

# EXPORT CONTROL REFORM: CHALLENGES FOR SMALL BUSINESS? (PART I)

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SUBCOMMITTEE ON AGRICULTURE, ENERGY AND  
TRADE  
OF THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES  
HOUSE OF REPRESENTATIVES  
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Questions for the Record:	
None.	
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None.	
Additional Material for the Record:	
None.	



## **EXPORT CONTROL REFORM: CHALLENGES FOR SMALL BUSINESS? (PART I)**

**WEDNESDAY, FEBRUARY 10, 2016**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON AGRICULTURE, ENERGY AND TRADE,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:04 a.m., in Room 2360, Rayburn House Office Building, Hon. Carlos Curbelo [chairman of the Subcommittee] presiding.

Present: Representatives Curbelo, Luetkemeyer, Gibson, and Lawrence.

Chairman CURBELO. Good morning. I call this hearing to order. Thank you all.

Thank you all for joining us today for our Subcommittee hearing on the Export Control Reform Initiative, ECRI. This is part one of a two-part series on the ECRI. Tomorrow, the full Committee will hold our second hearing, with administration officials, where members will be given an opportunity to use what we learn here today. I hope that through this hearing the Committee can identify some of the biggest remaining hurdles facing small businesses trying to navigate the United States export control system.

The U.S. has a long track record on controlling exports of defense materials and products and services that serve both a civilian and military purpose, also known as dual-use items. The reasons for doing so are sound. Export controls help to ensure our national security, aid our diplomatic relations, and maintain sustainable economic engagement around the world.

However, over the years, the U.S. export control structure morphed into an onerous and complicated system comprised of multiple agencies with differing jurisdictions. Eventually, the modernization of manufacturing and technology outpaced the export control system's usefulness.

The export control system's inefficiencies burden American businesses. Small businesses, in particular, have been discouraged from exporting because the time and resources required to navigate the complexities of the export control system often appeared to outweigh the benefits.

So, several years ago, the administration decided to undertake a massive overhaul of the export control system. This reform was supposed to have helped American small businesses make better use of the system. However, experts and policymakers alike have observed from the very beginning that these businesses would also

have the most difficult time adapting to the new export control system.

Now, it is my understanding that, for the most time, the ECRI has been met with broad support from America's private sector. However, that does not mean that the transition has been without its challenges and shortcomings, particularly for small businesses. Export control professionals continue to stress the importance of effective outreach efforts to small businesses, and the harmonization of the export control lists is still not complete. Additionally, much work still remains in reducing the licensing and paperwork requirements that often burden small businesses.

I look forward to hearing from our small-business witnesses, who specialize in exports, about their firsthand experience with the new export control system, and from their perspective what progress the ECRI is making in the simplification of export controls.

I am also eager to hear from our witnesses about what hurdles still exist for small-business exporters and what recommendations they might have on how the administration can continue to encourage small businesses to navigate the United States export control system and engage in international trade. After all, 98 percent of all goods-exporting firms are small businesses. We must do everything we can to help them succeed, because their success ensures the United States will remain the leader in international trade in the world.

Thank you again.

And now I yield to the ranking member, Mrs. Lawrence, for her opening remarks.

Mrs. LAWRENCE. Thank you, Mr. Chairman.

I want to thank the witnesses for coming here today.

The strength of America's small business is unquestionable. They drive American exports, with 97 percent of U.S. exporters being small and midsize companies. With over 70 percent of the world's purchasing powers located outside of the U.S., it makes sense for American businesses to sell abroad. However, small businesses are responsible for only 30 percent of all export revenues. Additionally, more than half of all small-business exporters ship goods to just one foreign partner.

If we are to achieve the goals set forth in the National Export Incentive of doubling exports and creating new jobs, we must remove existing burdens which constrain the success of our small businesses. Those burdens include the overly restrictive and sometimes confusing export control system. Additionally, the application process is often long and drawn-out, leading foreign customers to look outside of the United States for products.

Small firms have been hurt in the past and put in a competitive disadvantage. The National Small Business Administration survey found that 75 percent of these businesses reported difficulties when navigating the system currently in place. The administration launched the ECR Initiative to minimize those difficulties. In the extent of small exporters, this meant involving coordination between the agencies. It also meant updating outdated regulations and clarifying licensing policies.

While the ECR Initiative undoubtedly represents a step in the right direction, much more must be done to assist our small export-

ers. Breaking down those barriers must be a priority in every agency that seeks to provide export assistance to our small firms.

Today's hearing will give us the opportunity to learn whether reforms have helped and what more needs to be done to further improve the export control system. I would like to thank the witnesses again, in advance, and I look forward to hearing your testimony.

I yield back my time.

Chairman CURBELO. I thank the ranking member.

If Committee members have an opening statement prepared, I ask that they be submitted for the record.

I would like to take a moment to explain the timing lights for you. You will each have 5 minutes to deliver your testimony. The light will start out as green. When you have 1 minute remaining, it will turn yellow. Finally, at the end of your 5 minutes, it will turn red. Do the best you can to adhere to the time limits.

Our first witness is Andrea Appell, a director for BPE Global in San Francisco, California. She has been working in the field of trade compliance since 1997.

I will go ahead and introduce all the witnesses and then we will start with Ms. Appell.

Our second witness today is Jennifer Robertson-Ahrens, president of Robertson Forwarding Company in Miami, Florida, my home. She has managed the firm's compliance program, training, and implementation since 2001.

Our third witness is Craig Ridgley, vice president and managing partner of the Trade Compliance Group in Washington, D.C. There he performs trade compliance assessments with many of the export control agencies.

Now I would like to yield to the distinguished ranking member to introduce our final witness.

Mrs. LAWRENCE. It is my pleasure to introduce Dr. Gregory Quarles, the chief scientist of The Optical Society.

Prior to joining the society, he was the cofounder and managing partner of EdgeLight Incorporated, a startup enterprise pioneering wearable light therapy. He was also the CEO at B.E. Meyers & Co., Inc., a manufacturer of optical electronic technology-related products used by defense and law enforcement applications.

Dr. Quarles has been awarded five patents and has been recognized with numerous awards, including the Department of Navy Exceptional Performance Award.

Welcome, Dr. Quarles.

Mr. QUARLES. Thank you.

Chairman CURBELO. Thank you very much.

Ms. Appell, you are now recognized for 5 minutes.

**STATEMENTS OF MS. ANDREA APPELL, DIRECTOR, BPE GLOBAL, SAN FRANCISCO, CA; MS. JENNIFER ROBERTSON-AHRENS, PRESIDENT, ROBERTSON FORWARDING COMPANY, MIAMI, FL; MR. CRAIG T. RIDGLEY, VICE PRESIDENT AND MANAGING PARTNER, TRADE COMPLIANCE GROUP, WASHINGTON, DC; AND GREG QUARLES, PHD, CHIEF SCIENTIST, THE OPTICAL SOCIETY, WASHINGTON, DC**

**STATEMENT OF ANDREA APPELL**

Ms. APPELL. Mr. Chairman and members of the House Committee, thank you for inviting BPE Global to testify before you today. My name is Andrea Appell, and I am director at BPE Global.

BPE Global is an 11-year-old San Francisco-based professional services firm specializing in export, customs, and security compliance. BPE Global is a women-owned and operated small business with five employees. BPE Global assists exporters in facilitating trade under the Export Administration Regulations, the EAR, and the International Traffic in Arms Regulations, the ITAR.

Through BPE Global, I assist companies of all sizes, from Fortune 50 companies to small family-owned businesses engaged in international trade. In addition, I am extremely active in the trade community as a member of the American Association of Exporters and Importers, CompTIA, and a number of other trade groups, including a 5-year term on the Board of Directors of Women in International Trade, northern California, three of which as vice president of the organization.

I thank you again for the opportunity to participate in this forum. My testimony will focus on the area of facilitating U.S. exports.

First, I would like to recognize Eric Hirschhorn and Kevin Wolf for their leadership in the Export Control Reform. BPE Global strongly supports the reform, and we are appreciative of the huge undertaking and the accomplishments to date to modernize the U.S. export control system.

It was only a few years ago that an interagency review determined that the former system was overcomplicated, inefficient, and could not keep pace with the constant evolution of technology. Exporters of all sizes, including our clients, were losing competitiveness in the global marketplace.

BPE Global strongly supports the administration's efforts to facilitate exports while fulfilling its national security mission, and we have participated in many outreach events to educate, prepare, and facilitate the transition to Export Control Reform.

The administration is implementing export reform in three phases. During Phase I, we reviewed our clients' products and provided assessments on the impact of reform on our customers. We submitted comments regarding the impact of proposed rules on our customers to BIS as part of industry groups. During Phase II, we reviewed the export jurisdiction and classification of our clients' products. In some instances, this represented tens of thousands of items. The creation of a positive list has greatly improved our ability to more efficiently classify products, software, and technology.

As of today, we and our clients must understand both the ITAR and the EAR and be able to classify items under both the U.S. Munitions List, USML, and the Commodity Control List, CCL. For our clients who were subject only to the ITAR, some of the products have moved to the EAR, and they can now ship under expanded license authorizations instead of always having to obtain a Department of State license.

