Wolf Whistle

Former Chief notes“Policy Silence,” Staffing Gaps, and Unfinished Controls at BIS

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Kevin Wolf, Akin Gump

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Former Commerce export-control policy chief **Kevin Wolf** told the Massachusetts Export Expo that U.S. exporters are navigating an unusually opaque period in export controls—defined less by sweeping new rules than by missing policy signals, reduced regulator engagement, and unresolved China- and AI-focused measures that have left companies planning against shifting, often informal, government direction.

Wolf, a partner at Akin Gump who served nearly eight years as Assistant Secretary of Commerce for Export Administration, delivered the Expo's opening "2025 Export Control Year-in-Review," a session billed by organizers as a practical survey of major export-control developments and trends over the past year.

His core message was structural: export controls are instruments meant to serve national-security and foreign-policy objectives, and when an administration has not clearly articulated those objectives, compliance risk migrates from "classification-and-destination" checklists to transaction-by-transaction judgment calls about end users, end uses, corporate ownership, and downstream access.

Tariff instability and a Supreme Court ruling add to trade-policy uncertainty

The Expo's opening framing placed export controls inside a broader trade-policy environment marked by tariff volatility and litigation risk, with businesses still absorbing the Supreme Court's recent holding that the **International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs**. The decision, issued in *Learning Resources, Inc. v. Trump*, raises immediate questions about what legal authorities will support future tariff actions and what remedies may be available for duties already paid.[2]

Wolf argued that this wider instability matters for exporters because trade policy and export controls—once treated as separate silos—are increasingly interdependent in Washington.

Commerce, he noted, sits at the center of both ecosystems, administering export controls while also playing key roles in tariff-related processes. For companies, that convergence can translate into abrupt shifts in licensing posture and enforcement attention, particularly in transactions touching China, advanced computing, or supply-chain chokepoints.

“No export-control policy” is common early—but the operational impacts are sharper now

Wolf said the administration has not issued a coherent, overarching export-control policy, and stressed that early-term policy silence is not unusual; he recalled that the beginning of the Biden administration was similarly quiet on China and export controls. But he described today’s practical consequences as more acute because the rules themselves have evolved: exporters can no longer rely primarily on list-based controls (the Commerce Control List and related country chart logic) to automate decisions.

In Wolf’s account, the modern compliance burden is increasingly driven by

1. end-use and end-user controls,
2. party-to-the-transaction screening beyond the named end user,
3. U.S.-person activity controls, and
4. extraterritorial rules that pull certain foreign-made items under U.S. jurisdiction.

That shift makes policy uncertainty harder to “route around” with software alone; it requires sustained, well-funded governance and training.

Penalty escalation proposals miss the real source of most violations, Wolf says

Wolf noted recent Hill and enforcement commentary pressing to increase export-control penalties, but he urged exporters and policymakers to separate deterrence from day-to-day compliance failure modes.

“In my experience,” he said, violations typically reflect **underinvestment in compliance systems and training**, not a rational calculation that penalties are too low to matter. The errors he sees most often, he told attendees, stem from misunderstanding, poor internal controls, or process failures—problems that higher maximum penalties do not directly fix.

His prescription emphasized resources rather than rhetoric: more compliance education inside companies and more outreach by government, coupled with internal investment in transaction-level due diligence capabilities.

A year defined by “things I did not see”

A notable portion of Wolf’s talk consisted of what he described as absences in 2025—signals, in his view, of reduced institutional bandwidth and diminished process transparency.

He cited a decline in speeches and conference participation by BIS officials, a pause in the cadence of public-facing guidance, and no clear plan for BIS’s annual Update conference, which has historically served as a major channel for regulator-to-industry communication.

He also pointed to the effective shuttering of public sessions of the Technical Advisory Committees (TACs), with some committee charters expiring.

Wolf further noted that the United States did not implement prior-year changes from multilateral export-control regimes, including Wassenaar-related updates, during 2025—an omission he said can create frictions for U.S. firms if allies update more promptly and domestic controls fall out of alignment.

Staffing gaps affecting administration

Wolf said staffing disruptions are affecting export administration operations. He pointed to vacant assistant secretary positions and notable turnover among experienced personnel as contributing to slower and less predictable licensing outcomes.

In his telling, these institutional constraints manifest in several ways: fewer advisory opinions, fewer formal responses to public comments on interim rules, and altered patterns of interagency referral and escalation. Exporters, he suggested, should assume processing times will remain uneven, especially for China-related licenses, deemed exports, and advanced-technology transactions that attract heightened review.

