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Export Control Reform Initiative Fact Sheet #1: The Basics

What is the Initiative?

The President's Export Control Reform Initiative is a common sense approach to overhauling the nation's export control system.

- This system is a national security-based program that requires exporters to obtain government permission before exporting controlled items – munitions and commercial items with military applications – to countries, end-users or end-uses of concern.
- This system also controls items for foreign policy reasons, including to certain sanctioned designations like Cuba, Iran, North Korea, Sudan, and Syria, and to end-users or end-uses of concern.
- Controlled items include not just weapon systems but items like night vision cameras, machine tools, and chemicals used in semiconductor fabrication that could also have a military application.
- The current system operates under 1970s-era statutory authorities, and was designed to address the challenges of the Cold War world.
- Every President since President Kennedy has implemented reforms to the export control system, each with some successes, but the system that has evolved, built layer upon layer, has reached the point where incremental changes are no longer viable for meeting U.S. national security needs.
- The President's entire national security team supports a comprehensive overhaul of the system to meet the current and anticipated U.S. national security and foreign policy objectives of the 21st century.
- This initiative is not a de-control effort nor is it part of the National Export Initiative.

Who administers the system?

The current system is spread across seven primary departments – the Departments of Commerce, Defense, Energy, Homeland Security, Justice, State, and the Treasury.

- There are two different control lists administered by two different departments, Commerce and State, under different statutory authorities that have significantly different requirements.
- There are three primary export licensing agencies: Commerce, State, and the Treasury.
- A multitude of agencies – Commerce, Defense, Homeland Security, Justice, State, and the Treasury – each have authority to investigate and/or enforce some or all of the three licensing agencies' export controls.
- All these departments operate on a number of separate information technology (IT) systems.

Why do we need to overhaul the current system?

The Administration has determined that fundamental reform of the current system is necessary, to overcome the inefficiencies and redundancies of a set of systems within a system.

- Maintaining two different control lists has caused significant ambiguity, confusion and jurisdictional disputes between the departments, delaying clear license decisions for months, and sometimes for years.
- The scope of controls for one of the two lists, the munitions list, is for anything that is specifically designed, developed, configured, adapted, or modified for a military application. This design-intent control results in controlling everything, from the weapons system itself to every nut, bolt, and screw that may be used on that system.
- The same ambiguity and the delays adversely impact enforcement agencies' ability to quickly verify if an item is controlled and how, and hamper the aggressive pursuit of investigations and the criminal prosecution of violators.
- There are multiple departments with overlapping and duplicative export enforcement authorities resulting in redundancies and problems in coordination that can jeopardize each other's cases.
- The broad scope of controls without prioritization strains both licensing and enforcement resources and imposes significant resource constraints on U.S. firms to comply with the controls. The solution is not simply to expand the government by adding more licensing and enforcement personnel.
- None of the licensing agencies' sees the others' licenses, and each operates under different procedures and definitions, leading to gaps in the system and different licensing requirements for nearly identical products.
- The lack of a unified IT system means the U.S. Government does not have the capability of knowing comprehensively what it has approved and, more significantly, what it has denied for export.
- As a result, the current system is overly complicated, contains too many redundancies, and tries to protect too much. This makes it harder to administer and enforce the controls, and harder for exporters to comply. It also means that items could end up where they should not with the potential that we cannot effectively prosecute violators.

How does all this impact national security?

The purpose of export controls is to ensure that items do not end up in the hands of those who intends to do the United States or its allies harm. It is a risk-based system, where items are generally authorized for export to low-risk destinations, while others may be allowed to other destinations after closer U.S. scrutiny, and some may be denied.