While the movement of products and technology from State to Commerce has been advantageous, it has not come without some drawbacks related to determining the level of control on a product and timeliness related to license requests. When an exporter moves from being subject to only the ITAR to a business subject to both the EAR and the ITAR, regulatory complexity and administrative burden increases. For example, under the EAR, exporters must provide information on end users and end use that they previously did not have to do under the ITAR. Another example is that the audit trail for export classifications has been expanded to include the order of review and a 600 and 500 series review detail.

Though a majority of our clients have benefited from the reform effort, moving their products to the CCL, a few have actually moved from Commerce Department's jurisdiction to State Department's jurisdiction.

To further explain the complexity under the EAR, exporters must consult several different sections of the EAR in order to determine if the commodity is subject to the EAR, assigned the ECCN classification, check if general prohibitions apply, identify the reason for control, assess whether or not the reason for control triggers a license requirement, and finally, determine if a license exception is available.

The ability to read and interpret multiple sections of said regulations requires exporters to be comfortable with legal and regulatory language and ultimately become self-taught experts on the classification and controls related to the products and technologies with which they work. Because mastery of the new set of regulations is now incumbent on those same exporters, we have found that companies prefer the pain they are most familiar with, licensing products under the much more straightforward administration of the ITAR.

So if, during the review of regulatory requirements, an exporter determines that a license is required to export the commodity, the turnaround time for response from either State or BIS delays the export of items, especially when requests are volleyed between two agencies and the other agencies they consult. Delays are troublesome for companies of all sizes, but particularly hard for small businesses to absorb.

Fulfillment of orders of small businesses is key to their survival. If small businesses are unable to meet their contracted demands, they face not only a financial risk, but the risk of losing the valuable business to another, often larger U.S.-based supplier, or potentially to a foreign provider.

Other areas where our clients struggle are with missing, incomplete, or contradictory definitions of underlying export principles. This work I know is still in progress. The lack of clear definitions can create a roadblock for export, which results in assigning a clas-

sification which is overly conservative and accompanied with higher controls.

BPE Global supports continued outreach by BIS on consulting and understanding the EAR to guide businesses through obstacles related to exporting, ease the transition from the ITAR to the EAR, and encourage competitiveness in the global marketplace.

Again, I wish to thank BIS for its work on export reform. In general, the reform seeks to provide increased competitiveness, predictability, and efficiency for the export communities. We share these objectives and welcome the opportunity to be a partner as the process moves forward.

Thank you for the opportunity to speak to you today. I welcome any questions.

Chairman CURBELO. Thank you for your testimony.

#### **STATEMENT OF JENNIFER ROBERTSON-AHRENS**

Now, Ms. Robertson-Ahrens, you are recognized for 5 minutes.

Ms. ROBERTSON-AHRENS. Thank you, Chairman and Subcommittee. I appreciate the opportunity.

I am Jennifer Robertson-Ahrens. Robert Forwarding is a very typical small business, as many freight forwarders in the industry are. Our industry makes up about—85 percent of our businesses are small business with about six or seven employees, bringing about 2 million a year from maybe two or three contractors. The way freight forwarders differentiate themselves is in expertise, whether it be by commodity or vocation to which they ship back and forth from.

Robertson Forwarding is unique. In the mid-1990s, we became a government contractor working with INL and the U.S. Department of State moving aviation parts throughout the world, mainly Central and South America. I would believe that we were one of the first companies dealing with ITAR-regulated freight back in those times. In about 2001 is when I got into the industry and started focusing on DDTC regulations and became an export compliance officer.

One of the things that I have noticed with Export Control Reform, though I believe the initiative is truly helpful and it is a direction that we should be going in, as a DDTC Response Team member once said to me, it is like a giant pool where you drop a boulder and the ripples are going to be for a while.

And what I have seen that has happened with us is that it is hard to train my staff on ECCNs. When it comes to the ITAR, it is very self-explanatory what to do with the DSP-5. When it comes to using an ECCN, depending what the classification is and depending what country we are going to, it really depends on what regulations and what government restrictions you have per country. If a shipper does not give us this information correctly, we are liable to civil and criminal prosecution for improper exports.

We are noticing that manufacturers and shippers are reluctant to self-classify and obtain commodity jurisdictions as the supply chain grows and grows and grows between overseas manufacturers with shippers in the United States creating products and then selling them on to larger companies to then fulfill their contractual agreements in foreign countries. We are noticing that there is con-

fusion between USML and how they relate to their current ECCN classifications; with identification of ECCN licensing requirements. It is leaving exporters vulnerable to possible export violations due to lack of training and a constantly fluctuating process as Export Control Reform moves on.

Contracts and items are sometimes procured 2 years in advance. You already identify how you are going to ship them from the second that you procure them, the second that you sign that contract. As this goes on every 6 or 7 months with the evolution, it is changing how we are working, and it is delaying our processes. We are seeing some of our customers up to \$150,000 on small contracts in just delays, fines, penalties, improper shipments. We have some legal people here who know that if I do something like that, I have to go and get a voluntary disclosure. Those things are not cheap, nor are they free. So it is quite dramatic what is happening.

As a freight forwarder, we are under enforcement agencies, we are considered the last line of defense for U.S. Border Protection, for the Office of Foreign Asset Control, Bureau of Industry and Security, TSA, Transportation Security Authority, and the Federal Maritime Commission. We have a lot of people to answer to. So regulations that are clear and laid out clearly towards us make a huge difference on how we are able to execute our work.

One of the other issues that I have noticed coming forward is there is a movement of—my staff is a group that usually, in the freight forwarding industry, maybe has a bachelor's degree. It is a great small-business initiative for hiring people with what the government wants. You want more people working. You want people coming directly up from the ranks.

Once this starts to push down between the shipper's procurement into classifications, and it comes to us before shipping, my staff has been asked by shippers to basically classify their commodities for them because of the pushback. People are nervous. People are scared. They are throwing it on us.

Some of these items, whether they are EAR or ITAR, are all based on algorithms or how they are done by the engineers. It is an engineering response. I am not seeing the pushback happening to manufacturers and shippers. I am seeing it as the last line of defense as my firm. We are the ones who are able to be audited quickly. We are the ones with five different organizations that can come in at any time and review our audit and our documents.

So what I would like to see is—we have been through this before as freight forwarders when TSA came into full force. The training, the outreach. CBP needs more training per different export region, whether it is Dulles or MIA. They have to play by the same rules. They are not. They are leaving it up to the different CBP directors to decide how they train their staff. it varies very much.

We also have, where we notice that—sorry, I am off the cuff. Well, long story short, when TSA came into play, it was every 2 years you received an update, and we all knew when we had to get to that update. It wasn't happening so fluidly as it is with Export Control Reform. You knew where you were playing. You knew where the field was. You knew what you had to get up to speed with. So Export Control Reform has been coming down the pike for a long time. Its outreach is not. BIS has not been nearly as active

as it needs to be for freight forwarders and exporters in training, offering very few outreach programs.

I would like to finish my statement by saying I really believe that the initiative is correct. I believe the initiative is what businesses need. But there has got to be another way to encompass training, outreach, communication to the hundreds and thousands of small businesses, like my own, that need to be able to repair ourselves. Thank you.

Chairman CURBELO. Thank you, Ms. Robertson-Ahrens. I apologize for mispronouncing your name earlier.

Ms. ROBERTSON-AHRENS. It is okay.

Chairman CURBELO. And I thank you for going off the cuff. We appreciate that.

Ms. ROBERTSON-AHRENS. I love off the cuff.

Chairman CURBELO. Now, Mr. Ridgley, you are recognized for 5 minutes.

#### **STATEMENT OF CRAIG T. RIDGLEY**

Mr. RIDGLEY. Mr. Chairman, thank you for this opportunity to speak before your Committee and your colleagues on ECR.

My name is Craig Ridgley, as you pointed out. I am the managing partner and vice president of the Trade Compliance Group, formerly known as MK Technology, which is the oldest trade compliance consulting company in the country. We started in D.C. back in the mid-1980s.

With regard to ECR, it is very much an open question as to the impact of ECR as it relates to small businesses or SMEs. We don't have a definitive answer, but we would like to pose some questions that might lead Congress and the Obama administration in the right direction. We also have some modest suggestions that would help to ensure that the interests and concerns that are at the center of the ongoing reform process are listened to.

We start by asking BIS and DDTC to survey SME exporters, ask them which elements of the ECR Initiative have been beneficial and which have not. How should the ECR initiative be altered to take into account their concerns? Are there any recent surveys conducted by companies or business associations on the potential impact of reform efforts on SME suppliers and vendors?

SMEs are widely seen as disproportionately disadvantaged by the export control system. SMEs could not then and cannot now afford large compliance staff or a Washington liaison office. Consequently, the overwhelming majority has less access to government licensing authorities than those enjoyed by large companies.

Long licensing times and opaque regulations are continuing concerns. Further, due to the significant increase in BIS classification requests and DDTC commodity jurisdictions, the cycle time for those services has now reached the point of near irrelevance. It is not useful to wait 8 months for commodity jurisdiction. You have to find other ways of doing your business. You can't wait 8 months at a time.