AI Diffusion rule: still on the books,

Wolf singled out the **AI Diffusion rule** as emblematic of the current legal-operational split. The rule, issued in January 2025 with compliance requirements scheduled to take effect May 15, 2025, remains formally part of the regulatory

landscape pending a Federal Register rescission.[3] But BIS publicly announced plans to rescind it and stated that enforcement officials were instructed **not to enforce** the diffusion rule while a replacement is developed.[3]

For exporters, Wolf's takeaway was practical rather than theoretical: companies must track both what the rules say and what the government is signaling it will do, while remembering that adjacent authorities—end-use controls, advanced computing restrictions, and China-related prohibitions—can still drive liability.

Wolf also returned repeatedly to the policy problem the diffusion framework sought to solve: **compute access**. Even when chips are shipped to destinations outside the highest-risk jurisdictions, the ability of entities in "countries of concern" to access computational power remotely (or through shared infrastructure) complicates efforts to treat geography as a reliable proxy for risk.

Affiliates rule and AUKUS: burdens, exemptions—and "back of the line" risk

Wolf described the now-suspended **affiliates rule** as one of the most consequential compliance expansions of 2025 because it would have required exporters to treat certain non-listed entities as restricted based on indirect 50% ownership by listed parties across multiple lists. Implementing that concept at scale, he said, effectively forces exporters into corporate-structure investigations that many screening systems were not built to perform.

On AUKUS-related relief, Wolf emphasized a different operational message: exemptions are meant to be used. Citing sources in the State Department licensing ecosystem, he warned that if a transaction is exempt and a company nonetheless applies for a license, the application may be pushed to the back of the queue—an informal but consequential penalty for treating exemptions as optional paperwork shortcuts.

"Easter egg": Commerce to publish licensing metrics

Wolf also flagged what he called an "Easter egg" in a recent White House order on defense trade: a directive that, within 120 days, State, Defense, and Commerce begin publishing **aggregate quarterly performance metrics** on foreign military

sales case execution and on the adjudication of Commerce and State export licenses.[4] State already provides public processing-time indicators; Wolf said similar Commerce reporting could give exporters a clearer baseline for planning and escalation—even if it provides only aggregate, not case-specific, transparency.

Compliance takeaway: assume volatility, invest in transaction-level control

Wolf's overall message was that exporters should plan for continued volatility. The near-term challenge is not simply "more controls," but an environment where policy intent is unclear, staffing constraints affect processing and guidance, and high-impact rules (AI diffusion, affiliates ownership, China-focused measures) can shift quickly based on broader negotiations.

In that environment, he urged companies to treat compliance as a core operational capability: screening all parties to a transaction, performing end-use diligence, maintaining auditable ownership-risk processes, and training personnel to recognize that the same item shipped to the same destination can trigger different obligations based on end user, end use, and downstream access.

1. *Learning Resources, Inc. v. Trump*, U.S. Supreme Court (Cornell LII), holding that IEEPA does not authorize the President to impose tariffs.

2. Bureau of Industry and Security, U.S. Department of Commerce, press release announcing plans to rescind the "AI Diffusion Rule" and stating BIS enforcement officials were instructed not to enforce it.

3. The White House, "Establishing an America First Arms Transfer Strategy" (Feb. 6, 2026), directing publication of aggregate quarterly performance metrics on adjudication of Commerce and State export licenses.

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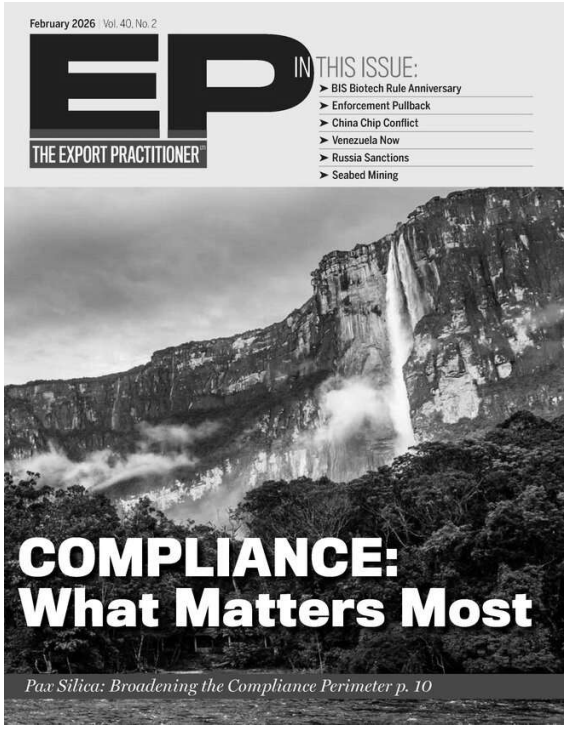

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PO Box 7592
Arlington, VA 22207
Phone: 301-460-3060 (tel:1-301-460-3060)
Email: Fruffing@traderegs.com (mailto:Fruffing@traderegs.com)

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