

REPORT ON THE DEPARTMENT OF DEFENSE'S PLANS TO REFORM THE EXPORT CONTROL SYSTEM

Legislative Requirement

Section 1237(a) of the National Defense Authorization Act for Fiscal Year 2011 (NDAA FY 2011) (PL 111-383) provides that the Secretary of Defense shall submit to the appropriate congressional committees a report on the Department of Defense's plans to implement the reforms to the United States export control system recommended by the interagency task force established at the direction of the President on August 13, 2009. The report is due no later than 120 days after the date of the enactment of the NDAA for FY 2011. Section 1237(b) requires an assessment of the extent to which the plans to reform the export control system will: (1) impact the Defense Technology Security Administration of the Department of Defense; (2) affect the role of the Department of Defense with respect to export control policy; and (3) ensure greater protection and monitoring of militarily critical technologies. Section 1237(c) defines "appropriate congressional committees" as: (1) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and (2) the Committee on Armed Services, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Foreign Relations of the Senate.

1. How plans to reform the export control system will impact the Defense Technology Security Administration (DTSA) of the Department of Defense (DoD).

The exact impact of the Administration's Export Control Reform (ECR) initiative on DTSA will not be fully realized until the requirements of the Single Licensing Agency (SLA) and the single licensing and case management system are fully defined across the Federal government.

The following factors suggest that DTSA will continue to have a substantial role in export controls and other items.

DTSA is prepared to dedicate resources to assist in establishing a U.S. Government Single Licensing Agency (SLA) in order to ensure the SLA is equipped with the technical and licensing expertise necessary for review and staffing of export licenses.

DoD has been designated as the executive agent for the single information technology (IT) licensing system that will be based on DoD's USXPORTS system. Thus, DTSA's IT staff will continue to manage and support USXPORTS as it transitions to a U.S. Government-wide case management system.

DTSA would need to retain staff to support other mission areas. DTSA would continue to be the DoD point of contact for all export control-related matters, including Wassenaar Arrangement issues, bilateral technology transfer discussions and negotiations, Arms Trade Treaty discussions and negotiations, the DoD patent security review process, space launch monitoring, and national disclosure policy.

DTSA has a wide range of technology security and export controls roles and responsibilities within the Department of Defense. DTSA's responsibilities include the review of munitions and dual-use licenses referred by the Departments of State and Commerce, respectively, for national security concerns, as well as certain Foreign Military Sales. DTSA is the DoD representative on the U.S. Government delegation to the multilateral export control regime, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, and works with DoD components and interagency partners to develop and evaluate proposed changes to the regime's control lists. DTSA is actively engaged in bilateral discussions and agreements with Allies and partners dealing with technology transfer and cooperation. DTSA is the Chair of the National Disclosure Policy Committee that establishes and promulgates national policy for disclosure of classified military information to foreign governments and international organizations. In this role, DTSA assesses foreign government security programs to determine their capability to protect U.S. classified military information. To formalize such agreements, DTSA negotiates General Security of Military Information Agreements and Industrial Security Agreements with these foreign governments. DTSA has space monitoring responsibilities that involve physical monitoring of launches in foreign countries of U.S.-origin satellites and related

items. DTSA is hosting and helping staff a new Technology Security and Foreign Disclosure office that will coordinate various DoD technology security review processes as part of an effort to undertake reform in parallel with export control reform. Finally, DTSA serves as the DoD Representative to the Committee on Foreign Investments in the United States that reviews foreign acquisition of U.S. companies.

DTSA's staff of more than 200 includes a wide range of technical, licensing, and policy officials dedicated to these mission areas. This includes approximately 50 senior engineers with unique knowledge of military and dual-use systems and capabilities, and 30 licensing officers, in addition to foreign policy analysts, security specialists, and support personnel.

Although the SLA would be expected to make decisions regarding the vast majority of licenses, more difficult and precedent-setting exports will continue to require additional review and analysis, and it is anticipated that these more difficult issues would be referred by the SLA to DoD and other appropriate U.S. Government departments or agencies. Thus, DTSA would continue to require a core of "in-house" technical and licensing officers to review export licenses. As appropriate, other DoD components currently reviewing export licenses, such as the Military Departments, would also continue to review these more "difficult" cases.

