

Export Control Reform Initiative Fact Sheet #2: Myths and Facts

Myth 1:

The United States is the largest arms exporter in the world, so there is clearly no problem. This is all about expanding exports as part of the National Export Initiative.

Facts

- The Export Control Reform (ECR) Initiative is strictly a national security review conducted with the unanimous agreement of the President and his entire national security team. ECR is distinct and separate from the National Export Initiative. Both initiatives have been referenced together, such as in the 2010 State of the Union, but that is because two export-related initiatives made sense to be mentioned together.
- The United States controls more than arms. It controls everything that feeds into a weapon system, including any specialty nut, bolt, or screw that is used.
- All are equally controlled as munitions items which generally results in the requirement for an export license, annual registration, annual fees, and a separate authorization for any end-item into which any of these items is incorporated.
- The reach of U.S. munitions control never ends until the original U.S. item is destroyed or permanently re-imported into the United States.
- U.S. companies receive authorization to export a system to a close U.S. Ally but require a subsequent license for every aspect of service, maintenance, and repair of that item. Further, if an Ally wishes to loan, sell or transfer the equipment to another country, even to another Ally, U.S. Government approval or notification is needed. If an Ally manufactures its own weapons system, but uses United States Munitions List (USML) components, the Ally likewise needs U.S. approval for the transfer of those components embedded in its own system.
- Consequently, our Allies and partners procure locally and design out U.S.-origin items, which results in lost sales, lost jobs, and lost revenue that would be used to develop the next generation of products, as well as lost taxes, all to the detriment of the U.S. defense industrial base and U.S. national security.
- ECR is about focusing on controlling those items that provide a significant military or intelligence advantage to the United States. A minor component for an F-18 should not be controlled in the same manner as the F-18 itself.
- Without implementing the reforms necessary to better focus on items by prioritizing U.S. controls, the U.S. Government will need to continually expand its licensing and enforcement resources while diverting resources that should be focused on truly sensitive items. Controlling every part and component in perpetuity threatens to strangle the U.S. defense industrial base and erode the U.S. security of supply such that the United States will eventually need to foreign source to be able to manufacture

weapons systems for its own use. It is critical to national security that the system of controls be reformed.

Myth 2:

For the sake of promoting exports, the reform effort will result in more sensitive items going to China, Iran, Cuba, or other sensitive or sanctioned countries to the detriment of U.S. national security and foreign policy interests.

Facts:

- The reform initiative will enhance, not ease, the prohibitions on destinations like Cuba, Iran, North Korea, Sudan and Syria, and will enhance, not ease, U.S. policy of not supporting China's military modernization program.
- All munitions items, regardless of their sensitivity and regardless of which list controls them, will continue to be subject to U.S. arms embargoes. In addition, military items currently controlled on the Commerce Control List in Export Control Classification Numbers (ECCNs) ending in -018 will also become subject to these arms embargoes as well, resulting in a clearer, more comprehensive application of tightened U.S. embargoes.
- ECR is intended to improve the U.S. ability to meet national security and foreign policy objectives. Through the reform effort, for example, the United States has already harmonized its various export control violation criminal penalties to a standardized maximum to make U.S. controls on exports to sensitive and sanctioned destinations more effective. Instead of merely the cost of doing business, the penalties are now up to \$1 million, 20 years in jail, or both.
- The reforms are intended to more stringently protect our most sensitive items, the so-called "higher walls," meaning that we will be better equipped to ensure that sensitive items do not go to end-users or end-uses of concern. Spending time and resources protecting a specialty bolt diverts resources from protecting truly sensitive items. For this reason the Administration is recalibrating the controls on items that pose little or no national security risks, so the government can improve its ability to protect those items that need protecting. This is not a decontrol but a prioritization of our controls.

Myth 3:

This decontrol effort will result in U.S.-origin items being more widely available for use in human rights abuses.

Fact:

- No, the Administration will continue to maintain the judicious use of export controls to deter human rights abuses and avoid contributing to civil disorder in a country or region.

Myth 4:

The Administration announced that it is decontrolling almost all of the items currently controlled in one of 19 categories of items on the U.S. Munitions List being rebuilt, Category VII – Tanks and Military Vehicles. This will be a field day for illegal arms brokers for the sake of more exports under the National Export Initiative, will undermine U.N. Security Council sanctions and our own U.S. unilateral arms embargoes and sanctions.

