

Export Control Reform Initiative Fact Sheet #6:
Myths and Facts about the Impact of Reform on U.S. Foreign Policy Equities

Myth 1:

The United States is the largest arms exporter in the world, so the U.S. export control system is clearly not a problem. Export control reform (ECR) is all about expanding weapons exports as part of the National Export Initiative of doubling exports in five years. As a result, ECR is loosening U.S. controls on arms exports that will result in more U.S. items going to destinations of concern, like Iran and China, and in contravention of United Nations (U.N.) arms embargoes, all to the detriment of U.S. national security and foreign policy interests.

Facts

- ECR is a national security review distinct and separate from the National Export Initiative. It is *not* about exporting more arms.
- In fact, the Administration is *tightening* its implementation of both U.S. and U.N. arms embargoes by *adding* items not previously subject to these embargoes.
 - All items moved from the Department of State's U.S. Munitions List (USML) to the Commerce Control List (CCL) remain subject to the same partial or total arms embargos administered by the Department of State;
 - In addition, less-sensitive military items that have been on the CCL since the early 1990s (in Export Control Classification Numbers (ECCNs) ending in -018), ***have been made subject to these same arms embargoes as well***, resulting in a more comprehensive application of U.S. and U.N. embargoes.
 - There is no diminishing of U.S. Government (USG) review of export license applications for these items. The Departments of Defense and State will continue to review license applications processed by the Department of Commerce, for national security and foreign policy considerations, as they already do for other items on the CCL.

Myth 2:

ECR is simply a de-control effort that will result in U.S.-origin items being more widely available for use in human rights abuses.

Facts

- 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, to 36 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) under License Exception Strategic Trade Authorization (STA). Additional compliance measures, including restricting STA for military (i.e., 600 series) items to ultimate end-use by the 36 governments of eligible countries, apply to such exports providing an audit trail.
- The USG continues to require a license for exports of 600 series items within these 36 countries if not destined for the ultimate end-use of those countries' governments and outside of the 36 countries and continue 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 that move to the CCL.
 - For items on the USML, administrative export violations are enforced by the Department of State and criminal violations by the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI).
 - DHS has personnel deployed both domestically and internationally, including 250 special agents assigned to foreign posts, and they maintain the same robust investigative authority they currently possess under both the State and Commerce regulations.
 - However, for items on the CCL, *administrative and criminal* export violations *are also* enforced by the Department of Commerce, which has over 100 special agents dedicated *exclusively* to this task. Additionally, criminal violations of export control requirements for items on the CCL are enforced by DHS and the FBI.
 - Thus, the USG has more export enforcement agents investigating possible violations of export requirements for those less sensitive items that are moved from the USML to the CCL than was the case for such items prior to ECR.

Myth 3:

The movement of thousands of items from the USML to the CCL means that proposed exports of these items, including such items as troop transport aircraft and ground vehicles, are no longer be reviewed by the USG for human rights concerns, or subject to the human rights statutory factors required by the Foreign Assistance Act (FAA). This change leaves this important screening subject to the policy whims of this and future Administrations. Of equal concern, the Commerce Department has no experience with vetting export license applications for human rights reasons, nor does it have the legal authority to deny such exports.

Facts

- It is incorrect to assume that the current Administration and previous Administrations have only considered human rights factors because the FAA requires it. The Executive Branch has a long history of using export controls on munitions and dual-use items to help prevent human rights abuses under a combination of statutory and regulatory authorities including but not limited to the FAA.
- Human rights are an important component of U.S. Conventional Arms Transfer policy, which the Department of State uses when evaluating proposed exports of items on the USML. In January 2014, the Administration released an updated policy that provides greater clarity and transparency with respect to U.S. goals for arms transfers and on the criteria used to make arms transfer decisions. More specifically, it highlights the importance the United States places on key factors such as respect for human rights, as well as other factors like international stability, homeland security, counter-terrorism, combatting transnational organized crime, and supporting nonproliferation. The Department of Commerce has a long history of vetting export license applications for human rights reasons, a statutory requirement dating back to the Export Administration Act of 1969.
- In 2012, for example, the Department of Commerce processed over 6,000 license applications for items controlled *solely* for human rights reasons; in fact, Commerce is the only export licensing agency that controls some items on its control list *solely* for human rights reasons.
- The Department of Commerce has broad legal authority to control and deny exports for a wide range of national security and foreign policy reasons under Sections 5 and 6 of the Export Administration Act and Section 203 of the International Emergency Economic Powers Act.
- The Department of State plays a key role in reviewing these license applications for foreign policy reviews, including human rights, and continues to do so for items moved from the USML to the CCL.

Myth 4:

The Administration's plans for a massive decontrol of firearms from Category I and ammunition from Category III of the Department of State's USML 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 USML and the CCL, 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 USG 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 USML Category I firearms and Category III ammunition controls well before they are published in final and become effective.