To be sure, the progress has been made in streamlining the regulations and increasing the clarity and objectivity of USML. For every commodity-related and related software and technology that is moved from the USML to the Commerce Control List, the ex-

porter no longer has to be concerned about defense services, brokering, registration, and registration fees. Also, he can now take advantage of a de minimis rule, a less burdensome direct product rule, and no purchase order requirement.

In short, there are some definite advantages derived from the ECR Initiative and relative to the USML and the transfer of thousands of items from the USML to the CCL.

With the laudable goal of improving the export control system, government agencies have asked a lot of our exporting community, including the expenditure of thousands of man-hours and millions of dollars for compliance with new classification designations. For many companies, including SMEs, they have had to learn a whole new compliance language moving from the ITAR to the CCL.

Classification processes, which have heretofore essentially been black and white, are now depending upon end use information that has traditionally not been relevant to classifications and for the SME is now extremely difficult, if not impossible, to obtain.

In some conferences that I have attended, and in training sessions that I have conducted, the pain of ECR is almost palatable. Significant time and company resources are being invested in the cost of transitioned items in the overall implementation of the ECR Initiative.

For example, an SME vendor of minor components may have tens of thousands of drawings previously subject to the ITAR. Post-ECR, those thousands of drawings must be all reviewed in light of the new definition of "specially designed." Application of the "catch and release" process on those tens of thousands of drawings is financially prohibitive and in some cases impossible if there is a gap in the original supply chain, leading to assumptions and guesswork.

Additionally, DDTC and BIS should issue guidance on the changes needed with regard to the Foreign Military Sales, the FMS program, to promote the objectives of the ECR Initiative. FMS activity remains under the jurisdiction of the Department of State while associated parts and components have been transitioned over to the jurisdiction of the Commerce Department.

Guidance is needed as to the conflicting jurisdictional authorities. For example, licenses are still required for the reexport or transfer of parts and components related to items related to decades-old aircraft, such as the C-130.

Thank you for the opportunity, and I would be glad to answer questions.

Chairman CURBELO. Thank you very much.

Now we would like to recognize Dr. Quarles for 5 minutes.

#### **STATEMENT OF GREG QUARLES**

Mr. QUARLES. Chairman Curbelo and members of the Subcommittee, thank you very much for allowing me to testify before you today on the challenges that export control poses for small businesses.

As Congresswoman Lawrence stated, my name is Craig Quarles. I am chief scientist for The Optical Society here in Washington, D.C. I am also a former small-business executive for the past 20

years dealing with companies that were working with compliance of export controls.

A little bit about The Optical Society. We are the leading professional organization for scientists, engineers, students, and entrepreneurs who fuel discoveries, shape real-life applications, and accelerate achievements in the science of light. This includes development of new medical imaging devices, fiber optics, wireless Internet, and spanning medical to military lasers. 2016 is our hundredth anniversary for the society, with over 19,200 members globally. We also have 250 corporations that are members, and 90 percent of those are small businesses. So we have a good sample set to talk about these issues with.

We find that it is vital that Subcommittees such as yours look at how export control is impacting small businesses, because we want them to have the same equal footing to compete globally. We want them to be able to reach all the consumers that you had identified previously so that global competition is allowed to be sold and bartered.

The Optical Society stands ready to partner with the Federal Government to assist small businesses to export more U.S.-manufactured products abroad.

So what are some of the major concerns of our constituents with The Optical Society? Number one is what all of our other panelists have talked about, the export reform changes taking place that were launched in 2009. The Department of State is amending the International Traffic in Arms Regulations, provides the U.S. Munitions List, and especially Category XII, which is under scrutiny currently, which implies military electronics, military optics, and lasers.

This would regulate the dual use and sale of optics and photonics products that were previously military and security almost exclusively, and now a portion of those are going to the Commodity Control List. We find that compliance is going to be a challenge for the small businesses in The Optical Society because of the regulatory complexity of looking at these devices and where they sit.

We are recognizing potential negative impact not only on our members, but the industry as a whole, and so we have partnered with two other groups, the Semiconductor Industry Association and SPIE, in educating our congressional delegations about the negative impacts on small business, particularly in the optics and photonics industry.

I have tried to identify three primary concerns, some of which have already been echoed today, with the export control as it stands. The first one is impact on time to market. Second is cost of compliance. And the third is a gap and a need for enhanced government export assistance resources, especially for the small businesses that don't know how to navigate the movement of these two lists.

Going to point one, to the time to market. We have talked to members from The Optical Society, and to get a CCL license, it should be a standard 20 days. Some of these companies have sold product to the same companies for the past 3 to 4 years, same delivery, same product, and it is taking 60 days to get licenses currently. Sixty days is a delay that can cost orders for these small

businesses. Foreign competitors can use this seemingly very brief window of time as an opportunity to come in, undercut a sale, and win the business from the U.S. companies and take them completely out of the loop.

The cost of compliance is another concern point and one that I am very aware of. We have broad support here. A Small Business Administration summary previously showed that it is really a fixed cost for compliance for small business up to from 5 to 500 individuals, but the cost per employee in small businesses, according to this report, is 36 percent higher than it is for the large companies, and that really puts small businesses facing a substantial cost disadvantage when having to deal with compliance, regulations, and the fees compared to their larger counterparts. Large companies already assume this large fixed cost spread out over a large numbers of employees and can compete and win these orders and keep small business out of the way.

From my prior experience as the CEO of a company selling lasers to the military and homeland security, our cost annually was well over \$500,000, a half a million a year, for small a mom-and-pop business just to stay compliant with CCL and our ITAR regulations. That didn't include our Washington support.

What choices do the business owners have? Spend hundreds of thousands of dollars to remain in compliance? Worry about fines, worry about potential jail time? These regulations make it very costly to compete if you don't have subject matter experts onboard.

Then finally, I think we see a trend for needing to strengthen government export assistance, especially for small businesses. Regulations are an important part of enabling our national security, as the chairman pointed out, and The Optical Society fully supports that. We don't want to harm our security or limit U.S. competitiveness. However, the government must provide resources for our businesses to comply without burdensome expenses.

Surveys for the Small Business Administration, spanning 2010 to 2013, show the sharp decline in the level of interaction between small businesses and the Export Assistance Centers that Commerce has. In this timeframe, awareness of the centers dropped 20 percent, and the useful resources there dropped 50 percent. Does this really make the most effective assistance that we can offer a small business? I would say no.

The Optical Society acknowledges and applauds the cross-agency coordinated initiatives the administration has set forth to assist small businesses, but more needs to be done to educate the businesses with export controls. Just as a point of view, it is not just small businesses. We do have a large number of university professors that are part of The Optical Society, and they have to worry about the ITAR, foreign graduate students, and now export control from the Commerce side.

So in conclusion, better streamlining of the regulations, especially for small businesses, is important and it is making progress. We are going down the right path. Faster approvals need to be put into place, ways to get licenses and exportability more rapidly to compete globally, and then finally, looking for ways to have better outreach and education to the public as we go to these expanded lists. There is going to be chaos and confusion, and the government

could do very well by stepping in and offering assistance to the export compliance officers at universities and with small businesses.

The Optical Society and our memberships that we represent thank you for the opportunity to testify today, and we are ready to partner in any way we can, especially on the education front. Thank you.

Chairman CURBELO. Thank you. Thank you, Mr. Quarles.

And thank you all for your testimony. I know many members have other commitments and hearings today, so I am going to defer immediately to them, beginning with the ranking member, Mrs. Lawrence.

You are recognized.

Mrs. LAWRENCE. Thank you so much.

And thank you, again, for your testimony.

Dr. Quarles, it seems a common theme of the time that it takes to get a license. I think you mentioned 60 days.

Where do you see the bottleneck? Is it the staff time that it takes to process it? Give me a sense of how we can improve that. With the licensing happening, you said around 60 days, how does that directly impact you as a company?

Mr. QUARLES. The first part of the question, the bottlenecks, as I see it, are really from staff internal trying to decide, is this a commerce item, is this ITAR? Especially with the division of some of these areas and some of the overlaps, we are looking at making sure it goes to the right place. If it doesn't go to the right place and comes back with questions, that just adds more time onto the licensing portion of the request.

I think it is just manpower in the licensing staffs themselves. I think we may get something in within 2 days of receiving a request for a quote in the previous company I was with, and it is still 60 days before a response ever comes out of the government on whether the license is going to be granted or if more information is needed.

I think there is confusion moving forward with where this stands, and on the other end, maybe shortage of manpower.

Your second question about the small-business side, I think the costs are just prohibitive.

Can you refresh me on what the rest of the second question was?

Mrs. LAWRENCE. How does that directly impact you when it takes 60 days?

Mr. QUARLES. Thank you very much. Yes.

So if it takes 60 days, in most cases, some of these technologies are available from most of our allies with NATO, from companies scattered all across the NATO countries, and they can potentially turn this around in 30 days and make the sale. If you are waiting 60 days for a license, you have two choices. You either start manufacturing and hope you get the license, and if you don't, then you are sitting on product that is going to be on the shelf that you have already put labor and time into; or you wait to get the license, and by time that they may come back and say, sorry, we have already awarded the contract to someone else.

So you are in a predicament either path you take. It is a burden on a small business.

