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September 27, 2023

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**BUREAU OF INDUSTRY AND SECURITY**

Office of Congressional and Public Affairs

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**Remarks as Prepared for Delivery by Assistant Secretary Kendler: BIS-  
BAFA Export Control Forum  
Frankfurt, Germany**

*September 27, 2023*

President Safarik, Director General Pietsch, Consul General Scharpf, Distinguished Colleagues –

Thank you to the German Federal Office for Economics and Export Control (BAFA) for co-hosting the Export Control Forum with the U.S. Department of Commerce’s Bureau of Industry and Security this week. The Export Control Forum is an opportunity for U.S. government export control and sanctions implementation agencies to provide updates on regulations, enforcement, and compliance considerations to European industry and U.S. companies with operations in Europe, alongside our German government colleagues. To our industry colleagues, thank you for making the time to join us this week. Industry is our first line of defense to ensure that sensitive goods and technology are not misused to contribute to the proliferation of weapons of mass destruction, destabilizing military modernization programs, or human rights abuses.

Export controls have been an important tool for advancing our mutual national security and foreign policy interests since at least the establishment of the Coordinating Committee for Multilateral Export Controls in 1949. Since that time, we have seen the rise of four multilateral export control regimes – The Australia Group (chemical and biological controls), the Missile Technology Control Regime, the Nuclear Suppliers Group, and the Wassenaar Arrangement (conventional weapons and related dual-use items). These regimes focus on preventing the proliferation of weapons of mass destruction or destabilizing accumulations of conventional weapons.

In addition to these longstanding regimes, new arrangements are emerging to leverage export controls to confront threats posed by other misuses of technology, such as by authoritarian regimes to abuse human rights. For example, earlier this year the United States announced the release of a Code of Conduct for the Export Controls and Human Rights Initiative, as part of the Summit for Democracy, whereby subscribing states, including the United States, Germany, and eleven additional EU countries, take human rights into account when authorizing potential exports and share information on risks associated with the trade of goods, software, and technologies that pose human rights concerns.

Over the past 18 months especially, we have seen an unprecedented increase in the profile of export controls globally. Once largely the province of regulators, attorneys, and compliance specialists, export controls have entered common parlance. One has only to open a newspaper on any given day to find reporting on semiconductor manufacturing equipment and advanced computing exports controls, or on the impact of our export controls on Russia's ability to wage its brutal and illegal war in Ukraine.

As we have seen in the Russia context in particular, our controls are more effective when they are coordinated with our allies and partners. Both the Administration and the U.S. Congress share a deep commitment to such coordination; in fact, the statute that authorizes BIS's export controls explicitly states that multilateral controls are most effective. In the words of former Under Secretary of Commerce for Industry and Security Eric Hirschhorn, U.S. unilateral controls are like "damming half the river," as equivalent technologies are likely available from other suppliers that do not restrict their export. Coordinated controls not only reduce avenues for evasion or backfill by other technology suppliers, but from an industry perspective, they are easier to comply with. The more our controls are aligned, the fewer nuances industry must contend with across licensing regimes, reducing compliance burdens and facilitating secure trade.

In remarks made on February 4, 2021, over a year before Russia's further invasion of Ukraine, President Biden highlighted that America's alliances are some of our greatest assets and that the United States would be "more effective in dealing with Russia when we work in coalition and coordination with other like-minded partners." Consistent with this direction, following Russia's full-scale invasion of Ukraine and Belarus' complicity in that invasion, the United States led the formation of and continued alignment within the Global Export Controls Coalition (GECC), now comprising the United States and 38 other global economies. Our export controls on Russia and Belarus have been impactful because they have been imposed and maintained through this coalition, which has been more effective than any action the United States or EU might have taken in isolation.

