



BUREAU OF INDUSTRY AND SECURITY
KEYNOTE REMARKS OF ASSISTANT SECRETARY THEA D. ROZMAN KENDLER
2022 American Association of Exporters and Importers (AAEI) Annual Conference & Expo
June 15, 2022
Remarks as Prepared for Delivery

I'm proud to be here to address your 101st Expo—Slightly less pressure than speaking at your centennial, so thank you for that. I am honored to be here as Assistant Secretary for Export Administration, addressing AAEI as it begins its second century.

Think of all that our global economy has been through over the last 100 years—world wars, recessions, depressions, famines, pandemics. Through all of that, your organization has endured, and AAEI members have—I hope, prospered.

While I'm optimistic that we're starting to come out of the COVID-19 pandemic, we're also facing a previously unimaginable and certainly unconscionable attack on the innocent people of Ukraine. This is another moment of tremendous global stress.

As you know, those are the moments when we're tested most—and many times, we end up coming up with creative solutions to these stressful situations that make us stronger in the long run.

Your conference theme this year is spot on—Tempest to Transformation. As the world churns around us, we need to be prepared to transform the way that we operate so that we can ensure our continued prosperity. Tempest to Transformation sounds like something I've been saying a lot recently: from crisis comes opportunity.

As Assistant Secretary I'm committed to utilizing the flexibility of the EAR creatively, informed by data, to address national security challenges while also ensuring that industry can comply effectively with the rules that we issue.

Today I want to talk a bit about how we approach novel problems in the export control world, about where we get stuck, and hopefully about how we get unstuck.

Let me start with our response to the war on Ukraine.

In just a few months, in response to the atrocious, unjustifiable war launched by Russia, we've recalibrated, revitalized, and strengthened our international partnerships as never before—from international meetings to text chains and video calls, we've essentially accomplished years' worth of relationship building in a few months.

This started as a solution to a problem we faced with Russia.

How were we to expand the effect of our export control system against Russia when U.S. trade with Russia is limited in scope, and when our export control system had already tightened trade in sensitive commodities with Russia after years of behavior contrary to U.S. national security and foreign policy, as well as global peace and security?

I won't relay a laundry list of the measures we and our partners have imposed. But let me thank you for your compliance.

U.S. exports to Russia for the items subject to new U.S. controls have decreased around 97% compared to the same time last year.

I'd also add a reminder that we are also committed to supporting sectors in Russia essential to humanitarian activities. Critical medical items, items for the safety of flight and civil nuclear safety, and items that enable telecommunications services to support the flow of accurate information and access to the internet – these benefit the Russian people, and we are prepared to license exports in these areas.

We have taken this enormous test of the will and spirit of the world and tried to find a way to make changes that make us stronger in the long run.

Almost four months after Russia launched its war, the implications of this new cooperation point to a new and stronger future.

It is my objective and hope that our cooperation will not just serve to respond to Russia's barbaric actions, but that we recalibrate our international export control collaboration around the challenges of the future.

The challenges we face are presented both by nation state actors—Russia of course, but also China, Iran, North Korea—as well as the changing threat environment facilitated by the internet and cheaper, more powerful and commercially available technologies.

I'm proud of the enormous effort BIS technology, regulatory, and policy experts have expended to bring about a real impact on the Russian military and to help the Ukrainian people.

Our controls are getting attention from the highest levels of the Russian government.

We have expanded our Russia controls quite a bit since February 24: our focus on restricting Russia's access to semiconductors, which as you all know are an essential input to many of the things that we rely on in a modern economy, including a variety of military applications, has not wavered.

Since the start of the invasion, through April when the most recent data is available, Russia's semiconductor imports from all sources have dropped by 90 percent.

That is a significant long-term challenge as Russia seeks to replace, repair, and resupply its military.

As was recently reported, Russian companies are struggling to determine how to source these critical inputs, and at a recent meeting with Russian entrepreneurs, one participant indicated that he was "very concerned about our microelectronics."

Mr. Putin cut in: "Me too. Honest."

Putin and honest are two words that should be taken with a grain of salt when they are in the same sentence, but the fact remains that our coalition of 38 of the most technologically advanced economies is a powerful one.

As you've seen, our response to Russia's war has evolved as we've worked with partner countries to maximize our effectiveness.

It is my hope that we keep expanding and strengthening that coalition, and that we've now built a strong foundation on which we can address new and emerging challenges together.

Unfortunately, it took a horrific invasion to provide the impetus to jolt these 38 countries to work together so closely. It took a strong vision from President Biden and other world leaders — not to mention Secretary Raimondo and Deputy Secretary Graves — to get us to this multilateral approach.

Russia's aggression gave the world an urgent focal point for action, around which we coordinated and have acted quickly, creatively, and powerfully.

Fortunately, not all the challenges before BIS are quite as urgent, but do require us to take a step back, reevaluate our objectives, and ask whether we need to be creative in updating our approach to that objective.

Sometimes BIS implements solutions with good intentions that don't land the way we expect.