Mrs. LAWRENCE. Thank you.

Ms. Robertson-Ahrens, one of the main issues that most small businesses face when it comes to the ECS is understanding exactly what the shipped items are covered, and you outlined that, by Federal regulation. You even stated the ripple effect that it has on the small business.

What can be done to make the existing system put small businesses on a level playing field by this understanding, exactly? Because you have mentioned that sometimes the burden is placed on you to define what that is. Can you just dig a little deeper on that, please?

Ms. ROBERTSON-AHRENS. I will give you an example of the burden being placed. Everybody in this room is, I think, familiar with the DSP-61. It is a license that freight can go—oh, 73, actually—the license can go—the freight goes out as ITAR and it comes back to the United States if it is not sold or if it is whatever, however the contract is.

During Export Control Reform, a lot of the items that went out on this DSP-73 coming back into the United States is now under an ECCN. Large corporations—I am representing a large corporation in this factor—upon importation did not take the initiative to assign the ECCNs to the commodity. I cannot bring this back into the United States midstream without it moving from the ITAR to the EAR, where it applies now.

As a forwarder, how can this be my responsibility? How can you push this down the chain? I have seen it with our large manufacturers with some highly technical goods, that things are bundled into one USML. But when we have to go and then do the licensing—I mean, I will do the AES, which is what we do, it is now moving to AES—they don't break down the bundle. You have to sit there as a forwarder now and go back to your shipper to try to comply. It has added a lot of burden. There is quite a bit of back and forth.

Training, as far as my staff goes, with BIS, AES, and all the additional initiatives that are coming forward right now, is kind of few and far between. There are some webinars. But really, we need outreach. We need people coming to the ports to meet with us. It shouldn't cost a crazy amount of money. I have seen seminars. They are done by private firms that, I know, know no more than I do from the same webinar that I watched charging between \$500 to \$600 per person, and then they are going to do it someplace about 4r hours away, and that is the only one coming down range.

If it is a government initiative, and we are private citizens, then the government has to take the initiative to provide training each port at a rate that is affordable for every small business.

Mrs. LAWRENCE. Thank you.

My time is up, but thank you so much.

Chairman CURBELO. I thank the gentlewoman.

And now I would like to recognize Mr. Luetkemeyer.

Mr. LUETKEMEYER. I thank the chairman.

Let me just follow up on your comments, there, Ms. Robertson-Ahrens. For clarification, you are talking about a company that exports some goods, and then some of those goods come back to this country, they either didn't want it, or they were—what?

Ms. ROBERTSON-AHRENS. U.S. defense contractors, aviation parts return and repair, sales of U.S. products for the C-130 and other, F-16s.

Mr. LUETKEMEYER. So there is a process to get them be processed back into this country?

Ms. ROBERTSON-AHRENS. If they have moved from the ITAR to the EAR during this time of Export Control Reform, you do have to identify them.

Mr. LUETKEMEYER. Really? You can't get them out and you can't get them in, huh?

Ms. ROBERTSON-AHRENS. If you get them out, you have to get them back in.

Mr. LUETKEMEYER. Okay. That sounds like the government, doesn't it? Wow, only here.

Interesting discussion also with you, Mr. Quarles. I was curious, the cost to comply, you had a half a million dollars is what it cost. I know it differs from company to company. But have you got an average that it would take for the average company? They are probably dealing mostly in the same kind of products that I am looking here, it is stuff that is highly regulated, it could be military hardware and equipment things like that. I am assuming it is all probably in the same ballpark.

Is half a million dollars, is that a normal figure.

Mr. QUARLES. I think the experience I have in talking to our members over the last 2 weeks about this, it has ranged anywhere from \$150,000 for a few members that are focused on one or two products that are going into select markets overseas to some of the small businesses that are doing multiple licenses with both Commerce and with ITAR spanning 500,000 to 750,000. It is in that range of a quarter million to three quarters of a million dollars for a small business that has got over 50 percent of their business in those areas.

Mr. LUETKEMEYER. What happens when you have a company that is working sort of hand in glove with a country overseas for a particular product? You still have to go through this process?

Mr. QUARLES. You still do, because a lot of times what ties into that also is if you are working with someone overseas, now you have to start looking at these technology assistance agreements, TAAs, which are even more burdensome. You have to start define specifically what can be said, what can be exchanged, what is not technical data, what is technical data so you don't get an ITAR violation.

So it is very difficult. Once you have it in place, it is pretty seamless, just waiting on the licenses. But just getting those conversations up and going and getting approval for both parties to meet and consume product is a costly challenge.

Mr. LUETKEMEYER. I really understand the concern. I mean, you are selling very technical, very unique products that are something probably our military is involved with, and it is proprietary probably in a lot of instances. So I am looking at a list of things here, you look at missiles, explosives, vessels, vehicles, aircraft. But it is interesting here, we have got firearms, guns, and ammunition that haven't had any sort of proposed rule, final rule made. What is the problem there?

Mr. QUARLES. I will defer to one of the others if they would like to answer before me.

Mr. LUETKEMEYER. Mr. Ridgley.

Mr. RIDGLEY. I think in all honesty it is politics. I use that term generally, without—

Mr. LUETKEMEYER. Well, I appreciate honesty, because that is what we need a lot more of around here. Because, to me, you are looking at some really sophisticated stuff here. You have got missiles, explosives, high-tech vehicles, aircraft, and now we are looking at guns, ammunition, and firearms. I mean, there are a lot of places in the world that can build a bullet, and yet we are not allowing that to be done.

I am curious as to, if it is politics, I mean, I was guessing it was, but I mean, if there is something else there, I would like to know what the concerns would be.

Ms. ROBERTSON-AHRENS. Well, again, as a forwarder and importer, I find a lot of people don't understand that one of the roles that you play in this game of world trade is about trade. And it is about U.S. technology and capabilities being copyrighted and taken over by other countries and then them making the products themselves. So that, I think we understand where the concern is. I guess it is the execution.

Mr. RIDGLEY. I think it is more fundamental than that. I think it is we need a period of time without a Sandy Hook, without a San Bernardino, we need a period of time without a Paris. We need a less sensitive period of time without something related to guns, ammunition, and the other. I think that is what is stalling that, those categories, is we just need a less sensitive time. That is my belief anyway.

Mr. LUETKEMEYER. I appreciate that. Thank you.

My time is up. I yield back.

Chairman CURBELO. Mr. Gibson, you are recognized for 5 minutes.

Mr. GIBSON. Well, thanks, Mr. Chairman and the ranking member. Thanks for your leadership.

Mr. Chairman, also thanks for your thoughtfulness. Indeed, I am going to have to leave after this to another hearing. So I just to note that as a matter of personal courtesy, I am very thankful.

I actually want to build on the comments by my colleague Mr. Luetkemeyer here just for a moment, and say that, clearly, exports are a key piece of our economy. In fact, the administration in 2011 expressed a goal to double our exports, which is something I strongly support. And even though it is broader than the purview of this hearing, I guess my first question is, does anybody have a sense on where we are on that goal?

Ms. APPELL. Well, thank you.

I didn't come prepared with any statistics, but I can speak from the basis of our clients, that the export reform is working, right? It is making things easier. It is facilitating exports.

There are some tweaks that need to be made, and I think that is why we are all here. We come from a different perspective on what needs to change.

But it is working. And I think with continued outreach, to build upon Ms. Robertson-Ahrens comments, again, I will commend BIS

for their outreach. They have done a great job of providing seminars, being accessible, being ready to answer questions.

I do look to State to increase in that capacity. For certainly our customers, State has been a little bit of a closed book, and we look to them, to partner with them, to encourage the communication between government and the private sector.

Mr. GIBSON. Well, thank you. And just to follow on here. As you know, in the consolidated appropriations bill enacted last year with bipartisan support and the President of the United States' signature, the Bureau of Industry and Security received an additional \$10 million over previously enacted funding levels. That House report that accompanied the Commerce, Justice, Science, and Related Agencies appropriations bill made clear that the increased funding was to allow, quote, "BIS to continue its efforts to protect national security while coping with an increased workload of export license applications," that is close quote.

In part, this funding was provided in anticipation of the increased workload expected at BIS in order to move USML Categories I, II, III over to BIS. However, despite the fact that these funds were provided for in this current fiscal year, that transition has not occurred. I mean, that was sort of the question that was alluded to here. But I just wanted to put it on the record, that that is something that was enacted. I mean, we worked together to get that done. So really now it is a matter of compliance. It is a matter of law.

So I don't know if anybody else wants to make an additional comment on that.

Ms. APPELL. May I add a comment?

Mr. GIBSON. Yes, please.

Ms. APPELL. I think that is fantastic. I think what also could be done that doesn't cost money is when State responds to licensing requests, something very simple, an analysis of their legal reasoning or even something as simple as your goods may be subject to export reform, please see, you know, one, two, three sources. I think that would really help the exporters, and I think it would be very easy for them to do.

Mr. GIBSON. Well, I thank the panelists. This is the first of two different hearings. Obviously, we are going to get the rest of the story here, or at least in terms of the testimony later on in the week. But I just want to thank you for what you do to try to keep our economy strong, making sure our goods move, and essential part, as I said, to a thriving and flourishing economy.