Facts:

- The Administration is not decontrolling any items in Category VII.
- It is proposing to move those items that the Department of Defense has identified as least sensitive to the Commerce Control List which does not equate to being decontrolled. The items will be transferred from the USML to the CCL and thus remain on a U.S. export control list. Decontrol would mean complete removal from any U.S. control list and generally no export control requirements.
- Moving items to Commerce jurisdiction provides the United States with greater flexibility which will facilitate interoperability with U.S. Allies and partners and result in less onerous requirements for exporters which improves the government's ability to effectively control items while ensuring a healthy defense industrial base with the ability to enhance the U.S. military's security of supply. (See Factsheet #4.)
- Items that are "specially designed" for a military application will have the same export restrictions to proscribed destinations, including China, as under the State regulations. Military items currently on the Commerce Control List will also be subject to the same export restrictions that the Department of State administers, resulting in a tightening of U.S. arms embargoes.

Myth 5:

Why do we want to liberalize controls at a time when we are facing increasing threats from terrorists and countries seeking WMD?

Facts:

- We are focusing our controls to meet the most important national security challenges.
- As a result, we will be in a better position to devote resources to preventing exports to terrorists and end-users of national security and proliferation concern, while at the same time improving our ability to cooperate with Allies and partners.

Myth 6:

Thus far the reform initiative does nothing to close gaps or deficiencies in enforcement of export controls. The June 2009 GAO study shows that using bogus front companies,

GAO could procure sensitive items currently used by U.S. Armed Forces in Iraq and Afghanistan.

Facts

- In the area of enforcement, the Administration has:
 - Harmonized the various statutory criminal penalties for export control violations to a standard maximum, in partnership with the Congress through inclusion in the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) in the summer 2010.
 - Restored Commerce's export enforcement authorities permanently in CISADA. Commerce has operated under emergency authorities since 2001, when the Export Administration Act last lapsed.
 - Raised concerns about the low penalties in criminal convictions for export control violations, frequently below the U.S. Sentencing Guidelines. In case after case for munitions items illegally exported to Iran, for example, we have seen low prison sentences or no prison sentences. CISADA included a report requirement to Congress by the U.S. Sentencing Commission on the advisability of mandatory minimums.
 - Opened the Export Enforcement Coordination Center (the E2C2), created by Executive Order 13558. The E2C2 is an interagency coordination body that is working to de-conflict and coordinate our export enforcement efforts and build, for the first time, a central repository for export enforcement cases.
 - Consolidated the multitude of screening lists of the Departments of Commerce, State, and the Treasury into one list to help exporters, especially small businesses, to evaluate parties to transactions electronically. This makes it easier for exporters to comply and more difficult for illicit procurement networks to obtain controlled items.
- With regard to the GAO study regarding bogus front companies, no system can be designed that is foolproof against those who are intent on breaking the law. But what we are doing will make it harder to get away with breaking the law and we have already made the price for doing so much higher.

Myth 7:

There is no point to rebuilding the control lists if you are merely shifting from one list to the other. Our most sensitive items should stay on the more robust U.S. Munitions List.

Facts:

- State and Commerce operate under different statutory authorities, both of which date back over 30 years. However, Commerce operates under more flexible authorities than State. Even if both agencies maintain a world-wide license requirement for a given item, the movement of an item from the State list to the Commerce list has a significant impact, especially for small businesses that manufacture a minor part or component well down the supply chain from a system manufacturer. Such transfer

means a U.S. small business will no longer need to register with State as a manufacturer and pay an annual registration fee, even if the business owners never plan to export. In addition, transfer may:

- Streamline authorizations – munitions list items require individual export licenses, Technology Assistance Agreements to tell your customer how to incorporate your part, Manufacturing Licensing Agreements;
- Eliminate foreign manufacturers' design-out campaign for most parts and components;
- Make the U.S. a much more reliable supplier to our Allies and partners;
- Enhance U.S. interoperability with Allies and partners; and
- Facilitate keeping a domestic defense industrial base.

Myth 8:

ECR means the United States is stepping away from its multilateral commitments.

Facts:

- No. One of the basic tenets of the initiative is that we will continue to abide by our international obligations and commitments and continue to work with our international partners to improve the multilateral export control regimes. This will help strengthen multilateral as well as U.S. controls.
- Specifically, Commerce and State will continue to list items subject to multilateral control, and other items that pose a concern for foreign policy reasons. For items controlled by one or more of the four multilateral export control regimes that we determine may not require control, we will submit proposals to the appropriate regimes. Any proposed changes to the multilateral lists require consultation and consensus by members of those international regimes.
- Moreover, we are developing new CCL controls for those military items moving to the jurisdiction of the Commerce Department. These new controls will use the same international control category designations used by the multilateral regimes, which should enhance foreign enforcement and compliance.

Myth 9:

The Administration's plans for a massive decontrol of firearms in Category I of the U.S. Munitions List will make it easier for terrorists and criminal groups, including drug cartels, to obtain weapons.

Facts:

- The Administration has no plans to decontrol firearms. However, current plans do envision moving some firearms (not all) currently contained in USML Category I to the Commerce Control List.

