



## SECURITY ASSISTANCE MONITOR

### **Key Questions about the U.S. “Export Control Reform Initiative”**

**Questions & Answers  
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#### **What is the Obama Administration’s “Export Control Reform Initiative”?**

Following a U.S. interagency review of the U.S. arms export control system aimed at strengthening the competitiveness of key U.S. defense industry sectors, the White House [launched](#) the “Export Control Reform Initiative” (ECRI) in August 2010. The review [had determined](#) that the “current export control system is overly complicated, contains too many redundancies, and, in trying to protect too much, diminishes our ability to focus our efforts on the most critical national security priorities....” To address these issues, ECRI would move “less militarily significant items” from the more strictly controlled State Department’s U.S. Munitions List (USML) to the more loosely controlled Commerce Department’s Commerce Control List (CCL). Military equipment and training on the USML are called [defense articles](#) and [defense services](#). As of July 2015, the administration has [completed regulatory changes](#) to thirteen of the twenty USML-related military categories ranging from missiles to military aircraft to ground vehicles. Key military categories under discussion are firearms, related ammunition, and private contractor military training.

#### **How many types of arms has the Administration already moved from the State Department’s USML and the Commerce Department’s CCL?**

While the Obama Administration has not provided the total number of former [defense articles](#) moving from the USML to the CCL, it has provided some information on the scale of the move. In a [presentation](#) at the U.S.-Sweden Defense Industry Conference, Assistant Secretary of Commerce for Export Administration, Kevin Wolf, said that “as many as 30,000 or more generic parts and components subject to a license requirement in 2010 may no longer require control on the [State Department’s] USML.” This includes [many parts and components](#) of the F-16 fighter jet and other U.S. military aircraft. The White House also stated that 11,000 (or 90 percent) of the total 12,000 military items licensed for export in 2009 for military vehicles would be shifted to the CCL. For those military vehicle items transferring to the CCL, the White House estimated that about 55 percent of the licenses currently issued for the military vehicle category would be eliminated. For more details about the specific types of military items they have moved to the CCL, see this blog [post](#).

**What are some of the possible regulatory changes for the remaining military categories, including related to firearms, private contractor military training, and tear gas?**

According to a recent Senate Banking [hearing](#), the State Department said they plan to publish proposed changes to the control of firearms exports by the end of this year. While it is unclear what the administration is considering, past [U.S. government fact sheets](#) have said they would move some, but not all firearms currently on the U.S. Munitions List (USML) over to the Commerce Control List (CCL). U.S. officials have also indicated that certain semi-automatic firearms, some parts and components of firearms, and ammunition would be regrouped on the Commerce Department's CCL. The administration has also proposed to completely eliminate oversight of many types of [private contractor sales of military training abroad](#) that does not directly involve defense articles. This could include military training on issues such as intelligence, military organization, tactical movements, logistics, and interrogation, among others. It also plans to move the control of all [tear gas exports](#) over to Commerce Department control, allowing companies to use the broad Strategic Trade Authorization License Exemption.

**What are some of the differences in export controls for military items moving from the State Department's USML and the Commerce Department's CCL?**

Although the Commerce Department has added some new controls for military items moving to the CCL, there are several critical controls missing for arms on the CCL. Unlike companies exporting arms on the USML, companies can export most military equipment on the CCL using the [Strategic Trade Authorization](#) (STA) license exception, which allows U.S. companies to export items to 36 countries (mostly NATO, including Turkey) without U.S. government pre-approval. Some other controls that are required for USML-related items but not for military equipment on the CCL include: 1) [registration](#) for entities that manufacture or export arms; 2) [registration and licensing of arms brokering](#); 3) disclosure of [political contributions, fees, and commissions](#) in connection with an arms deal; 4) policy of approval for many arms exports to China for [civilian end-uses](#) (see Control Policy); 5) [disclosure requirement](#) when U.S. arms are inadvertently exported to countries under U.S. arms embargoes; and, 6) annual public reports on [U.S. exports of arms and related services](#) to every country as well as a separate [report on end-use monitoring](#) checks.

**How can the loss of these controls negatively affect U.S. government efforts to identify and stop illicit arms trafficking or problematic private military training?**

According a Washington Post [article](#) in 2012, the Justice and Homeland Security Departments raised concerns "that the changes in the export rules could make it easier for drug cartels and terrorists to obtain weapons and make it harder to stop firearms trafficking." U.S. officials have indicated that the loss of registration

information, brokering requirements, and license requirements could complicate enforcement efforts. When companies use the STA license exemption, the U.S. government cannot see any potential bad actors in a proposed sale, which helps them curb illegal arms trafficking. In the case of [Taipan Enterprises, Ltd.](#), the United States likely sought to prevent an irresponsible arms deal to Libya and Yemen when it charged the owner of the company for failing to register and obtain a U.S. brokering license. This case would not have been possible if the arms were on the CCL. Similarly, the United States would not have been able to [charge](#) Academi, LLC (formerly called Blackwater) for failing to obtain a license to provide advice and training on the structure and operating procedures for South Sudanese security military forces.

### **Has the Obama Administration Reduced the Complexity in the Arms Export Control Process?**

As indicated above, one of the reasons the Obama Administration is pursuing its reform is to address the complicated export system, which overburdens U.S. companies. With thirteen military categories already completed, many companies are saying the new arms export control system is even more complicated than it was before. According to a National Small Business Association and Small Business Exporters Association Exporting Survey conducted in 2013, three-fourths of U.S. small business exporting items controlled under the USML or the CCL “believe the system is [too complex and time consuming](#)”. At a recent House Subcommittee on Agriculture, Energy, and Trade [hearing](#), several businesses “explained how the reform requires the expenditure of thousands of hours to reclassify parts, components, and other items, that were clearly classified before the reform.” As a result, many companies prefer the old system to the new one. The added complexity may also undermine enforcement efforts as companies could misinterpret the controls of a specific military item, which appears to have already happened in the [Mozaffar Khazaee](#) case.

### **How Could the Loss of the Fee Disclosure Requirement Negatively Affect U.S. Efforts to Reduce Corruption?**

Given the significant challenges in reducing corruption in the arms industry, the U.S. government required companies to [disclose](#) any fees, commissions, gifts and political contributions in connection with exports of arms controlled by the USML. However, this disclosure requirement is not applicable to military items on the CCL. According to U.S. officials, this added requirement was designed as preventative measure to encourage U.S. companies to establish strong compliance measures to prevent any corrupt practices. From time to time, it has also been used to penalize companies for engaging in corrupt practices. [Announcing](#) a \$400 million criminal fine against BAE Systems in a 2010 prosecution, the Justice Department explained: “BAES admitted that, as part of the conspiracy, it knowingly and willfully failed to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense items.” While companies exporting arms

controlled under the CCL must still comply with the Foreign Corrupt Practices Act, the loss of this added requirement takes away these added enforcement tools.

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