

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.
- 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.
- Prior to ECR, all were equally controlled on the U.S. Munitions List (USML) 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 if subject to the USML 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 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 procured locally and designed out U.S.-origin items, which meant that the United States has no control over the transfers of these foreign-origin items and has less visibility into their transfers to destinations, end-users, and end-uses of concern, including human rights abuses. It also 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 completing the ongoing reforms necessary to better focus on items by prioritizing U.S. controls, the U.S. Government would 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

threatened 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:

- ECR is a national security review and not related to the National Export Initiative that promotes exports. The ECR improvements 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.
- As a result of ECR, all military 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 already controlled on the Commerce Control List in Export Control Classification Numbers (ECCNs) ending in -018 are now 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.
- Paradoxically, before ECR, the maximum prison sentence for criminal violations of the U.S. Munitions List controls was only half of the comparable prison sentence for violations of the Commerce Control List controls. They are now the same standardized maximum.
- 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:

- ECR is a prioritization of controls and not a de-control effort. The Administration is continuing its long-standing judicious use of export controls, including vetting of potential end-users, to help prevent human rights abuses. ECR is not removing the export license requirements for lethal items or crime control items.
- The Administration is easing the export license requirement for less sensitive items (mostly parts and components) by the 36 governments of NATO countries and most countries that are members of all four multilateral export control regimes (as listed in Country Group A:5 in Supplement No. 1 to part 740). Additional compliance measures, including a requirement for ultimate end-use by one of the 36 governments for military (i.e., 600 series) items, apply to such exports that will provide an audit trail.
- The U.S. Government continues to require a license for exports of those items within these 36 countries if not destined for the ultimate end-use of those countries' governments and outside of the 36 countries, and continues to have an audit trail to ensure compliance and enforcement.
- The easing of specific export license requirements to the 36 countries is further balanced by an increase in the enforcement resources focused on exports of items moved to the Commerce Control List.
 - For items on the U.S. Munitions List, administrative export violations are enforced by the Department of State, while criminal violations are enforced by the Department of Homeland Security and the Federal Bureau of Investigation.
 - For items on the Commerce Control List, administrative *and criminal* export violations are enforced by the Department of Commerce. Criminal violations are also enforced by the Departments of Homeland Security (DHS) and the Federal Bureau of Investigation. The Department of Commerce has over 100 special agents dedicated exclusively to export control enforcement. This is in addition to DHS personnel deployed both domestically and internationally, including 250 special agents assigned to foreign posts. DHS maintains the same robust investigative authority they currently possess under both the State and Commerce regulations. The movement of items from the U.S. Munitions List to the Commerce Control List has no significant effect on Homeland Security's ability to take appropriate criminal investigative actions.

- As a result of the transition of less sensitive items from the U.S. Munitions List to the Commerce Control List, the U.S. Government has ***more export enforcement agents*** investigating possible violations of Commerce-administered controls.

Myth 4:

The Administration has decontrolled almost all of the items that were controlled in one of 19 categories of items on the U.S. Munitions List being rebuilt, Category VIII – Aircraft and Associated Equipment. This is a field day for illegal arms brokers for the sake of more exports under the National Export Initiative, undermines U.N. Security Council sanctions and our own U.S. unilateral arms embargoes and sanctions.

Facts:

- The Administration has not decontrolled any items in Category VIII. It has moved less sensitive items, mostly parts and components determined by the Department of Defense to no longer warrant U.S. Munitions List controls, to the Commerce Control List. This does not equate to being decontrolled. The items were 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 that 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.
- The trend under the previous export control system was for Allies and partners to replace U.S.-origin items with comparable foreign-made items to avoid the onerous U.S. export control system, which meant that the United States had no control over the transfers of such items and had less visibility into their transfers to destinations, end-users, and end-uses of concern, including human rights abuses.
- Items that are “specially designed” for a military application have the same export restrictions to proscribed destinations, including China, as under the State regulations. Less sensitive military items that were already on the Commerce Control List prior to ECR are now also subject to the same export restrictions that the Department of State administers, resulting in a *tightening* of U.S. arms embargoes.
- None of these changes are related to the National Export Initiative (NEI) or promoting exports. ECR is a national security review unrelated to the NEI.

Myth 5:

Why are we liberalizing 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. This means that we are prioritizing our controls, not liberalizing them.
- As a result, we are 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.
 - Paradoxically, prior to ECR, the maximum prison sentence for criminal violations of the U.S. Munitions List controls was only half of the comparable prison sentence for violations of the Commerce Control List controls. They are now the same standardized maximum.
 - 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 reporting 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. In 2013, the average number of monthly downloads of the consolidated list was 34,000. Upgrades made in November 2014, including a new "fuzzy logic" search tool deployed in mid-2015 that helps find listed entities without knowing the exact spelling, is resulting in

hundreds of thousands of screens per day. 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 to almost 40 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;
 - Enhances U.S. control of and visibility into transfers of items previously replaced with foreign-origin items; 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 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 helps strengthen multilateral as well as U.S. controls.