- Moving firearms to the Commerce Control List does not equate to decontrol. The items are being transferred from the USML to the CCL and thus remain on a U.S. export control list. They will simply be controlled by Commerce instead of State. Decontrol would mean complete removal from any U.S. control list and generally no export control requirements.
- Jurisdiction for firearms exports is already divided between Commerce and State, with both departments licensing the export of thousands of shotguns every year. Most of State's firearms export licenses are for sporting uses, just like the Commerce licenses.
- The export license requirements for firearms and parts and components will remain significant. With the movement of these items to the CCL, the Administration will have more law enforcement agents involved in the investigations of violations.

Myth 10:

It appears that the Administration is going in two different directions regarding arms control, with the massive decontrol effort on the one hand and participation in Arms Trade Treaty talks on the other. The United States will simply have to re-impose controls if an Arms Trade Treaty becomes a reality.

Fact:

- The Administration is not going in two different directions; we are closely coordinating our export control reform efforts with our participation in the Arms Trade Treaty discussions.

Myth 11:

Satellites are special and warrant unique, more stringent controls than other controlled items.

Facts:

- Satellites are the only items on either control list that were mandated by statute and are the only items subject to strategic trade controls that could not be adjusted by the President as deemed necessary for national security and foreign policy reasons.
- The Administration and Congress partnered to pass legislation in December 2012 as part of the National Defense Authorization Act (NDAA) for FY 2013 that restores flexible authority to the President to tailor controls on the export of U.S.-origin satellites and related items appropriately to the risk of diversion to unauthorized end-users or end-uses.

- Exports and reexports of all satellites and related items, regardless of sensitivity or availability, will continue to be prohibited if destined for China, North Korea, Iran, and other countries subject to arms or other embargos.
- The new authorities from the NDAA are consistent with the recommendations to Congress by the Departments of Defense and State in the NDAA for FY 2010 Section 1248 report (available on the ECR webpage). Tailoring satellite export controls will facilitate cooperation with Allies and the export control regime partners while maintaining robust export controls as necessary to protect national security.
- Updating satellite export controls will provide the U.S. satellite industry with an opportunity to seek to restore its leadership by allowing it to compete on a more level playing field with its international competitors. This will be particularly beneficial to small- and medium-sized U.S. companies that manufacture parts and components for satellites.
- These NDAA changes are a critical step toward modernizing U.S. satellite-related export controls to meet the challenges of the 21st Century. In 2013 the Administration will work to implement the changes authorized by this legislation and to continue to work more broadly with Congress to move ECR forward.

Myth 12:

The Administration's creation of the Export Enforcement Coordination Center (E2C2) and its plans to create a Single Licensing Agency are simply adding new layers of bureaucracy to the current system.

Facts:

- The E2C2 is a forum to de-conflict and coordinate investigations and facilitate the resolution of disputes that cannot be resolved in the field. Rather than adding bureaucracy, it serves as a clearinghouse for enforcement and intelligence information related to export violations, which strengthens our enforcement capabilities and makes them more nimble.
- The E2C2 is eliminating duplication among law enforcement agencies, resulting in more efficient and effective enforcement activities.
- The GAO found in a 2006 report ("Challenges Exist in Enforcement of an Inherently Complex System") that agencies have had difficulty coordinating investigations and agreeing on how to proceed on cases. Other challenges GAO identified include obtaining timely and complete information to determine whether violations have occurred. Each enforcement agency has its own database to capture information on its enforcement activities but outcomes of criminal cases are not systematically shared. All of these problems are being addressed via the E2C2.

- Rather than adding an additional bureaucratic layer, the planned single licensing authority would replace and consolidate current structures, including consolidating the licensing processes currently administered by the Departments of Commerce and State, and the licensing of items currently administered by the Treasury. The single authority will create new efficiencies and ensure consistency in licensing and administrative enforcement decisions. It will also administer a single dispute resolution process, moving away from the varied processes or, in some cases, no process, that we have today. This means less but clearer and more concise regulations going forward.

Myth 13:

The solution to this problem is to add more resources so we have more export control licensing and enforcement personnel.

Facts:

- We definitely need trained quality licensing and enforcement officials.
- In a time of austerity, however, we do not need to simply expand our export control agencies as that does not resolve the underlying problems with our current system.
- The Administration’s approach is consistent with the recommendations made in a March 2003 letter to then-National Security Advisor Condoleezza Rice, in which Senator Kyl, former Senator Feingold and others stated “we believe current U.S. export controls, which are based on the system we used during the Cold War, need to be fundamentally reformed, and that protecting U.S. national security interests should be our first priority in doing so.”

Myth 14:

ECR is just about helping big defense contractors. It will have no impact on small- or medium-sized component manufacturers.