- The current system generally treats all items the same, resulting in the controls applied to an F-18, for example, being the same as the controls for a bolt that is used on that F-18, straining U.S. Government resources without focusing on those items that warrant more scrutiny and control.
- The reach of these U.S. controls for all items, large and small, imposes an export license requirement for any item a close ally needs to maintain and service its U.S.-origin weapon systems.
- The reach of these controls also encourages second-sourcing items from non-U.S. suppliers to avoid the U.S. licensing system. This harms U.S. manufacturers, especially second- and third-tier suppliers, diminishing their sales and driving up costs to the U.S.

military for the same items or causing the U.S. military to source from non-U.S. manufacturers.
  - In response to a Department of Commerce industry survey, U.S. firms estimated that they lost in excess of $2.1 billion in annual sales due to export controls and billions more in lost opportunities to even compete for a sale.
- The design-out of U.S.-origin items also means that the United States has no control over the transfers of such items and less visibility into their transfers to possible destinations, end-users, and end-uses of concern, including human rights abuses.
- Today's weapon systems are typically jointly developed, but the U.S. export control system has not been updated to reflect this change. This drives up costs to the U.S. military and U.S. allies in joint programs.
- The control list-related reforms will move less sensitive items, mostly parts and components, from the State munitions list to the Commerce list. Commerce's statutory authorities allow these items to continue to be controlled but eligible to be shipped to close allies and partners with certain enhanced compliance requirements without a specific license. These items are still shipped via a type of authorization; the items are not de-controlled. The additional compliance measures ensure that the U.S. Government continues to have a paper-trail to enforce U.S. controls.
- The net result of the list reforms will be to improve U.S. interoperability with close allies and partners while enabling the U.S. Government to focus on transactions of concern. Such reforms will also result in the collateral national security benefit of contributing to the health and competitiveness of the defense and manufacturing industrial base, thereby maintaining and expanding U.S. manufacturing jobs.
- 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.

When will changes be made?

The Administration has deployed a three-phase implementation plan.

- Phases I and II fix the problems across the current system that will result in fundamental reform while maintaining the current interagency structure.
- Phases I and II can be achieved largely by Executive action alone without legislation.
- Phase I is complete, and the Administration has made significant progress to date in implementing all facets of Phase II:
  - It has developed and applied a methodology for rebuilding the control lists; published a series of proposed rules for public comment in 2011, 2012, and 2013; by July 2013, it had published the first eight munitions list category final rules; and will continue to publish the remaining proposed and final rules on a rolling schedule.
  - The Administration and Congress partnered to pass legislation in December 2012 as part of the National Defense Authorization Act for FY 2013 that restored flexible authority to the President to tailor controls on the export of U.S.-origin satellites and related items. This was the only category that required legislation before the Administration could rebuild it. This category was rebuilt and published in proposed form in 2013 as part of the rolling schedule for proposed and final rules.

- The President directed the most comprehensive update in 36 years of the administration of export and import controls for defense articles and defense services controlled pursuant to the Arms Export Control List when he issued Executive Order 13637 in March 2013.
- The President issued Executive Order 13558 to create the Export Enforcement Coordination Center (E2C2), which formally opened in March 2012. All departments and agencies with export enforcement responsibilities are working side-by-side, together with the intelligence agencies, to coordinate enforcement actions.
- The Administration and Congress also partnered to pass legislation in the summer 2010 known as the "Comprehensive Iran Sanctions, Accountability, and Divestment Act" (CISADA), to increase the disparate criminal export enforcement penalties to a standardized maximum. It also provided the Department of Commerce with permanent law enforcement authority that had been in lapse. This was the only enforcement-related legislation needed to implement Phase I or II reforms.
- An electronic consolidated list of parties was developed to assist small- and medium-sized companies screen transactions to ensure items are exported in compliance with licensing and other export control requirements. In 2013, the average number of monthly downloads of the consolidated list is 34,000. In addition, approximately, 13,000 email accounts have been added to receive notifications when the consolidated list is updated.
- Four departments – Commerce, Defense, Energy, and State – are migrating to a single secure licensing IT system administered by Defense, with State successfully moved in July 2013; other departments will follow.

- Phase III will require legislation to implement a government reorganization that would consolidate the current system into a:
  - Single Control List
  - Single Licensing Agency
  - Single Primary Enforcement Coordination Agency
  - Single IT System.
- This implementation plan is designed to resolve core problems first, before focusing on a government reorganization.
- The consolidation plan in the final phase would eliminate the need to keep the systems within a system fully synchronized, by eliminating these separate systems.
- This is common sense approach and is good government, especially in this era of tightening budgets.

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