With that, Mr. Chairman, I yield back.

Chairman CURBELO. Thank you, Mr. Gibson.

I recognize myself now for questions.

Our goal here is to make sure that America's small businesses are treated fairly and given a shot to succeed, well, for many reasons, because small businesses hire a lot of people who wouldn't get a job otherwise or would struggle to get a job at a larger corporation.

So what I would like to ask you all of you or anyone who would like to answer is, under the ECRI, do you feel that the playing field between larger and smaller companies will be leveled? I understand that under the existing paradigm, if you have a big team of

lawyers or compliance officers, you are going to be at an advantage. Do you see that being mitigated or significantly improved under this new paradigm that is being developed?

Mr. QUARLES. From our perspective at The Optical Society, I think that it will be improved. I think we are going to see a blip to begin with, with the confusion that is going to cause it to be swinging the other way to large business until the new rules and regulations are well understood and conveyed to the small-business community. I think once that happens, there are improvements that are going to be moving into place, and it will make it easier across the board. But you have to get past that gap and that first initial response to the changes that are happening.

Chairman CURBELO. Sure. Any other thoughts on that?

Mr. RIDGLEY. Yes. My experience with my small clients is, particularly those that were ITAR shops that now have to deal with EAR, it really is a struggle for them.

From a level playing field perspective, maybe in the long run it will level out, but right now my business has increased dramatically because of ECR. More OF the small businesses are coming to me and saying, "Craig, we need help. I don't understand this stuff. Please come do training." So on and so forth. I am very thankful for ECR for what it has done for my consulting practice.

But as far as IT leveling the playing field for small businesses, I don't think it has. I think they are burdened with—even EAR shops are burdened with new license exceptions that almost make it impossible to do what they need to do.

STA specifically is a license exception that was created to support ECRI. The first 60 percent of STA tells you what you can't ship with STA. Even to the A-5 countries, which are our closest allies, you can't—I have clients that are in aerospace. You can't ship hardly any 9.E technology under STA. A lot of my clients in that aerospace field are small business. I mean, there are 12-man shops, there are 100-man shops. I would like to see how it could level the playing field, but right now the big companies have the legal staff, they have the compliance people to be able to deal with them, and the small shops have to call me. So—

Ms. APPELL. If I may?

Chairman CURBELO. Please.

Ms. APPELL. I would like to sort of echo what Mr. Ridgley has said. It used to be under the old system that if it was loosely described in the ITAR, it was in the ITAR. And that was very easy for an ITAR-focused business, right? They would submit their license, a description of the products, and they would either to get a license or they wouldn't. It is very straightforward.

Under the new system, just as he is saying, when you move over to the EAR, it is a little more flexible, right? You have these license exceptions that you can qualify for, like STA. And the small businesses, most of them have never looked at the EAR if they were an ITAR shop, and navigating that is quite difficult. And, again, to sort of add to that cost of compliance, right, they don't have the in-house staff. They have to look outside to consultants, attorneys, or whoever to help them guide that through that process.

Ms. ROBERTSON-AHRENS. So I can only speak from our perspective. Again, it comes down to training, everything that is being

said pretty much across the board. They are dealing from the shipper's side, they are dealing from the manufacturer's side. We then end up hitting it down at the bottom when you get to you are telling me exactly how to ship. If it doesn't gel, if what people are saying doesn't make sense, and then CBP also has a different perspective, the shipment won't move.

Right now it just seems too nuanced. Is that the right way to say it? It is just seems too nuanced for it to be a really smooth supply chain.

Chairman CURBELO. Thank you.

Mrs. Lawrence, you are recognized.

Mrs. LAWRENCE. Just briefly. This will be my last question, to Mr. Ridgley.

Right now, according to the White House, the enhanced export enforcement is a critical element of the ECR Initiative, which includes the enhanced coordination of all exports by a multidepartment enforcement center, and this began in 2012. And we know that the Homeland Security and FBI are the enforcers of the U.S. export controls.

So the existing export licensing requirement, which we have been told repeatedly has its glitches, for many items to move forward we have to balance that with oversight of the Department of Homeland Security and the Department of Commerce. Is there evidence to suggest that these enhanced enforcement measurements have hindered or interfered with the export production?

Mr. RIDGLEY. On the Commerce Department side, no, I don't think so. I don't think there is a practical implication there. I think that maybe a license takes a little bit longer, maybe a week. Six to 8 weeks has been my experience for the past two decades. Maybe it is going to 9 weeks now.

On the State Department side, it is much longer, I don't know why, both in terms of licensing and in commodity jurisdictions. I had a client who had a gold-plated EMI ring that we wanted a commodity jurisdiction for because it was part of the International Space Station, at least that is when we submitted it. In the interim, the space station went from State to Commerce. Finally we got a CJ back that said, well, no it is an ECCN now. But that took 8 months to get that CJ back with that determination that it was ECCN under the CCL.

So I think the main impact is all those ITAR people who are now lost in the land of EAR, and they are going back to State with CJ after CJ after CJ. I think that is where the real impact is.

Mrs. LAWRENCE. Okay. Thank you.

Chairman CURBELO. Thank you, Mrs. Lawrence.

And I want to thank all of you for your presence here today. It does make a difference. It does matter. It will inform our work on this topic. And we work very well together on this Committee, and our goal in this case is to make sure American small businesses can sell their products abroad so you can create more wealth here at home and hire more Americans needing jobs.

I ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record. Without objection, so ordered.

This hearing is now adjourned.

[Whereupon, at 11:03 a.m., the Subcommittee was adjourned.]

**A P P E N D I X**



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*Before the*  
**Committee on Small Business**  
**Subcommittee on Agriculture, Energy, and**  
**Trade**

*Statement of*  
**Andrea Appell**  
**Director, BPE Global**  
February 10, 2016



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## **Introduction**

Chairman and members of the House Committee, thank you for inviting BPE Global to testify before you today. My name is Andrea Appell. I am a Director at BPE Global.

BPE Global is an 11 year old San Francisco-based professional services firm specializing in export, customs, and security compliance. BPE Global is a women-owned and operated small business with five employees. BPE Global assists exporters in facilitating trade under the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR).

Through BPE Global I assist companies of all sizes, from Fortune 50 companies to small, family owned businesses engaged in international trade. In addition, I am extremely active in the trade community as a member of American Association of Exporters and Importers, CompTIA, and a number of other trade groups, including serving a five year term on the Board of Directors of Women in International Trade, Northern California, three of which as Vice President of the organization.

I thank you for the opportunity to participate in this forum. My testimony will focus on the area of facilitating U.S. exports.

## **Facilitating U.S. Exports**

Thank you to Eric Hirschhorn and Kevin Wolf for their leadership in the Export Control Reform. BPE Global strongly supports the reform and we are appreciative of the huge undertaking and the accomplishments to-date to modernize the U.S. export control system.

It was only a few years ago that an interagency review determined that the former system was overcomplicated, inefficient, and could not keep pace with the constant evolution of technology. Exporters of all sizes, including our clients, were losing competitiveness in the global marketplace. BPE Global strongly supports the Administration's efforts to facilitate exports while fulfilling its national security mission and we have participated in many outreach events to educate, prepare and facilitate the transition to export control reform.

The Administration is implementing export reform in three phases. During Phase I we reviewed our client's products and provided assessments on the impact of reform on our customers. We submitted comments regarding the impact of the proposed rules on our customers to BIS as part of industry groups. During Phase II we reviewed the export jurisdiction and classification of our clients' products – in some instances this represented tens of thousands of items. The creation of a positive list has greatly improved our ability to more efficiently classify products, software and technology.

As of today, we and our clients must understand both the ITAR and the EAR and be able to classify items under both the U.S. Munitions List (USML) and the Commodity Control List (CCL). For our clients who were subject only to the ITAR, some of their products have moved to the EAR and they can now ship under expanded license authorizations instead of always having to obtain a Department of State License.



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While the movement of products and technology from the State Department to Commerce has been advantageous, it has not come without some drawbacks related to determining the level of control on a product and timeliness related to license requests. When an exporter moves from being subject only to the ITAR to a business subject to both the EAR and ITAR, regulatory complexity and administrative burden increases. For example, under the EAR, exporters must provide information on end users and end use that they previously did not have to provide under the ITAR. Another example is that the audit trail for export classifications has been expanded to include the "Order of Review" and the 600 and 500 series review detail. Though a majority of our clients have benefited from the reform effort moving their products to the CCL, a few have actually moved from the Commerce Department's jurisdiction to the State Department's jurisdiction.

To further explain the complexity under the EAR, exporters must consult several different sections of the EAR in order to:

- a. Determine if the commodity is subject to the EAR (Part 734.2-5);
- b. Assign the required Export Control Classification Number (ECCN) (Supplement No. 1 to Part 774);
- c. Check if general prohibitions apply (Part 736.2);
- d. Identify the reason for control (Supplement No. 1 to Part 738);
- e. Assess whether or not the reason for control triggers a license requirement for the destination country (Part 740); and
- f. Determine if a license exception is available (also Part 740).

