



Looking back, looking forward

*Former Commerce Assistant Secretary Kevin Wolf
recounts his time shaping export control reform.*

BY CHRIS GILLIS

Kevin Wolf spent seven years in the Obama administration and is known as one of the driving forces behind the president's efforts to reform export control.

But Wolf, the former Commerce Department assistant secretary for export administration, said in a recent interview with the *Adam Smith Project* he views his biggest accomplishment during that time as the successful breaking down of bureaucratic and territorial walls that once stood between federal agencies in charge of export control.

"I got them to realize that it's one big system with input for all agencies," he said. "It should no longer be a zero-sum game where one agency wins and the other loses."

This new interagency relationship was kindled by the Obama administration's determination to update and improve the way the country manages its export control regime, which meant breaking down traditional operating barriers between the State Department's Directorate of Defense Trade Controls (DDTC), the Bureau of

Industry and Security (BIS) at the Commerce Department, and the Defense Department's Defense Technology Security Administration (DTSA).

Since the collapse of the Soviet Union in the 1980s, these primary agencies struggled to keep up with the myriad demands of export licensing, frustrating exporters with confusing regulations and causing them to lose export opportunities to overseas competitors.

Then-Defense Secretary Robert Gates, who announced President Obama's Export Control Reform (ECR) initiative April 20, 2010, said "the system has the effect of discouraging exporters from approaching the [licensing] process as intended."

The president's ambitious plan called for the development of a single export control list to make clearer to U.S. companies which items require licenses for export and which do not. It sought a single licensing agency that would have jurisdiction over munitions, dual-use items, and technologies. One that would streamline the review process and ensure that export decisions

are consistent and made based on the real capabilities of the technology. And it would use a single technology system to manage the process.

But timing for such monumental changes to bureaucracy is everything for administrations where the turnover is every four to eight years. The export control reform initiative was announced in the second year of the first Obama term, and there was no time to waste.

To oversee this activity, the administration swore into office two capable and driven Commerce political appointees to lead its export control reform: Eric Hirschhorn, who served in the Carter administration spent decades in private law practice, and authored *The Export Control and Embargo Handbook*; and Wolf, then a 43-year-old attorney who had been practicing international trade law at a large firm prior to his appointment.

Wolf immediately began working with BIS's agency counterparts at State and Defense to undergo the massive and time-consuming task ahead of moving less militarily sensitive items and commercial space-related items under the International Trade in Arms Regulations (ITAR) to the Commerce's Export Administration Regulations (EAR).

For exports that still required a BIS license, regulatory burdens were also eased through so-called "de minimis" provisions which, allowed non-U.S. companies to focus on purchasing U.S. products without worrying about violating content, services and technology inputs under ITAR. The prohibitions on trade with countries subject to arms embargoes, such as China, remained in place. Indeed, the changes allowed for more resources to be devoted to investigating and prosecuting illegal trade with such countries.

According to BIS, from 2013 to 2016, as controlled items were transitioning off the U.S. Munitions List to the Commerce Control List, as well as other related regulatory changes, the State Department experienced a 57 percent reduction in ITAR-based license applications. BIS, on the other hand, received more than 37,000 license applications for these items that moved to the EAR.

Yet, BIS was able to keep up the increased volume of licenses and has kept its processing time down to about 17 days.

Meanwhile, BIS has continued to offer new tools and training opportunities to exporters. According to agency figures, it had conducted more than 86,000 interactions with U.S. and foreign persons from 2013 until the end of the Obama administration in mid-January.

Goal Of Transparency. To ensure that the export industry both understood and supported the reform, BIS officials used numerous events to explain the changes and gather industry feedback. The Commerce agency was attempting to be as transparent as possible with the oncoming regulatory changes.

Wolf himself held more than 200 weekly teleconferences on specific export reform topics, with more than 15,000 people in the United States and abroad collectively listening to those calls.

However, Wolf didn't portend the changes would come easy for the regulatory agencies.

"These are difficult policy decisions to solve," he said.

He pressed his staff when making regulatory changes to "distinguish between lore versus law," meaning that changes should be made according to the laws and regulations, and not by "that's the way we've always done it" methodologies. Wolf said the change in mindset among all the agencies' staffs benefitted the interagency process overall and contributed to export control regulations today that are more "reliable and predictable for exporters."

