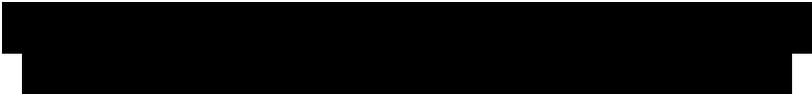




STATEMENT OF
DR. JAMES N. MILLER
PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
FOR POLICY

BEFORE THE HOUSE
COMMITTEE ON FOREIGN AFFAIRS

MAY 12, 2011



Thank you Madam Chairwoman, Ranking Member Berman, and Members of the Committee, for the opportunity to discuss the Department of Defense's role in the Administration's Export Control Reform initiative, and to describe how our efforts will enhance our nation's security. I am glad to appear here with Under Secretary of State Ellen Tauscher and Under Secretary of Commerce Eric Hirschhorn. Our work on Export Control Reform has been a great team effort, and I appreciate the Under Secretaries' leadership. I would also like to thank the staffs of our respective organizations and in particular the interagency Export Control Reform Task Force, and my staff at the Defense Technology Security Administration.

As you know, the Department of Defense is a strong proponent of fundamental change of our export control system. In his speech in April 2010 to Business Executives for National Security, Secretary Gates spoke about the need to adapt and reform America's national-security apparatus to better deal with the realities of the post-Cold War era. He outlined a simple but critical concept that has been the guiding principle behind the Administration's efforts: how to create "a system where higher walls are placed around fewer, more critical items."

I want to be absolutely clear that DoD continues to believe that export controls are vitally important to national security, including by helping us maintain a technological advantage for our forces and our Coalition partners. Our armed forces should always have the technological advantage. And we should take all reasonable steps to prevent future adversaries from using our own technology against us. Properly applied, export controls also help extend the useful life of military technologies, and save U.S. taxpayers the expense of developing countermeasures.

There are compelling national security reasons for export control reform.

First, we need to better focus our efforts to prevent potential adversaries from getting access to technology or equipment that could be used against us. This requires both "fewer items" and "higher walls." The two are fundamentally related. In over 95 percent of export control cases, we say "yes" – though often only after a lengthy and cumbersome review mandated by our current processes. Further, the number of export licenses we review has more than doubled over the last ten years. By focusing instead on the most critical technologies that underpin U.S. military advantages or that could be dangerous in the hands of others, we will improve our ability to protect the technologies that really matter. This includes a special focus on those items and technologies that are what Secretary Gates has called the U.S. "crown jewels."

Second, we need to improve the way the United States shares technology with Allies and partners in order to confront shared security challenges. One of the key lessons of the last decade is that success in future conflicts will require the ability to work effectively by, with, and through Allies and partners. In the past, there was a reasonable degree of certainty about the threats U.S. forces could be called to meet. Recent years have taught us that threats can emerge almost anywhere in the world, and that our own forces and resources will remain finite. To fill this gap effectively, the United States must be postured to effectively help our Allies and partners to operate alongside U.S. forces, or to address threats themselves. As Secretary Gates has said, in the irregular conflicts that characterize today's security environment, "the capabilities of the United States' allies and partners may be as important as its own, and building their capacity is arguably as important as, if not more so than, the fighting the United States does itself."

Over the years, we have made incremental changes in our export control system – squeezing our existing processes for efficiencies – but this is not enough. We need to set up new rules, organizations, and processes that deal effectively and efficiently with 21st century challenges -- fundamentally changing the regulations and procedures we have had in place since the Cold War. The bureaucracy that surrounds our current system has grown over time into a byzantine set of processes with diffuse authorities scattered throughout the government. While this structure might in theory balance competing interests, in practice it results in time wasted on process and jurisdiction. At best, this results in confusion and unnecessary effort on the part of both industry and government; at worst, it creates more opportunities for mistakes, enforcement lapses, and openings for problematic exporters to probe the system for the best result. This need for a more fundamental overhaul is the basis for the "four singularities" of our effort: a single control list, a single licensing agency, a single information technology (IT) system for export licensing, and a single primary enforcement coordination agency. As Under Secretary Tauscher has said, our reform effort is being conducted in three phases, with the third phase requiring enactment of legislation. We made a number of core decisions in Phase I: developing and testing the control list criteria and the methodology for how we will rebuild our control lists; implementing several new proposed licensing policies; and finalizing changes to our encryption controls which are critical to the Department of Defense and the Intelligence Community.

We are now in the process of implementing Phase II, and are making significant progress. The Department of Defense has taken the lead in rewriting the U.S. Munitions List – a

significant undertaking involving components from across DoD that is an essential precursor to a single control list. We have enlisted experts from the Military Departments and our laboratories to write “positive” controls for nineteen categories of the USML by July of this year. Our DoD experts are coordinating closely with experts at the Departments of State, Commerce, Energy, and other departments and agencies with specialized expertise to “tier” controls based on the level of sensitivity of items for military and intelligence purposes.

In conducting our review of the USML, we have discovered that some items should be moved from the USML to the Department of Commerce’s dual-use control list because these items, by themselves, are deemed by our experts not to impart or contain any specialized or unique military capability that merits control as a defense article. Therefore, we recommend that they be controlled—not de-controlled— as dual-use commodities under the jurisdiction of the Department of Commerce until we are able to implement a single control list. We are working with the Department of State to develop a comprehensive and efficient notification process to Congress with respect to these items and want to work with you and Secretary Clinton on improving that process. At the same time, we will need to ensure that we adhere to our multilateral export control commitments. Some changes we propose may require negotiations with our export control partners.

