

THE PRESIDENT'S EXPORT COUNCIL

WASHINGTON, D.C. 20230

September 19, 2013

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

Dear Mr. President,

The private sector members of your President's Export Council (PEC) appreciate your leadership and the steady progress that your Administration has made in promulgating specific regulatory measures to implement export control reform. We recognize that it requires much work and collaboration with the Congress to affect the transfer of U.S. Munitions List (USML) items to the Commerce Control List, and are encouraged that six USML categories have been formally notified to Congress and finalized. The Administration should stay focused on its reform efforts and complete its proposals for the rest of the USML categories in calendar year 2013. We are equally encouraged by the proactive approach that your Administration has taken to conduct outreach and education. The Department of Commerce (DOC) in particular has done a commendable job engaging industry stakeholders through seminars, webinars, and roundtables to explain the impact of the new regulations. This outreach should continue, paying special attention to the impact that reform may have on small- and medium-sized enterprises. We would also like to acknowledge the progress towards clarity and simplification achieved with the publication of the interim final rule on what constitutes an arms "broker" and "brokering activities" by the Department of State's Directorate of Defense Trade Controls (DDTC) on August 26, 2013. We are grateful that the concerns expressed in our letter of June 2012 regarding the change in scope and jurisdictional reach found in the proposed rule were largely addressed and ameliorated in the final rule, and see this as further evidence that the Administration's stated vision of a more streamlined regulatory network is coming to fruition.

The PEC would also like to recognize the importance of regulatory changes impacting the commercial communications satellite industry. Returning export jurisdiction for these articles to the DOC has been an important reform objective and represents a meaningful step in eliminating a competitive discriminator for U.S. industry that should help boost exports in a critical sector of our economy. The PEC Subcommittee on Export Administration held a field hearing in Los Angeles in June 2013 to hear directly from industry representatives about the impact of the new regulations. Some of the suggestions shared during this session included:

- A need for more clarity on what does and does not constitute controlled Telemetry, Tracking and Control (TT&C) "technology."
- Clarification on how to interpret License Exception Strategic Trade Authorization (STA) as it relates to export of satellite-related items to company affiliates and gateways.
- Issuing export licenses to allow satellite buyers to have comprehensive insight into their satellite assets thus encouraging the purchase of U.S.-origin satellites while still maintaining high standards of national security.

We believe those ideas and other similar suggestions merit strong consideration by the Administration as the final rule is developed.

Another area in which trade could similarly benefit from additional clarity is that of encryption items and software controlled under the Export Administration Regulation (EAR). Our recommendations for updating and simplifying encryption controls include the following:

- Expand outreach pertaining to the classification of software and technology containing encryption, specifically including products that contain third-party encryption software, and web application products.
- Develop an online interactive tool similar to the tool developed for License Exception STA that would assist exporters in identifying the export control classification number (ECCN) for their products, as well as properly identifying available license exception(s) for their export activity.
- Develop expanded Frequently Asked Questions addressing practical scenarios for exporters of encryption items to provide guidance pertaining to more specific nuances of the encryption regulations (e.g., classification examples, license exceptions, third-party software, and reporting requirements).

We believe it is also important for the Administration to continue to work towards a single IT system for the Departments of Commerce, State and Defense to use as it relates to the administrative process for export licensing. Progress has been made on this issue but more remains to be done.

The PEC recommends that the Administration continues to signal its strong support for export control reform at the highest levels, ensuring close coordination between the agencies and the National Security Staff, as well as close collaboration with the Congress. We appreciate your continued leadership on this critical initiative and stand ready to lend our support to this ongoing effort.¹

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McNerney". The signature is fluid and cursive, with a large initial "J" and "M".

Jim McNerney

¹ Please note this letter was prepared by the private sector appointed members of the PEC.