- Specifically, Commerce and State 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, the CCL controls for those military items moved from the U.S. Munitions List 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 from Category I and ammunition from Category III of the Department of State's U.S. Munitions List will make it easier for terrorists and criminal groups, including drug cartels, to obtain weapons and for U.S.-origin weapons to be used in human rights abuses.

Facts

- The Administration has no plans, and never had plans, to decontrol any firearms or ammunition.
- The Administration may consolidate duplicative requirements that exist today. For example, the licensing jurisdiction for shotguns currently is divided between the U.S. Munitions List and the Commerce Control List, based on the barrel length of the gun. Firearms exporters may need separate export licenses from both the Department of State and the Department of Commerce for a single purchase order from a single foreign customer, each license with unique requirements.
- The Administration is considering whether consolidating the duplicative licensing requirements would improve U.S. Government oversight on proposed firearms exports and improve the effectiveness of these controls. Consolidation into one set of requirements – e.g. putting all shotguns on one control list -- likely would ensure greater consistency and visibility for all agencies involved in the licensing and enforcement process and would make more efficient use of government resources. Consolidation also would make it easier for exporters to comply with export regulations.
- Importantly, the Administration is not considering removing the export license requirement for any guns or ammunition, even if it proposes consolidation, regardless of which agency has licensing jurisdiction or the proposed destination.
- In addition, the public will have ample opportunity to review and comment on any proposed changes to U.S. Munitions List Category I firearms and Category III ammunition controls well before they are published in final and become effective.

Myth 10:

The Administration has gone in two different directions regarding arms control, with the massive decontrol effort on the one hand and signing the Arms Trade Treaty on the other. The United States will simply have to re-impose controls if the United States ever ratifies the Arms Trade Treaty.

Fact:

- The Administration has not gone in two different directions. The United States actively engaged in the negotiation of the Arms Trade Treaty text to ensure that it was consistent with U.S. law and practice. ECR is not a massive decontrol effort. The Administration is prioritizing controls, moving less sensitive items (mostly parts and components determined by the Department of Defense to no longer warrant U.S. Munitions List controls) to the Commerce Control List. This does not equate to being decontrolled. The items transferred to the Commerce Control List 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.

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 were 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 as part of the National Defense Authorization Act (NDAA) for FY 2013 that restored 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, continue to be prohibited if destined for China, North Korea, Iran, and other countries subject to arms or other embargos.
- The 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). The Administration's new satellite export controls that went into effect in November 2014 are designed to facilitate cooperation with Allies and most of the export control regime partners while maintaining robust export controls as necessary to protect national security.
- Updated satellite export controls 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 is particularly beneficial to small- and medium-sized U.S. companies that manufacture parts and components for satellites.

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 processes, that we have today. This means fewer 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 prior 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 former Senators Kyl, 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 has 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 (see Factsheet #4).
- For those items moved from the U.S. Munitions List to the Commerce Control List, the licensing requirements and process are 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 are more likely to source from small U.S. companies. This is good for the effectiveness of and visibility of U.S. controls, 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/eg_main_023148.asp. This single list has almost 8,000 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. In 2013, the average number of monthly downloads of the consolidated list was 34,000. Upgrades made in November 2014, including a new “fuzzy logic” search tool added in mid-2015 that helps find listed entities without knowing the exact spelling, is resulting in hundreds of thousands of screens per day.
- 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 August 2015, 18 of 21 USML categories have been published for public comment, with the remainder to publish on a rolling schedule. Of the 18, 15 have already published in final regulations and gone into effect. The Administration is committed to continuing publication of all the proposed and final 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, the strengthening of the U.S. defense industrial base by reducing incentives for foreign manufacturers to design out and avoid using U.S. items while increasing the effectiveness of U.S. controls and enhances U.S. visibility in transfers, 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 licensing policies for the “600 series” in the Commerce Control List includes a policy of denial for the export of any 600 series software or technology to China and other countries subject to partial or total arms embargoes in the Department of State regulations. This will have the collateral benefit of stemming the infiltration of counterfeit parts or components into U.S. defense systems.
- The Administration is not decontrolling USML items. The Administration is prioritizing controls, moving less sensitive items (mostly parts and components determined by the Department of Defense to no longer warrant U.S. Munitions List controls) to the Commerce Control List. This does not equate to being decontrolled. The items transferred to the Commerce Control List 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.

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 hundreds of briefings since the beginning of ECR with Members, staff, committees, and individual offices, with broad bipartisan support.
- The vast majority of the reform effort has been done by administrative action and did not require legislation. For those items that require legislation, the Administration 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. It also resulted in legislation that restored authority to the President to determine the appropriate export controls for satellites and related items, the only category of items on the U.S. Munitions List that required legislation.
- 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 on-going list-related work fully implements this requirement.

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- Committees with oversight responsibilities for the export control lists have unprecedented visibility into the process, and have received and been briefed on draft rebuilt categories before they are published, receiving copies of all submitted public comments, and asked 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/