Some of that internal hesitation among agency staff when making regulatory changes comes with the concern that the new regulations won't be 100 percent perfect. Wolf told his staff that he realized they had to make difficult decisions, but assured them that "if we come across a mistake, we have the process to amend the regulations."

Wolf also said he understood the regulatory changes would be equally unsettling for exporters. For example, those whose exports formerly came under ITAR knew that most everything before the reform required a license, and the numerous U.S. Munitions List items shifting to the Commerce Control List required them to go through the reclassification process.

"When you shake up an entire system like export controls, some people will even learn that they weren't complying with the regulations," he said.

Despite the tremendous amount of reform work completed by the Obama administration, the ultimate goal to develop a single export control agency operating with a single set of regulations and IT system remains. This could still take years to accomplish and will largely depend on the political will of the Trump administration. Fortunately for the export control reform initiative and its supporters, it's been a non-partisan issue, with large numbers of both Republican and Democratic lawmakers on Capitol Hill backing it.

If Hillary Clinton had won the presiden-

tial election and Wolf was asked to stay on, he said he would have turned his attention to harmonizing the ITAR and EAR.

"The ITAR and EAR have different levels of control, but their core mission is the same," he said. "By harmonizing the two, we would further reduce regulatory burdens and still have a suitable level of control."

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Taking Up The Torch. The Trump administration has not yet announced its nominations for the next Commerce undersecretary for industry and security and assistant secretary for export administration. However, Wolf said he would advise the next appointees to build on the four export control reform principles already laid out by Hirschhorn:

- Strengthen military interoperability with NATO and other allies;
- Reduce regulatory burdens that dissuade these countries from using U.S. content in their product development;
- Focus the regulatory agencies' limited licensing and enforcement resources on "the items, end uses, end users, and destinations of greatest concern;"
- And, "improve" the reliability and predictability of the regulations so that exports and enforcement can be reliable and predictable, thus enhancing not only our national security but also our economic security."

"They should ask themselves what is it that I'm doing to further these four principles," Wolf said. "If you have the vision of these four principles front and center, then you'll be able to bend any change around them and still have a most predictable export control system."

The next administration will also have to consider how to keep BIS fully staffed to maintain operational efficiency, especially as more and more federal workers hit retirement age in the next five years. BIS's annual operating budget has increased from \$83 million to \$112 million during the past seven years, but many export control

specialists in the private sector question whether that's enough.

Although Wolf believes BIS is suitably staffed at the moment, he agreed "there are thousands of things the bureau could do, but only 100 can be done effectively." He noted that "BIS is one-deep [in terms of personnel] in many areas," and "if a person becomes sick or goes on vacation, licenses can grind to a halt."

Overall, Wolf said BIS is in good hands under the current career leadership, namely Daniel Hill, deputy undersecretary for industry and security; Matthew Borman, deputy assistant secretary for export administration; Richard Majauskas, deputy assistant secretary for export enforcement; John Masterson, chief counsel for industry and security; Carol Rose, chief financial officer and director of administration; and Roger Clark, chief information officer. He counts these former agency colleagues among his friends.

Upon completing his appointment at Commerce, Wolf had numerous job offers, but settled on joining Washington law firm Akin Gump's global international trade practice.

"Akin Gump represents an ideal fit for my return to private practice," Wolf said in a statement. "It has not only a client base that spans the globe and includes many of the industries most heavily affected by U.S. export control laws, but also a renowned reputation for its government-facing practices and one of the broadest and most expansive international trade platforms of any major global law firm."

For his first year back in the private sector, starting Jan. 20, Wolf will not be able to have direct contact with BIS on export regulatory matters. However, his schedule is already full. During his second week at Akin Gump, he was invited to London to address the many questions that U.K. companies have about the U.S. export control regulations and reform.

"I'm 50 years old and I feel very content with my life and career," Wolf said, noting that he was the first of his family to attend college. He obtained an undergraduate degree in economics and political science from the University of Missouri in 1988, and a law degree from the University of Minnesota in 1992.

"It's very rare for people whose career path has been largely a straight line, like mine," he said. "Being an assistant secretary was the accumulation of what I had already done so far, and now I'm fortunate to continue in that line by working with other ethical, smart people at Akin Gump." ■