Facts:

- Much of this initiative is geared at facilitating the smaller manufacturer’s compliance with control requirements.
- For those items that are moved from the U.S. Munitions List to the Commerce Control List, the licensing requirements and process will be calibrated to the sensitivity of the items with fewer onerous requirements including the license requirement for the item in perpetuity.
- As a result, foreign manufacturers will be more likely to source from small U.S. companies. This is good for U.S. manufacturing, good for the defense industrial base, good for security of supply to the U.S. military, and good for interoperability with Allies, to name but a few benefits. And it eliminates the time we spend on generic

parts and components so we can look more closely at those items that provide at least a significant military or intelligence advantage to the United States.

- For the first time ever, the end-user screening lists maintained by State, Commerce, and the Treasury have all been compiled into a single list in one place: www.export.com/ecr/. This single list has almost 24,000 line items. This means, for those companies that cannot afford to hire a screening service or read *Federal Register* notices every day, they can self-screen their sales orders to make sure they do not inadvertently send their products to someone they should not.
- A single application form has been developed and will be deployed when a single IT portal is ready, that will enable exporters to apply for licenses without having to knock on numerous agency doors.

Myth 15:

The publication of the rebuilt USML categories in the *Federal Register* has taken much longer than anticipated and is still not complete. This process has cost the government too much time and money.

Facts:

- Rebuilding the control lists is a painstaking endeavor that needs to be done carefully. Nevertheless, the Defense-chaired teams had all USML categories in draft form by July 2011. These teams include about 240 technical experts from throughout the USG.
- As of March 2013, twelve of 19 USML categories have been published for public comment, three more are in final clearances, and four are still to be finalized, including Category XV, which is being prepared as a result of December 2012 legislation as part of the NDAA that allows for the normalization of U.S. export controls on satellites and related items. The Administration is committed to continuing publication of all the proposed rebuilt categories.
- Whatever time and money is spent on reform now will be recouped over the long run with increased licensing and enforcement efficiencies, improved interoperability with Allies, and the strengthening of the U.S. defense industrial base by reducing incentives for foreign manufacturers to design out and avoid using U.S. items, thus making this process well worth the effort.

Myth 16:

The massive decontrol of USML items by moving them to the CCL will result in a surge of off-shore counterfeit items finding their way into U.S. weapon systems, threatening U.S. national security.

Facts:

- The movement of defense articles, mostly parts and components, from the USML to the CCL has no bearing on the existing problem of foreign counterfeit parts and components potentially used in U.S. weapon systems.
- Current Department of Defense policies require domestic sourcing; these requirements are unrelated to the USML.
- Counterfeit parts and components are a serious threat to U.S. national security, and better anti-counterfeit processes (e.g., via procurement, contractual, testing, tracking) are necessary to protect against and mitigate their infiltration into U.S. defense systems.
- The Administration recognizes that there is national security value in prohibiting the incorporation of foreign-made defense parts and components into certain weapons systems from countries of concern, regardless of whether the item is subject to the ITAR or Export Administration Regulations.
- Accordingly, the Administration's proposed licensing policies for the "600 series" in the Commerce Control List will include a policy of denial for the export of any 600 series software or technology to China or a terrorist supporting country. This will have the collateral benefit of stemming the infiltration of counterfeit parts or components into U.S. defense systems.

Myth 17:

The Administration has steam-rolled this effort over Congressional objections, with little Congressional oversight.

Facts:

- The Executive Branch has had unprecedented engagement with Congress since the beginning of the reform initiative, with over a hundred briefings in 2012 with Members, staff, committees, and individual offices, with broad bipartisan support.
- The vast majority of the reform effort can be done by administrative action and does not require legislation. For those items that the Administration has determined requires legislation, it has actively engaged the Congress. This partnership resulted in constructing what former Secretary of Defense Gates called a "higher wall" by raising the various criminal penalties for export control violations to a standardized maximum and permanently restoring the Department of Commerce's lapsed export enforcement authorities.
- The technical work led by the Department of Defense to rebuild the control lists is *required* by law in the Arms Export Control Act, which mandates that "the President shall periodically review the items on the United States Munitions List to determine

what items, if any, no longer warrant export controls under this section.” The ongoing list-related work fully implements this requirement.

- Committees with oversight responsibilities for the export control lists have unprecedented visibility into the process, receiving and being briefed on draft rebuilt categories before they are published, receiving copies of all public comments received, and ability to ask questions throughout the process.
- For the first time the export control interagency partners have been briefing oversight committees together, broadening information sharing and raising awareness of the U.S. export control system across committee jurisdictional lines.
- Ensuring that our export control system is modernized to better protect the country’s national security is a shared responsibility. The Administration is committed to continuing its robust engagement with Congress in all aspects of the reform effort.

To follow developments on the reform initiative, visit www.export.gov/ecr/