same interagency technical review as something like a five-axis machine tool.

We have devoted considerable time and effort to developing the tiering criteria over the last five months, and after several rounds of tests, we have a set of criteria to use in this process. The criteria may well change again as we get more into the list reform process. But the tiering criteria will not resolve the current jurisdictional problems between the two lists, which is another important Phase I action item.

The jurisdictional problem is exacerbated by the completely different structures of our two lists – the Commerce List is generally a positive list, which means that an item is only controlled if it is on the list. For each item on the list, the Commerce List contains detailed technical parameters that are used by exporters to determine

if their items are controlled. Most of the Munitions List, however, is not a positive list. Instead, it is based on broad general descriptions, which results in capturing every nut, bolt and screw of a munitions item. The lack of specificity, the continued use of the “specifically designed for military use” standard, and the reality that our military has transitioned to more commercial-off-the-shelf procurement, has made the jurisdictional problem a major one that needs to be resolved.

That is why we have developed what we call the jurisdictional “bright line process” for identifying whether items are on the Munitions List or on the Commerce List. With the basic criteria for the tiers and the bright line process now in place, we have moved into Phase II for the control lists.

We currently have technical experts applying both the criteria and bright line process to an entire category on the Munitions List, together with the related entries on the Commerce List. At the end of this work, we will have a positive list for that category, an end of jurisdictional uncertainty, and the process begun to restructure both lists into identical structures. We will use the results of this first category to make adjustments as necessary and then move more aggressively to the rest of the lists.

One of the core issues in current interagency jurisdictional disputes is the view that items that may not be munitions items should still be controlled on the Munitions List to ensure a sufficient level of control, if there is no existing entry on the Commerce List to which the item can be added. We are resolving this problem by implementing a recommendation from AIA – the creation of “holding” entries on the Commerce List. We will be able to place items into these control entries if we

decide that they should be controlled but are not munitions items and do not otherwise fit into an existing entry on the Commerce List.

This effort will also help us determine the volume of Congressional notifications that may be necessary. There is a statutory process for notifying Congress before removing items from the Munitions List, whether we intend to decontrol items or move them to the Commerce List. We have discussed the process with oversight committee staff and are committed to work with them, so they can advise us on the best means of handling the notifications.

This entire process will prompt us to develop a series of proposals to the multilateral export control regimes, to add, update, or remove controls, as the most effective controls are those that are multilateral.

By the end of Phase II, we will have two control lists in the same structure that are more focused on key items and technologies predominantly subject to multilateral controls and that are clear and easily updated and more easily enforced.

Licensing: As I mentioned earlier, we currently have 3 primary licensing agencies, none of which sees the others licenses. They use different procedures, have different regulations, and different definitions for the same terms. As a result of this stove-piped approach, the U.S. Government has no means of knowing what it has collectively authorized to a foreign company or government and, more significantly, what we have denied.

To resolve this, in Phase I we are identifying practices, business processes, and definitions, with the aim of making changes that will harmonize how we do

business and remove inherent discrepancies and contradictions between the current systems. One item on which we have made significant progress is the development of a single application form that would be used by all three licensing agencies. While this may seem mundane, it will be a significant improvement for U.S. exporters and an important early step in developing our single IT system.

Last Friday we published our first encryption reform regulation which the President mentioned in his March 11 speech at the Export Import Bank. The revised rule enhances our national security by allowing the government to focus its resources on the more sensitive encryption items, while cutting the red tape by eliminating the review of readily available encryption items, like cell phones and household appliances. The other regulation change that the President mentioned on dual- and third-country nationals will be published soon.

In Phase II, we will deploy changes in all of these areas and further align the systems by putting in place licensing policies linked to the new control list tiers. By the end of Phase II, we will see a complete transition to standardized licensing systems based on the two mirrored control lists that will result in more timely, transparent and predictable processes.

Enforcement: There are a number of enforcement agencies with overlapping and duplicative authorities, with Homeland Security (ICE) and Justice (FBI) having authority to investigate violations of all three primary licensing agencies' regulations and Commerce having authority to investigate violations of the dual-use licensing system. There is duplication of resources and insufficient coordination of enforcement investigations. We have seen cases where one agency

has initiated an investigation, only to spoil an undercover operation by another agency.

In Phase I, we are in the process of standing up what we call the Export Enforcement Fusion Center, a permanent standing office staffed by employees from all of the export enforcement entities and the intelligence community. This center will coordinate and de-conflict investigations, serve as a central point of contact for coordinating export control enforcement with Intelligence Community activities, and synchronize overlapping outreach programs. As the single licensing IT system comes on-line, which I will discuss in a moment, the Fusion Center will also screen all license applications, a function only currently performed comprehensively by enforcement officials for Commerce-processed license applications, which account for only 16 percent of all license applications.