The ability to read and interpret multiple sections of a set of regulations requires exporters to be comfortable with legal/regulatory language and ultimately become self-taught experts on the classification and controls related to the products and technologies with which they work. Because mastery of a new set of regulations is now incumbent on these same exporters, we have found that companies prefer the pain they are most familiar with – licensing products under the much more straightforward administration of the ITAR.

If, during the review of regulatory requirements, an exporter determines that a license is required to export the commodity, the turnaround times for response from either the State Department or Bureau of Industry and Security often delays the export of the item especially when requests are volleyed between the two agencies and the other agencies they consult. Delays are troublesome for companies of all sizes, but are particularly hard to absorb for small businesses. Fulfillment of orders for small businesses is key to their survival. If small business are unable to meet their contracted demands, they face not only a financial risk, but the risk of losing the valuable business to another, often larger, U.S. based supplier or potentially to a foreign provider.

Other areas where our clients struggle is with missing, incomplete, or contradictory definitions of underlying export principles. This work is still in progress and the lack of clear definitions can create a roadblock for exporters which often results in assigning a classification which is overly conservative and accompanied by higher controls. BPE Global supports and encourages more training on definitions in the EAR and ITAR and the application of these definitions to real-life examples. The final area which would significantly increase exporter education would be the publication of the legal analysis of



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commodity classification determinations by BIS and Commodity Jurisdictions by the DDTC. This would provide the trade community with a tremendous educational tool.

BPE Global supports continued outreach by BIS on consulting and understanding the EAR to guide businesses through obstacles related to exporting, ease the transition from the ITAR to the EAR, and encourage competitiveness in the global marketplace. In addition, we support the efforts by the State Department and Commerce to reduce the turnaround time on jurisdiction, classifications, license requests, and advisory opinions.

### **Conclusion**

Again, I wish to recognize the Bureau of Industry and Security for its work on export reform. In general the reform seeks to provide increased competitiveness, predictability, and efficiency for the export community. BPE Global shares these objectives and welcomes the opportunity to be a partner as the process moves forward, contributing to our mutual goals of promoting exports, enhancing trade facilitation, and protecting our nation's security.

Thank you for the opportunity to speak to you today. I welcome any questions.

## Congress of the United States

## US House of Representatives Committee on Small Business

Good Morning, I am Jennifer Robertson-Ahrens the President of Robertson Forwarding Company, a 47-year-old African-American, Woman-Owned, and HubZone firm located in Miami Florida's 24th Congressional District.

I want to thank Chairman Chabot and the Subcommittee on Agriculture, Energy, and Trade for allowing me to testify today on the effects of Export Control Reform (ECR) on my business.

It has been a very difficult couple of years for my small business which specializes in the importation and exportation of aircraft parts and other sensitive military equipment. I attribute the difficulties experienced over the last two years to a lack of clarity spanning across the exporting industry.

## Issues faced:

- Manufactures and shipper's reluctance to self-classify or obtain a commodity jurisdiction for their product.
- Confusion surrounding previously USML items and how they relate to their current ECCN classification.
- Identification and application of ECCN licensing requirements. Exporters are forced to navigate a confusing regulatory landscaped based on country specificity, end user, and trade agreements. Leaving the export industry vulnerable to possible export violations.
- Delays at US Customs and Border Protection, due to export officers unsure of the requirements for the ECCNs, 600 series products, and the use of export codes per country and end user submitted to them by industry in Electronic Export Information (EEI) filings. CBP's approval of these filings is required for export from the US. For exporters time is a critical component to our performance matrix and delays of any sort is costly.

Legislators need to appreciate that Freight Forwarders like myself are the "low-hanging fruit" for multiple enforcement agencies.

## Examples of enforcement agencies:

- US Customs and Border Protection
- Office of Foreign Asset Control
- Bureau of Industry and Security
- Transportation Security Agency
- The Federal Maritime Commission

Regulatory uncertainty and lack of available training leaves companies like mine in fear of financial retribution and possible criminal indictment for improper export classification provided to us by shippers/vendors.

This year I have witnessed a trend in manufactures and shippers who are undoubtedly the US Principle Party of Interest pushing li-

censing of their equipment for export to third parties without support for classification.

Examples:

- DOD contractor customer spent \$175,000 in fees due to delays in licensing between 2014–2015
- Licensing at DDTC delayed over 90 days
- Kickback of classifications between DDTC and BIS delays licensing up to three weeks.

As a US Export Compliance Officer I allocate a significant portion of our budget to training in order to keep Robertson Forwarding Company staff up to date with the regulations effecting my clients' freight. Export Control Reform has been on my radar for the last four years. I have trained and provided training to folks on the changing landscape throughout this time. With all of this said, I still had the most challenging and costly years in my professional career due to industry insecurity, confused and nervous shippers/manufactures, and government re4gulatory agencies not understanding the regulations resulting in unnecessary delays and cost for the industry.

In closing, I understand the motive of ECR but believe its implementation lacked sensitivity to business concerns. I believe the implementation of ACE and Export Control Reform should have been handled in a similar manner to the implementation of the TSA's Indirect Air Carrier Program in the 90's. There were multiple outreach programs provided at every major port, training by community liaisons, and web-based manuals. Updates phased in annually with notification of upcoming changes as well as implementation grace periods. This allowed industry to prepare and adapt to changes through training. Training was provided by the regulators themselves, allowing them to see how the practical implementation of regulations was effecting the industry and this information was then used to inform the upcoming annual or bi-annual changes.

Thank you for this opportunity.

Jennifer Robertson-Ahrens

President of Robertson Forwarding Company (d.b.a. RFC Logistics)

Subcommittee on Agriculture, Energy and Trade  
House Committee on Small Business  
2360 Rayburn House Office Building  
February 10, 2016

Export Control Reform:  
Challenges for Small Business?  
Part I

Testimony of  
Mr. Craig T. Ridgley  
Vice President and Managing Partner  
Trade Compliance Group

Mr. Chairman, I am very pleased to appear before you and your colleagues this morning to discuss the ongoing Export Control Reform, ECR, Initiative and its impact on small and medium sized enterprises, SMEs.

The Trade Compliance Group, formerly known as MK Technology, has been advising large corporations and SMEs regarding export control policies and procedures since 1986. We offer a comprehensive array of export compliance services and a broad range of compliance education and training services including custom training programs, instructional videos, and online export controls learning programs.

I am its Vice President and Managing Partner performing trade compliance assessments and developing compliance programs under the Bureau of Industry and Security Export Administration Regulations and the Directorate of Defense Trade Controls International Traffic in Arms Regulations. I have experience in both managing export control teams in many large companies and in advising scores of SMEs struggling to comply with a complex regulatory environment.

It is very much an open question as to the impact the ECR Initiative has had on SMEs. We don't have a definitive answer, but we would pose some questions that might lead Congress and the Obama Administration in the right direction. We also have some modest suggestions that would help to ensure that their interests and concerns are at the center of the ongoing reform process.

We would start by asking BIS and DDTC to survey SME exporters. Ask them which elements of the ECR Initiative have been beneficial and which have not been. Has it altered their plans to market their goods and services in certain markets and regions around the world? How should the ECR Initiative be altered to take into account their concerns? Are there any recent surveys conducted by companies or business associations on the potential impact of the reform effort on SME suppliers and vendors?

In 2010, the Milken Institute and the National Association of Manufacturers issued a study entitled, "Jobs for America: Investments and Policies for Economic Growth and Competitiveness" concluding that modernizing U.S. export controls could increase exports in high-value areas. By 2019, an enhanced regulatory environment could increase GDP by \$64 billion, create 160,000 manufacturing jobs, and heighten total employment by 340,000.

More than five years into the ECR Initiative, your Committee should ask the Milken Institute and the National Association of Manufacturers to revalidate their study's conclusions to see if we are still on track for the GDP and job growth projections.

In 2009, prior to the Administration's announced launch of the ECR Initiative, MK Technology, together with the Thales Corporation, released its "Best Practice Project for the Export of Controlled Material" based on interviews with corporate officials with export control responsibilities in large and small companies. Among its conclusions, it found that "Care should be taken to manage the small supplier relationship especially in light of the fact that some

are not well equipped to handle their own export compliance responsibilities". As relevant today as it was then, this small supplier role needs close scrutiny with many large companies divesting themselves of any compliance advisory or training role for their suppliers and sub-contractors.

SMEs were/are widely seen as disproportionately disadvantaged by the export control system. SMEs could not then and cannot now afford a large compliance staff or a Washington liaison office. Consequently, the overwhelming majority have less access to government licensing authorities than those enjoyed by large companies. Long licensing times and opaque regulations are continuing concerns. Further, due to the significant increase in BIS classification requests and DDTC commodity jurisdictions, the cycle time for those services has now reached the point of irrelevance.

To deal with these concerns, BIS and DDTC (as well as the Treasury Department's Office of Foreign Assets Control) should set up a Working Group to determine how exporter services can be made more accessible, responsive and user-friendly to SMEs. Also, these agencies should take steps to ensure that licensing officers and other agency personnel are fully trained regarding all SME export issues.

