



Executive Summary

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REFORMING U.S. EXPORT CONTROLS REFORMS: ADVANCING U.S. ARMY INTERESTS

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The U.S. Army, in addition to the rest of the Department of Defense (DoD) and other government agencies, needs a U.S. export reform that protects U.S. military technological advantages, builds partnership capacity through arms transfers and defense industrial collaboration, monitors exports, and enforces regulations to deny the transfer of sensitive national security items to potential adversaries or other countries of possible concern to the United States and its allies. Furthermore, the U.S. defense export system needs further major reforms to reduce inefficiencies and weaknesses. There are too many actors, too much subjectivity, and too many delays in the process. Although the International Traffic in Arms Regulations (ITAR) aims to prevent a foreign country or group from using U.S. arms against the United States and its allies, the Regulations actually weaken U.S. national security in important ways, including by discouraging the use of U.S. defense products and technologies even by close U.S. allies.

It is generally agreed that a stronger and more competitive U.S. defense industry will lead to the development of better technologies and a more vibrant U.S. economy, which will strengthen overall U.S. military capabilities as U.S. defense industrial capacity grows. U.S. arms sales lower DoD overhead costs, sustain U.S. defense production lines and a skilled workforce, enlarge the base of foreign suppliers, promote defense interoperability between U.S. and foreign forces, and generate positive contributions to U.S. international account balances.

However, the ITAR presents unneeded barriers to U.S. firms that impede their ability to compete in the global defense market. In turn, this makes it more difficult for these companies to sustain core U.S. defense

technological and industrial advantages, reduces U.S. military interoperability and collective security with allies that purchase weapons from non-U.S. (and non-ITAR) sources, and generates other undesirable effects for the U.S. Army and other U.S. military services. The Export Control Reform (ECR) project launched by the Barack Obama administration addresses some of these concerns. It aims to have one system and agency receive, review, adjudicate, and enforce license applications using a tiered control list based on the security sensitivity of the proposed export item. The administration has made some progress, but major structural deficiencies will persist unless deeper changes are made to the system's framework, which must await a congressional consensus on the issue.

Since taking office, the Obama administration has made export control reform a national security and economic priority. The current system is centered on a complex set of regulations that proves difficult for U.S. defense firms to navigate and impairs their ability to compete in international defense markets. The existing ITAR requires a complex licensing bureaucracy that produces an arduous, inefficient, and often unpredictable application process that hinders U.S. economic and defense goals by weakening the U.S. defense industry and, therefore, U.S. national security. A significant number of the regulated defense products are nonlethal items being sold to foreign countries with which the United States has strong alliances or in which foreign firms already make those products. As a result of these regulatory hurdles, U.S. defense firms are put at a competitive disadvantage that threatens their international competitiveness and mutual interoperability between countries using the same military technologies. The result is to decrease

the U.S. comparative advantage in the defense industry, thereby reducing U.S. defense exports and resulting in wider use of foreign-made items that are exempt from U.S. export controls.

The ITAR system, established by the Mutual Security Act of 1954 and the Arms Export Control Act of 1976, is a complex bureaucracy that relies on the judgment of multiple agencies and an often unpredictable application process. Under this system, licensing and registration processes proceed in parallel to allow for strict control of the movement and sale of specific defense products. The first major component of the ITAR is a pair of lists that designate the level of regulation to which a defense-related product will be subjected. The Directorate of Defense Trade Controls (DDTC), a component of the State Department's Bureau of Political-Military Affairs, creates and maintains the United States Munitions List (USML), which includes any defense technologies with potential military applications. The less restrictive counterpart of the USML, the Commerce Control List (CCL), covers so-called "dual-use" (civilian and military) items intended for commerce or research, but whose sale may have security implications if the articles were used for military purposes. The CCL is subject to the Commerce Department's Export Administration Regulations (EAR), which were established by the 1949 Export Control Act. This distinction between defense products that have military applications and those that are considered "dual-use" results in more strict controls on the former and less strict controls on the latter. It is often difficult for firms to anticipate how their products will be classified, since the definitions that determine whether an item will be part of the USML or the CCL are based on the intent with which the product was developed and whether or not there is a dual civilian use, both of which are subjective criteria that can take weeks to evaluate in the review process. Lack of communication between agencies has led to inconsistency in the decisionmaking process. Even if the decision is made to subject an item to EAR rather than ITAR review (under the CCL rather than the USML), there is still a detrimental effect on the U.S. firm because of the initial uncertainty and the time required for the DDTC to make the decision, often requiring input from technical experts at DoD.

While maintaining U.S. national security and preventing the acquisition of U.S. defense technologies by foreign powers are certainly worthy goals, they are not best served by excessive administrative controls and micromanaging through regulations. The direct costs of constantly applying and waiting for permits and licenses take a toll on U.S. defense firms

and make it more difficult for them to compete in the global defense market. It also disrupts their nonexport activities since they face restrictions on which employees can be assigned to which projects, creating additional burdens. Furthermore, every stage of the existing U.S. export control system, beginning with recommendations on making the lists and ending with the actual enforcement of the system, involves a different government entity with its own regulatory mandate. Among the costs and risks associated with the licensing process, firms cannot know for certain whether or not their licenses will be approved (although the majority generally are approved). The bureaucracies within the Commerce, Defense, and State Departments that are involved in the decisionmaking process for granting export licenses have broad discretion to issue, rescind, and revoke licenses with little oversight. From another perspective, these risks make investing in the U.S. defense industry less attractive, and therefore domestic industries face diminished access to financial capital while deterring potential foreign firms from establishing branches in the United States and encouraging domestic firms to relocate their commercial activities outside the United States. These problems also make foreign companies and countries reluctant to rely on U.S. imports subject to the ITAR process. The aggregate effect of these problems harms U.S. economic and national security goals by eroding the U.S. defense industrial base while self-defeatingly reducing the portion of the global defense industry subject to the ITAR and similar U.S. regulations.

In light of these concerns, the Obama administration is seeking simultaneously to enhance U.S. national security and benefit the U.S. economy. The ECR program calls for the unification of regulations and enforcement programs into a single comprehensive export control list, a single export licensing agency, a unified enforcement regime led by one primary agency, and a single information technology database that combines all information to facilitate communication and decisionmaking between the various actors within the system. In order to accomplish these goals, the administration is employing a three-phase transition system. In the first phase, the administration has done what it can to synchronize licensing rules, standardize sanctions regulations and their application, and lay the groundwork for implementation of the new framework. These changes, while insufficient to overhaul completely the system on their own, have led to notable changes in many areas. As part of Phase II, the Obama administration has tasked the Departments of State and Commerce to revise the USML and CCL to mirror the structure of an eventu-

ally combined, tiered list in preparation for the third phase of the project. Phase III would see the USML and CCL lists, as they currently exist, merge into one master list to maximize efficiency and accessibility. This would streamline the current bureaucratic maze of agencies responsible for overseeing arms exports into a process with each stage overseen by a single agency.

The administration's efforts to date have improved some conditions for U.S. defense firms, probably enhanced interoperability between U.S. and foreign military forces, and perhaps increased investment in the U.S. defense sector, which leads to greater economic growth and strengthened U.S. military capabilities. However, it will be difficult for all of the proposed changes to take effect before President Obama's second term ends in January 2017, and his successor may not support the current administration's ITAR reform plan or even make ECR a priority. Furthermore, Congress has yet to unite behind the President's reform vision or any alternative. Making enduring improvements in U.S. export reforms to the benefit of the U.S. Army and others will require major congressional legislation that does not seem to be forthcoming in the near future.

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