Finally, the Administration has also begun revising and “tiering” dual-use controls on the Commerce Control List so that, when coupled with a revised positive USML, the two lists can eventually be merged into one.

I also want to comment briefly on our implementation of the single IT system. The Department of Defense has been designated as the Executive Agent for the new U.S. Government-wide export licensing system, which will be based on DoD’s USXPORTS system. It is critical that we leverage the pockets of information we have in the different agencies to ensure that our licensing decisions are fully informed. We signed a Memorandum of Agreement (MOA) with the Department of State in February 2010 to transition it to USXPORTS, and expect initial operational capability by August 2011. An MOA with the Department of Commerce was signed in October 2010 – initial operational capability is projected for October 2011. We are working on a single-form that exporters can use to apply for a license that will facilitate entry into the process. Connectivity to IT systems used by the U.S. Customs and Border Protection will ensure that U.S. border agents can effectively and efficiently identify licensed exports. We

look forward to working with Congress to obtain budgetary authority sufficient to bring all relevant agencies into this much-needed, expanded system.

By the end of our Phase II work, we will have made significant improvements in efficiency. But we will still have two separate export control lists administered by two separate departments. We will not fully meet our “higher walls” objectives if we cannot fix the bureaucratic apparatus that has grown up around our export controls.

Our vision of a single licensing agency is one in which engineers, scientists, intelligence analysts, and licensing officers work together to review and process the majority of export licenses in an efficient and effective manner. A single licensing agency would have jurisdiction over items and technologies currently on either the munitions or dual-use list as well as items currently licensed by Treasury for embargoed destinations and would consult with other agencies as required for technical or policy reviews; it would also streamline review processes and ensure that export decisions are consistent and made based on the real capabilities of the technology. This agency would also reduce exporters’ current confusion over where and how to submit export-license applications, as well as which technologies and items are likely to be approved.

Admittedly, a single licensing agency is not a new idea. Last July, the Government Accountability Office, pursuant to a request by then-Chairman Berman, published its review of the systems of six of our closest Allies and found that these governments – Australia, Canada, France, Germany, Japan, and the United Kingdom – have largely come to the same conclusions that we have regarding the “four singularities.” And it is not just our Allies that have adopted this common-sense approach; as far back as 1991, a review by the House Committee on Government Operations issued a report on strengthening the export licensing system and recommended a single licensing agency, a single control list, and consolidated enforcement. We look forward to working with this Congress to achieve these much needed reforms.

Our proposed single licensing agency would oversee the implementation of a single control list. We believe that a single control list, administered by a single licensing authority, will be clearer for exporters and government, will greatly reduce bureaucratic disagreements on classification of items for export purposes, and will enhance our ability to control the exports of items critical to our national security. We will not spend time arguing about who controls an item– but instead will focus government resources on how important the technology is to U.S. national security, whether the item is appropriate for the stated end-use, and whether conditions

are required to mitigate risk. Critically, a single control list will also help expedite the provision of equipment to our Allies and partners.

Creation of a single control list has become more important as the line between purely commercial and purely military technologies has blurred in light of the demand for high technology goods in all sectors. From a national security perspective, we should treat items with similar capabilities the same way – irrespective of whether an item was designed for a specific civil or military purpose. For example, high accuracy gyroscopes that were once only used by the U.S. military are now being used in commercial aircraft. Conversely, our military uses commercial computers and processors in military systems. Thus, a single list, based on positive control language that captures key performance characteristics, will allow us to focus our efforts on key items that provide the U.S. with an important military advantage, and build higher walls around fewer items.

As Under Secretary Hirschhorn outlined, items we consider to be U.S. “crown jewels” – those items and technologies that are the basis for maintaining our military technology advantage, especially technologies and items that no foreign government or company can duplicate, such as hot section engine technology, will be placed in Tier 1 and guarded with extreme vigilance – the highest of our “higher walls” of export control reform. Items that provide significant military and intelligence capabilities will be placed in Tier 2 and will be exported on a case by case basis, including certain items that will be eligible for license exemptions to specified U.S. Allies and partners, as appropriate. We envision that items in tier 3 could be eligible for licensing to more countries and more licensing exemptions. Such items that have little significant military impact, or that use widely available technology, could be approved for export quickly. Finally, items that no longer merit control should be removed from the control lists in a manner consistent with our multilateral obligations. Over time, an item or technology could be “cascaded” from a higher to a lower level of control as its sensitivity decreases. As Under Secretary Hirschhorn mentioned, we need a more dynamic, tiered system that provides a more systematic way to quickly add controls to new items and technologies that provide the United States a significant military or intelligence advantage, and to transition items off our control lists that no longer warrant control.

It is important to note that the Department of Defense’s national security responsibilities in reviewing export licenses would not be eliminated with the creation of a single licensing

agency. Rather, the Department would continue to review those license applications that require further technical review or pose particular national security concerns.

In conclusion, as you have heard from all three departments today, the re-organization of our government's export control bureaucracy – including a revised role for DoD – is not just helpful for efficiencies, but is vital to meeting today's security challenges. As Secretary Gates has stated: “We need a system that dispenses with the 95 percent of “easy” cases and lets us concentrate our resources on the remaining 5 percent. By doing so, we will be better able to monitor and enforce controls on technology transfers with real security implications while helping to speed the provision of equipment to Allies and partners who fight alongside us in coalition operations.”

I look forward to working with Congress in developing the new authorities and processes that focus our energies on preventing exports to destinations of national security and proliferation concern, while facilitating our cooperation with Allies and partners for our mutual security benefit. Our national security will be far better served by a more agile, transparent, predictable, and efficient regime.

Thank you for the opportunity to speak to you today. I look forward to answering any questions you may have.

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