To be sure much progress has been made in streamlining regulations and increasing the clarity and objectivity of the U.S. Munitions List, and for every commodity and related software and technology that has moved over from the USML to the Commerce Control List the exporter no longer has to be concerned about defense services, brokering, registration, and registration fees. Also he can now take advantage of a *de minimis* rule, a less burdensome direct product rule and no purchase order requirements. In short, there are some definite advantages derived from the ECR Initiative and the transfer of thousands of items from the USML and the CCL.

While the ECR Initiative has begun to meet the expectations of the exporting community more progress needs to be made, its specific impact on SMEs has not received the attention it deserves. At this stage in the review process, it is time for the relevant agencies and industry associations to conduct surveys on the impact of the ECR Initiative on SMEs. Are small businesses sharing in any related job growth?

With the laudable goal of improving the export control system, government agencies have asked a lot of our exporting community including the expenditures of thousands of man hours and millions of dollars for compliance with new classification designations. For many companies, including many SMEs, they have had to learn a whole new compliance language moving from the ITAR to the CCL. And classification processes, which have been heretofore essentially black and white, are now dependent upon end-use information that has traditionally not been relevant to classification, and for the SME, is now extremely difficult if not impossible for the exporter to obtain.

In some of the conferences I have attended and the training sessions I have conducted the pain of ECR is almost palpable.

What are the ways to promote the adoption of the regulatory changes required under the ECR Initiative? One approach BIS should consider is the creation of a ‘compliant exporter of the year award’ similar to the exporter of the year awards now in place across a number of industry groups. Why not target SMEs for recognition particularly in the high tech sectors intended to be the beneficiaries of the export control reform process?

BIS should also consider directing the Regulations and Procedures Technical Advisory Committee, RPTAC, to review the impact of the recent changes in the Export Administration Regulations resulting from the implementation of the ECR Initiative. The focus should be on SMEs addressing their export competitiveness and as well as any reduced propensity to export or manufacture ITAR items.

With SME participation, the RPTAC could also help to advise regulators in developing a new common set of standards where the two control lists, the Commerce Control List and the United States Munitions List, would be merged into one.

DDTC’s counterpart to the TACs is the Defense Trade Advisory Committee, DTAG. It advises the Department in the regulation of defense trade helping to reduce unnecessary impediments to legitimate exports while supporting defense requirements of U.S. friends and allies. In January of 2014, the DTAG Export Control Reform Working Group issued a number of findings on the progress and the problems associated with the reform effort.

The advisory group members noted that significant time and company resources were/are being invested in the cost of transitioned items and in the overall implementation of the ECR Initiative. They focused on the direct costs tied to industry supply chains, procurement and engineering program in learning and complying with the new regulations including ongoing reclassification and jurisdictional changes. For example, a SME vendor of “minor components” may have tens of thousands of drawings previously subject to the ITAR. Post ECR, those thousands of drawings must all be reviewed in light of the new definition of “specially designed”. Application of the “catch and release” process on tens of thousands of drawings is financially prohibitive and, in some cases, impossible if there is a gap in the original supply chain, leading to assumptions and guesswork.

And they reviewed the indirect costs as well that are tied to administering and establishing the processes to support the regulatory changes. Specifically, these included employing additional staff, diverting existing staff from other tasks, making changes in production processes, employing consultants or other sources of expertise to assist in the regulatory changes, and compiling and storing information required under new reporting requirements. They noted that the costs were substantial enough to as to negate lower unit costs and to blunt their competitive edge.

Among their other observations: trade compliance programs are typically understaffed across a wide spectrum of companies and many corporate officials have difficulty finding the time to read proposed rules particularly if they are not directly related to the

company's products and services. In sum, industry doesn't have the luxury of not getting it right.

An expanded and more inclusive Defense Trade Advisory Group could make its own recommendations to ensure that they are adequate resources at DDTC for taking on new responsibilities, including the flexibility to use existing resources, without increasing any fees. Taking into account the views of the SMEs, the focus should be on fee mitigation. Currently, DDTC registration fees range from \$2,250 to \$2,750 depending on the number of license applications or requests for authorizations during a 12 month period. SMEs could be considered for some kind of fee remediation.

Both DDTC and BIS should create new SME-dedicated portals on their respective websites that would provide useful compliance information and templates geared to the needs of the small business exporter.

And DDTC and BIS should issue guidance on the changes needed in the Foreign Military Sales, FMS, Program to promote the objectives of the ECR Initiative. FMS activity remains under the jurisdiction of the Department of State; however, associated parts and components have been transitioned over to the jurisdiction of the Commerce Department. Guidance is needed as to the conflicting jurisdictional authorities and licenses are still required for the re-export or transfer of parts, components and related items related to decades-old aircraft such as the C-130. Many SME aircraft parts and components are being disadvantaged by the current licensing requirements.

Any progress in reducing the licensing burden and in simplifying forms and procedures will be especially welcomed by SMEs. In this regard DDTC and BIS need to establish a single entry portal and a single form for use with electronic interface through which all license applications can be submitted and redirected to the appropriate agency. Further reductions need to be made in the number of licenses for items remaining on the U.S. Munitions List, particularly for those items being exported to U.S. allies and partners for the replacement or repair of parts and components supporting U.S. government activities abroad.

Thank you for your attention and I look forward to answering any questions you might have.

Dr. Gregory Quarles

Chief Scientist

The Optical Society

Testimony

Subcommittee on Agriculture, Energy, and Trade

House Committee on Small Business

February 10, 2016

Chairman Curbelo, Ranking Member Meng, and members of the committee, thank you for allowing me to testify before you today on the challenges that export control reform poses for America's small businesses. My name is Dr. Gregory Quarles, Chief Scientist for The Optical Society (OSA). I have also served as a CEO and COO of two small businesses and served on 8 corporate and non-profit boards. Among my research and business pursuits has been the development of new optical components and laser devices for medical, military and industrial applications.

With 95 percent of the world's consumers living abroad, and nearly three quarters of the world's purchasing power being leveraged by nations outside the United States, it is vital that American small businesses be afforded equal footing to compete in the global arena to effectively ensure continued growth for the U.S. economy. The Optical Society stands ready to partner with the federal government to assist small business to export more U.S. manufactured products abroad.

I will explain the three primary areas of concern impacting Small Businesses from Export Control Regulations which regulates optics and photonics technologies, such as lasers, infrared imaging systems, electro-optic subsystems, optical material accessories, and partnerships with global partners which might involve the exchange of technical data. These are: Impact on time to market for regulated products and components, cost of compliance, and the need to enhance government export assistance resources, particularly for small businesses.

The Optical Society is the leading professional organization for scientists, engineers, students and entrepreneurs who fuel discoveries, shape real-life applications and accelerate achievements in the science of light. Through world-reowned publications, meetings and membership initiatives, OSA provides quality research, networking opportunities and dedicated resources for its extensive global network of optics and photonics experts. Optics and photonics are highly specialized fields of physics and engineering known as the "science of light," which makes possible everything from life-saving medical imaging devices and solar energy to high-speed Internet connections, computer chips and Light Emitting Diodes, to lasers for military and commercial applications. Globally, optics and photonics annual revenues amount to more than \$400

billion according to an analysis by OSA Industry Development Associates. In short, optics and photonics are essential to solving problems, enabling innovation, facilitating economic growth and improving lives.

2016 marks an especially important year for The Optical Society and optics. It is our 100th anniversary. Originally founded in Rochester, New York with 10 scientists from industry and academia, OSA now spans 177 countries and brings together more than 19,000 individual members and more than 250 U.S. corporate members—from global organizations like IBM Corporation to manufacturers like Optimax in Rochester, New York, or Bechman Coulter, Inc. in Miami, Florida.

Over 90 percent of The Optical Society's corporate members are small businesses that look to OSA to be their voice on issues, such as International Traffic in Arms Regulations (ITAR) that could adversely affect their ability to sell products abroad.

Related to the small business technology companies that The Optical Society represents, we believe that the U.S. government needs to conduct more educational outreach to potential exporting small business industry sectors on export control compliance and licensing requirements. Small companies, start-up companies—those without in-house in-depth export compliance expertise—are often challenged to sell export controlled products outside of the United States. U.S. small business companies at times due to the expense and complexity of export licensing decide against exporting. This issue needs to be addressed. The Optical Society is committed to work with the U.S. government on this endeavor.

The Optical Society (OSA) also wants to share with the committee the impact of export control on small business, related to the pending revisions in the ITAR, U.S. Munitions List (USML) Category XII, proposed under the Obama Administration's Export Control Reform (ECR) initiative. Category XII rules regulate export control compliance for optical and photonic-enabled devices. Even though these broad ECR changes have been ongoing since 2009, the final category for amending, Category XII, was saved for last due to its critical nature, overall complexity, and broad impact. Recognizing the potential negative impact on not only our members but the industry as a whole, we have partnered with two other groups, the Semiconductor Industry Association and SPIE, in educating Congress about the negative impacts on business and the optics industry.

Category XII revisions cover many of the commercially developed and manufactured optical and photonic components, as well as the potential impact of changes that extend to the three main constituents of The Optical Society, that being academia, industry and government researchers. Industry with an emphasis on small business and academia will need to be educated by government regulating agencies on the final rule changes to Category XII.