2. How plans to reform the export control system will affect the role of the Department of Defense with respect to export control policy.

As noted previously, the exact impact of the Administration's Export Control Reform (ECR) initiative on DTSA will not be fully realized until the requirements of the Single Licensing Agency (SLA) and the single IT licensing and case management system are fully defined across the Federal government. DoD would continue to play a key role in evaluating new technologies and revising controls to ensure that U.S. export controls protect U.S. superiority in the battlespace and our warfighters.

During the ongoing ECR initiative, DoD-wide technical, licensing, and policy experts on military and intelligence-related technologies are playing a central role in identifying critical

military technologies that should be protected through export controls. DTSA has taken the lead for reviewing the U.S. Munitions List (USML).

3. How plans to reform the export control system will ensure greater protection and monitoring of militarily critical technologies.

The four “singles” of export control reform -- the Single Control List, the Single Licensing Agency, the single Export Enforcement Coordination Center, and the single IT system -- are focused on better protection and monitoring of critical technologies.

A single control list will allow the U.S. Government to focus on what and to whom items are being exported, rather than on whether an item would be controlled by the Department of State (applying the International Traffic in Arms Regulations - ITAR) or the Department of Commerce (applying the Export Administration Regulations). Export control officials would no longer have to deliberate over jurisdictional issues, but would evaluate the sensitivity of items, the appropriateness of the end-use, the validity of the end-user, and overall impact on U.S. national security.

The new control list would be based on a three-tiered structure that would better reflect the military and intelligence value of items and technologies controlled by the United States. Tier 1 items would represent the highest level of military and intelligence criticality that are available almost exclusively from the United States or are weapons of mass destruction, and thus the export of Tier 1 items would always require a license, and would be reviewed with the greatest scrutiny. Tier 2 items would represent items that have substantial military and intelligence applications and are available from the United States and the multilateral export control regime members and adherents. Many Tier 2 items could be available to Allies and close partners, without a license. Some Tier 2 items and technologies may need to be more closely safeguarded. Tier 3 items have significant military and intelligence applications, but are more widely available outside the United States and multilateral export control regime members and adherents. Tier 3 items would be available to most of the world. Thus, the tiering of controls in a single control list would significantly enhance our ability to control items based on their national security

importance and our ability to make better-informed decisions on the national security implications of export requests. The guiding principle in establishing the new control list will be “higher fences around fewer items,” thus placing more scrutiny and controls over the most sensitive items and technologies.

The SLA, with technical, licensing, and intelligence experts evaluating license requests, would bring significant efficiencies to the USG export-control process, and enhance our national security. The SLA would be expected to decide the vast majority of licenses based on a “triage process” involving licensing and technical staff, along with a cadre of intelligence officers providing assessments on end-users. Thus, the SLA would be better equipped to assess a proposed transfer, e.g., the nature of the export, the appropriate tier/level of control, appropriate provisos, and validity of end-user and end-use. The most sensitive cases would be referred to other departments and agencies, including DoD, for closer scrutiny. DoD resources would focus on reviewing the most difficult cases of greatest potential national security impact.

The Single IT system for export licensing would enable USG agencies to evaluate export requests based on a set of comprehensive and common information, including critical intelligence information. This would ensure better-informed and more efficient decision-making.

Finally, the Single Export Enforcement Coordination Center would greatly enhance our ability to monitor licensed, and prevent unauthorized, transfers of critical military and intelligence items and technologies by bringing together the enforcement resources of several agencies. The Center would be aimed at ensuring better sharing of information and more effective and timely enforcement measures.

Conclusion:

Fundamental export control reform that enhances U.S. national security will only be achieved through the full implementation of all three phases of the Administration’s reform plan. A new U.S. export control system, including the new single export control list, based on robust criteria

and the tiering of controls, along with clear licensing guidelines, a single licensing agency, and a single export control licensing information system, would greatly enhance U.S. national security and protect the superiority of the U.S. warfighter. The new system should both facilitate cooperation with Allies and prevent access to critical technologies by potential adversaries.