As we have imposed increasingly impactful controls on Russia over the course of the war, we have maintained continuous coordination with our partners in the GECC. Earlier this month, along with partners such as the EU and the United Kingdom, we released guidance for industry on compliance with Russia export controls, specific "red flag" indicators of potential unlawful diversion, and a common list of 45 priority harmonized system codes for enhanced due diligence to prevent unlawful exports to Russia. Finally, to reduce compliance burdens on multinational companies operating in jurisdictions that have substantially aligned on Russia export controls, BIS has ensured that extraterritorial U.S. reexport controls do not apply to exports of certain controlled items from aligned jurisdictions that would otherwise be subject to a BIS licensing requirement because of newly-controlled U.S.-origin content or U.S. software, technology, or production equipment used to produce such items. This highlights how coordinated controls are not only more effective, but easier to comply with to ensure a level playing field for industry across ally and partner countries.

Beyond coordination on Russia sanctions, the United States and the EU have forged a deeper partnership on trade-related issues through the U.S.-EU Trade and Technology Council (TTC).

The TTC's Export Controls Working Group (ECWG), thanks in large part to Germany's leadership, has held four stakeholder meetings with public participation to identify export control-related issues where further coordination and regulatory alignment by the United States and the EU could streamline secure transatlantic trade. With stakeholder input, Germany has taken the lead identifying U.S. reexport controls as a key area for further discussion. Most recently on July 19, the ECWG, under Germany's leadership, held a stakeholder outreach event on U.S. reexport controls to address the issue of "double licensing," that is when an EU export authorization is required for the export from the EU of a controlled item, and a U.S. reexport authorization is also required because the controlled item was originally manufactured in the United States or was produced abroad with U.S. controlled content, software, technology, or production equipment. Public comments specifically suggested that BIS consider how U.S. license exceptions could be further aligned with EU general export authorizations, or BIS reexport jurisdiction could be removed entirely for less sensitive items exported from the EU to certain destinations.

These are issues BIS is examining closely and will continue to seek public comment on. Our policy approach is to generally rely on licensing decisions made by our trusted allies and partners and only to review transactions such allies and partners have authorized consistent with their own national security and foreign policy reviews when the items, end-uses, end-users, or destinations involved are the most sensitive. Accordingly, we are evaluating what regulatory flexibility we may have to reduce licensing burdens associated with U.S. reexport controls on exports authorized by close allies and partners. Some license exception provisions are already available for certain such reexports and we welcome your feedback through the TTC on how those license exceptions are currently used and what additional exceptions could be beneficial.

To further reduce "double licensing" resulting from U.S. reexport controls, we strongly encourage reexporters to use license exception Strategic Trade Authorization (STA) whenever it is available. A product of the U.S. Export Control Reform (ECR) effort beginning over a decade ago, STA authorizes, subject to certain conditions, exports of many controlled dual-use items to all EU member states, as well as Commerce-controlled munitions items to most EU member states, including Germany. STA was intended to significantly reduce licensing volumes for controlled trade with our closest allies and partners, including in the EU, but remains chronically underused. Ten percent of our overall licensing volume involves transactions eligible for STA and 25% of our licensing for munitions items involves STA-eligible transactions. Accordingly, we welcome input through TTC stakeholder events on ways in which BIS could make this license exception more user-friendly to facilitate additional controlled trade without a specific BIS license, as originally intended during ECR.

Finally, we continually assess list-based licensing requirements for exports to our closest allies and partners to determine whether such licensing requirements should be adjusted based on allies' implementation of substantially similar controls and ability to regulate the use and reexport of controlled items consistent with our shared national security and foreign policy interests. If we determine certain licensing requirements are no longer warranted, we may remove or revise them as appropriate.

The mutual national security and foreign policy objectives of the United States and the EU require that we protect sensitive technologies that could be used for proliferation-sensitive, militarily-destabilizing, or anti-democratic purposes while facilitating secure transatlantic trade and fostering innovation on emerging technologies. I look forward to our continued cooperation as we apply export controls in novel ways, including to advance the protection of human rights throughout the world. If we continue to work together, we can ensure trade remains secure while moving at the speed that your business operations demand. As we refine existing controls, develop new ones, or tailor our regulations, we will remain coordinated with our allies and partners around the globe to ensure our respective export controls systems achieve their national security objectives while creating a secure innovation ecosystem that promotes technology leadership.

Thank you.