I have had the opportunity to speak with several leaders from the optics and photonics industry leading up to this Subcommittee Hearing. I have found their input to be enlightening, and paralleling much of my experience in research and development and the

production of optical and photonics commodities and components. As scientists and business leaders, many of us are also familiar with U.S. government export control regulations related to selling controlled products abroad and the ability to recruit international students for research endeavors that may be affected by export control regulations. The input shared by these OSA colleagues has been a well-defined path of obtaining their graduate degrees and opening a start-up or going to work in an industrial lab. Then, as they develop products for their customers, they are met with the requirement to review multiple export control requirements before shipping, which can sometimes lead to canceled sales.

Allow me to delve more deeply into the first major impact—compliance causes delays, which can mean lost revenue opportunities.

***Generating Revenue/Time to Market:***

Compliance with Export Control regulations for products and components that are available from non-U.S. vendors adds time to the sales process—making U.S. businesses less competitive and impairing U.S. industry growth.

As all business development managers dealing with overseas sales will share, there are three critical components to booking a sale: price, lead-time, and ability to deliver (and receive an export license if necessary). One of the frustrating aspects with developing Intellectual Property and then trying to sell a product globally is the uncertainty of export licenses being approved and the lead-time involved. Many times a company will quote a product to a customer, with the caveat that they will deliver in 60 days, **IF** an export license is granted. After speaking with two colleagues in New York that routinely sell the same product, multiple times annually to repeat customers, the lead time for these licenses is averaging between 30–60 days for both Commerce Department Bureau of Industry and Security licensing for dual use technology exports and the Department of State Directorate of Defense Trade Controls on military technology export licensing.

The result? Foreign competitors can use this seemingly brief window of time as an opportunity to undercut a sale and win business from U.S. companies—regardless of product quality and in some instances price. It may be cliché, but time is money and U.S. businesses lose when regulatory compliance increases the time to purchase for the buyer.

When U.S. small businesses are competing with U.S. companies that have relocated subsidiaries overseas or with foreign entities that are not restricted by U.S. government export control regulations, there is a strong probability that you cannot even compete for these orders. Many foreign corporate competitors advertise products as being “ITAR-free” or “non-ITAR” meaning purchase from a U.S. export control regulated company and you will have delay times or cancellations in securing your needed product. Many prospective buyers from outside of the U.S. will not even ask for a quote when they learn about the delay or uncertainty in obtaining an export license. U.S. businesses aren’t competitive.

Delay time in securing export control licenses has a greater impact on small companies related to generating revenue compared to larger established U.S. companies. Delays or loss of foreign sales because of export control compliance timeliness to secure a license can equate to layoffs and or the small business' long-term viability to continue operations while foreign corporations to earn higher revenues, and subsequently invest these revenues back into their corporate research and development programs and creating the opportunity for more rapid growth.

Further, the lack of U.S. growth can affect the research enterprise by discouraging bright young scholars from pursuing science and technology degrees. This leads to a shortage of qualified applicants for the high paying, high technology jobs. The final part of this negative cycle is that if U.S. companies developing these state-of-the-art technologies cannot achieve growth in their sales globally due to export control, then investment, by individuals or the corporations themselves, will diminish, leading to a decreasing opportunity to generate technology-based revenues sufficient to sustain operations.

***Cost of U.S. Government Export Control Compliance:***

Compliance is a necessary cost of doing business. However, it shouldn't be burdensome for small businesses.

A study by N.V. Crain and W.M. Crain of Lafayette College for the Small Business Administration summarized the compliance cost very well—it is essentially a “fixed-cost” regardless of the size of the company. Their comparisons were for companies ranging from five employees to 500 employees. Large corporations see a lower cost per employee, and the cost per employee in small business are 36 per cent higher than those in companies greater than 500 employees. Thus, small businesses face a substantial cost disadvantage when having to deal with export compliance regulations and fees when compared to their larger counterparts. The industrial sector of The Optical Society membership base is particularly concerned with the loss of potential revenue due to limitations to freely sell technologies that are sold as dual-use in open markets by many of our allies globally.

I can also speak from my prior experiences as CEO of a laser and opto-electronic corporation, which was a small business selling products that were export controlled by Commerce Department Bureau of Industry and Security licensing for dual use technology exports and the Department of State Directorate of Defense Trade Controls of USML/ITAR regulated licensing. The cost annually for personnel just to manage the compliance and export control team, exceeded \$500,000 annually. This excludes the cost for outside legal counsel and consultants for pursuit of problematic Technology Assistance Agreements (TAAs) or license challenges. The TAAs are the “rules” for working with international students and colleagues on export-controlled products. However, these rules limit collaboration and can often create confusion.

But what choice do business owners have? Spend tens of thousands of dollars on experts or risk fines of a million plus dollars—

or even jail time? Regulations make it costly to compete. While discussing the impact of export control, I must also weigh in on behalf of the academic community, which makes up nearly 60 percent of the membership at The Optical Society. Export Control has been put into place to protect only the technology, but national security, which should enhance the safety and position of the United States globally. However, restrictions as such are inconsistent with many mission statements for universities. The university experience is fundamental to provide a learning environment for all students, staff and faculty members where they are afforded the opportunity to pursue open inquiries, examine critically, and carry out research and teaching in an unrestricted environment. In the optics and photonics fields, that can be a challenge if a professor feels restricted by export control regulations that force them to limit interactions with non-U.S. citizen scientists and graduate students, or potentially face the threat of personal liability for possible violations.

***Strengthening Government Export Assistance Resources (emphasis small business companies):***

Regulations are an important part of ensuring sensitive technology does not harm our national security or limit U.S. competitiveness. However, the U.S. Government must provide the resources for small businesses to comply without burdensome expense.

An evaluation of surveys jointly conducted in 2010 and 2013 by the National Small Business Association (NSBA) and the Small Business Exporters Association (SBEA) indicates a sharp decline in the level of interaction U.S. small business exporters had with Small Business Administration (SBA) operated Export Assistance Centers. The surveys show that between 2010 and 2013, awareness of SBA Export Assistance Centers among small U.S. exporters declined from 18 percent to 15 percent. Fewer than one in five businesses are aware of export assistance.

Furthermore, the surveys found that while in 2010, 26 percent of small U.S. exporters had taken advantage of a U.S. located Export Assistance Center, in 2013, the amount of small U.S. exporters claiming to have been advantaged by an assistance center fell to a mere 10 percent.

The Optical Society acknowledges and applauds the cross-agency coordinated initiatives the Administration has set forth to assist small businesses offset the complexities of export compliance. While these services demonstrate the government's vested interest in supporting U.S. businesses, there remains opportunity to ensure resources are made aware and directly available to U.S. small businesses.

Analysis of the impact of Export Control on Small Business should also include suggestions for areas where the government can assist or provide resources, especially with the proposed changes forthcoming. The SBA has already established 103 Export Assistance Centers across 48 states. This is a good start, but more needs to be done. As shared by The Optical Society companies that

I spoke with, this is an excellent resource for small business to start learning the basic requirements for export control compliance. These centers primarily have general knowledge in the Department of Commerce regulations.

However, numerous Optical Society members did reference that their local centers would search for Department of State and USML/ITAR general experts outside of the Export Assistance Center office for referrals. Most of the input stated that these employees were good for assisting beginners and novices, but detailed challenges were likely beyond their knowledge base. In order to engage highly qualified subject matter experts, it typically requires that a company create small businesses export control department or hire multiple consultants to help them navigate the challenges of export compliance. Either scenario is expensive and prohibitively so for many small businesses that could otherwise export their product overseas.

This is not an inexpensive path, nor is it guaranteed to win sales in the global market. It would be useful if those responsible for CCL/USML/ITAR regulations would establish and employ experts at these EACs to assist small businesses with their questions and education as they attempt to navigate the export control pathway. This seems to be a deficiency that causes some small businesses to shy away from manufacturing ITAR-controlled technologies utilizing optics and photonics.

Finally, with the upcoming export control rule changes to be finalized ITAR, U.S. Munitions List (USML) Category XII, we can expect massive confusion that will undoubtedly follow these rules changes being announced. It would be very proactive for the Department of Commerce, State and local Export Assistance Centers to start working with their various constituents to schedule seminars to highlight the changes, make clear the new definitions, and educate both university and industrial compliance officers on the nuances of the new regulations. There will obviously be an expense associated with this, but the investment into being proactive could infuse a confidence in these high-tech based small businesses to expand their revenues and pursue global sales with less fears and confusion.

### **Conclusion:**

As Export Reform takes place, these reforms simplifying the regulatory process will allow small businesses and industry to comply with negative impact on their competitiveness globally. Also, the U.S. Government should strengthen its export assistance resources, particularly for small businesses.

Outreach and education will be required to increase the awareness of end-users, manufacturers, and compliance officers, and to prevent a drastic rise in export control violations. Providing low-cost or free webinars, training, and continuous education to compliance officers, at both universities and for small businesses likely will help to minimize future violations, especially with upcoming changes to the regulating licensing requirements for dual use and ITAR/USML compliance. The Optical Society is committed to

partnering with the federal government related to export control education and outreach with U.S. industry in the photonics and optics markets.

On behalf of The Optical Society and the membership that we represent, thank you for the opportunity to testify today.

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