We've all been in situations where we drive one route for so long that we don't even pay attention to another route that might take us to our destination more quickly. How do we make the decision to try the new route?

We created License Exception Strategic Trade Authorization (STA) eleven years ago.

Our goal was to reduce licensing burdens for sensitive items to trusted destinations, facilitating compliance and protecting national security.

Those trusted destinations are many of the same countries that joined our Russia export controls coalition.

STA was – and still is -- intended to facilitate exports between the United States and our close partners by easing license burdens.

In 2011, then-Under Secretary Eric Hirschhorn estimated that use of STA could potentially eliminate 3,000 of the approximately 22,000 licenses BIS issued the prior year.

The data shows you aren't utilizing STA the way we'd hoped, and this means you're continuing to drive the slower route.

Some of you have followed us into the faster lanes -- Since its inception in 2011, STA has been used for approximately 145,000 shipments, for a total value of \$10.0 billion worth of transactions. Per year, that is an average of 12,000 shipments with a value of \$830 million.

But during the same period, \$2.0 billion in exports were shipped using a BIS license even though those transactions could have been shipped using STA, which would have saved time and money for industry, not to mention BIS's ability to more quickly process licenses for which there isn't a substitute license exception available.

Of course, License Exception STA does not fit every situation or make sense in every case. Following my analogy that is now getting a little old, I also recognize there may still be too many traffic lights on the new route.

I know there are businesses that could benefit from STA if they took the time to consider the alternate path and adapt their compliance programs.

So please consider me the friendly voice of your traffic app of choice, letting you know that there is an alternate, faster route. And please report obstacles as you identify them.

Just as we work so closely with our allies to counter the world's security challenges, we want to ensure we're facilitating trade with our trusted partners.

We may need to spend more time educating exporters on our ideas to facilitate trade, like STA. In turn, we ask that you evaluate and improve your compliance programs.

However, we're not just looking backwards at how we can improve on what we've done in the past.

We also have to be responsive to the new realities we're seeing in the marketplace and threat environment.

Everything about export controls is international, of course, but we all know that not every transaction involving an export is a straight seller-exports-to-buyer situation.

I want to bring to your attention an export controls issue I encountered when I was a prosecutor in the Justice Department's National Security Division.

As we consider trusted country partners and facilitating trade, there are also non-standard situations in which I wonder if our rules are appropriately tailored.

The presence of freight consolidators is not new in our exporting system.

Consider the case of a Florida company and its owner that were the subject of criminal prosecution and administrative penalties a few years ago.

The business model was to provide a mailbox or freight consolidation service to foreign customers. For a fee, the U.S. company provided a domestic U.S. address that they – the foreign customers – provided to U.S. sellers. In this way, the foreign buyers were able to acquire U.S. items while concealing from U.S. sellers that the items were intended for export. The company then exported the items to the foreign buyers.

Let me ask you to consider, who are the principal parties in interest in this transaction?

Under the EAR, the Principal Parties in Interest are "Those persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction."

Generally, they would be the U.S. seller as the U.S. PPI and the foreign buyer as the FPPI (foreign principal party in interest). The forwarding or other agent is not a principal party in interest.

Does that make sense to you for freight consolidators? When the U.S. seller isn't aware that they're engaged in an export transaction?

This company shipped the items overseas, but they created a business model whereby they didn't always know what was being exported. In addition to potentially having less information than other parties to the transaction, what if they made less money from the transaction than the U.S. seller?

This case was successfully prosecuted based on a strong investigation and the uncovering of specific facts that showed unlawful intent. But this isn't the only business like this in the United States. Is it possible to more clearly define the responsibilities in these transactions?

The EAR has the concept of a "routed export transaction", where the foreign principal party in interest agrees in writing to assume responsibility for determining licensing requirements, but that isn't what happened here. If the foreign party didn't assume that responsibility, who should have it in the United States?

Along with the Census Bureau, we've considered different permutations of these terms of the years. We're thinking about how best to harmonize definitions between the Foreign Trade Regulations and the EAR, and how to make sure we are as clear as we can be for you – exporters and industry – to obtain the information you need and fulfill your obligations under the law.

I'm not here to make any major announcements on how we're going to solve these issues today.

But I can say that we are paying attention, focused on the details of how transactions may be structured, and taking into account the practical realities of how trade professionals such as yourselves operate.

Our greatest human asset is creativity, and we will need creativity as we face the next 101 years of change and continually evaluate whether the way we do things remains the best way that they can be done.

We face questions in export controls that require engagement from governments, industry, and average citizens.

To properly address these questions, BIS is prepared to be creative in how we move forward. We are ready to transform our export controls corner of the world from this tempest and turn our crises into opportunities.

I am optimistic about our future based on the collaboration and cooperation I see today.

We aren't just muddling through—we are deliberately charting where we want to go and working to get there.

Let's work together, solve these problems, and enhance our national security.

Our current moment is by nearly every metric a tempest—but the work we do together, every day, makes a difference in how we navigate through this moment into what I hope will be a more secure and prosperous future.