This is another area in which considerable work has been done, mapping out the terms of reference that are being used to prepare an Executive Order to formally create the center.

It is in the enforcement area where we have identified some legislative changes we would like to make. We have worked together with Congress on these possible changes, which have been included in the Iran sanctions legislation. Our reform provision toughens our enforcement authorities by doing three things:

- First, it harmonizes the different maximum export control criminal penalties across four different statutes to the maximum.

- Second, it adds a civil penalty provision to one of the statutes that has none, the United Nations Participation Act, which will enhance the enforceability of certain Treasury regulations; and
- Third, it commissions a study to be conducted by the U.S. Sentencing Commission on the impact and advisability of imposing a mandatory minimum criminal sentence for export control violations, with the intent of assessing why criminal sentences for export control violations appear to be low even though these violations may impair our national security.

We appreciate our Congressional partners' collaboration with us to improve our export enforcement tools, which is important feature of the "higher fences" that Secretary Gates has referenced.

In Phase II, we will harmonize our enforcement outreach, license compliance, and inspection programs, as well as our administrative enforcement procedures and self-disclosure processes. By the end of this phase, we will have a harmonized government-wide export enforcement program that will be more capable of enforcing our controls.

IT System: Finally, an effective, integrated IT infrastructure is an essential enabler of any robust export control system. But we currently have a number of IT systems across the licensing and enforcement agencies. This fuels the problem I already mentioned about our stove-piped licensing processes, in which the U.S. Government has no way of knowing what it has collectively authorized or denied for export to any specific end-user. This increases the risk that wrong decisions can be made.

In Phase I, we have already completed an initial review to migrate the licensing agencies to USXPorts (“U.S. Exports”), a Department of Defense system that was deployed in 2003. As a first step, the State Department’s munitions licensing organization is already in the process of migrating. Follow-on steps will migrate Commerce and Treasury and the other departments and agencies that participate in the interagency review of license applications.

We are also standing up a review to build a single interface for exporters to use, rather than the two different electronic systems maintained by Commerce and State, and the paper process used by Treasury. Our IT experts are already at work with our licensing team, which is developing the single application form.

In Phase II, all the licensing agencies will migrate to a single system. For the first time, they will be able to query the system and see the universe of what is considered for export to a given end-user. In Phase II, an assessment will be initiated to determine how to integrate the single licensing system with the various enforcement systems.

By the end of Phase II in all four areas, we will have a fundamentally new system in place based on the current interagency structure – two mirrored control lists that are more tightly focused on those key items and technologies that should be protected, with harmonized business practices, policies, and definitions across our licensing and enforcement agencies, with stronger enforcement authorities, and a single IT licensing system structure.

This leads me to Phase III, where we propose transitioning our reformed system to a new interagency structure. In Phase III our goal is to:

- Merge the two mirrored lists into one;
- Merge the licensing agencies, with harmonized business practices and policies, into a single licensing agency;
- Combine Commerce's Export Enforcement office and DHS/ICE Counter-Proliferation Program into a single dedicated export enforcement unit; and
- Deploy an enterprise-wide IT system, so that we can track an export from the filing of a license application until the item leaves the port.

The Administration in recent weeks made some key decisions on its vision for Phase III. For the Single Licensing Agency, as we're calling it, the Administration supports the creation of an independent entity, governed by a Board of Directors comprised of the Cabinet officials of the current departments with export control responsibilities, which reports to the President. We anticipate that leadership of the SLA would be nominated by the President, with the advice and consent of the Senate.

For the consolidation of certain enforcement functions, it supports merging Commerce's Export Enforcement office and ICE's Counter-Proliferation Program into a single dedicated export enforcement unit within ICE. We look forward to working with the Congress on the details of our proposals and consider options for Phase III legislation.

Conclusion

These consolidations are a natural progression of our comprehensive export control reform plan. We have an aggressive agenda with an even more aggressive timetable, as our goal is to achieve Phases I and II, and seek legislation for Phase III this year. To do so, it is critical that the leaders in the Administration, the Congress, and industry work together to make it happen. Reforming our export control system is critical to our national security, to effective political-military engagement with partner nations around the world, and to America's economic competitiveness in a global and rapidly evolving economy.

At the end of this process, with your help, we hope to have a fundamentally new system, a system defined by flexibility, transparency, and predictability, and which improves the ability of exporters to comply and for the government to enforce.

Thank you for your time this afternoon and for the support that many of you and your organizations continue to provide to our efforts.