Myth 5:

The Administration has moved not only parts and components to the CCL, but also items like troop transport aircraft and ground vehicles. Making these items available without export licenses makes it easier for these systems to be armed once exported and contribute to deregulating the global arms industry and to more conflicts around the world.

Facts

- A small number of unarmed, non-lethal end-items have been moved to the CCL that were deemed to be less sensitive and no longer warrant USML control under the requirements of the Arms Export Control Act. These items, however, remain controlled world-wide, with a world-wide license requirement, except to Canada, under the Commerce Department's Export Administration Regulations.
- This requirement changes **only** if an exporter asks that an end-item be made eligible for export under a license exception to the ultimate end-use by 36 governments under License Exception STA (as listed in Country Group A:5 in Supplement No. 1 to part 740). In addition, the Departments of Commerce, Defense, and State **MUST** agree unanimously to the exporter's request. Any such change would be published for transparency purposes. As of August 2015, no STA eligibility requests have been submitted to Commerce.
- Moreover, there are additional compliance measures that include every recipient of any of these items to sign a written certification that they understand and accept the U.S. export control requirements. **This means that the USG continues to have a paper-trail to ensure compliance and to enforce U.S. controls.**

- The addition of any armaments or other defense articles that meet the control parameters of the USML after export continues to require a license authorization from the Department of State. The integration of defense articles into items controlled on the CCL constitutes a defense service, **just as it does for defense articles on the munitions list, so there is no decrease in the reach of these U.S. controls.**

Myth 6:

The Administration is moving “significant military equipment” from the USML in order to remove the export license requirements for these items for the sake of more arms exports.

Facts

- “Significant military equipment” is a designation made by the Department of State, in consultation with the Department of Defense, for articles on the USML that warrant special export controls because of their capacity for substantial military utility or capability.
- As part of ECR, the Department of Defense has been leading a comprehensive technical review of the USML to determine those articles that warrant continued U.S. Munitions List control, including those that warrant designation as “significant military equipment”.
- Those items that warrant control as “significant military equipment” remain on the USML. Less sensitive items moved from the USML to the CCL are no longer deemed to be “significant military equipment”, for example, emergency escape equipment for aircraft on the USML was previously deemed to be “significant military equipment” but no longer is. This less sensitive equipment has been moved to the CCL.
- Some items moved or planned to be moved to the CCL may continue to require special export controls – such as commercial communication satellites – but they are not treated as significant military equipment. The Department of Commerce has broad authority to require special export controls without needing a significant military equipment designation.

Myth 7:

Moving items from the USML to the CCL removes these items from annual reports to the Congress and the public on arms exports, reducing transparency. Also, such changes will permit the Administration to circumvent the statutory Congressional Notification process.

Facts

- The Department of State will continue to provide to the Congress and publish an [annual report](#) for its licensing activity for the items remaining on the USML.
- The Department of Commerce will continue to provide to the Congress and publish two annual reports on its export control activities, which include licensing statistics: an [annual report and a foreign policy report](#).

- With regard to Congressional notifications, the most sensitive items will remain on the U.S. Munitions List and remain subject to this process. Less sensitive items that the Department of Defense determines do not warrant control on the USML (predominantly parts and components) are being moved to the CCL.
- However, to ensure transparency with the Congress and the public regarding exports of “Major Defense Equipment” or MDE – equipment so designated by the Arms Export Control Act for any item of significant military equipment on the U.S. Munitions List having a nonrecurring research and development cost of more than \$50 million or a total production cost of more than \$200 million – the President directed in Executive Order 13637 in March 2013 that the Department of Commerce put congressional notification procedures in place for any MDE that may be moved to the Commerce Control List.
- So transparency has not diminished. Notably, a key feature of ECR has been a public, transparent process, whereby the Administration has sought public input for every regulatory change, including all proposed changes to the control lists. All proposed and final rules, and the public comments received associated with these rules, are available at www.export.gov/ect/.

Myth 8:

The reform effort makes it easier to move jobs offshore to countries like China where it is cheaper to manufacture, making items more available to countries of concern and for human rights abuses.

Facts

- To move production of an item controlled on the USML outside the United States, a manufacturer must obtain an export license for the technology used to make that item. ECR is not de-controlling any technology related to items that remain on the USML. USML defense articles will continue to be denied for export to China. This will continue to be a requirement emanating from both the State Department’s International Traffic in Arms Regulations and the Tiananmen Square sanctions.
- All items, including the less sensitive items and their related technology that move to the CCL, remain controlled as military items *and thus remain subject to the U.S. and U.N. arms embargoes*. As a result, production for these items will *not* move to countries, like China, which remain subject to a U.S. arms embargo.

Myth 9:

The United States cannot enforce export control requirements for all items moving from the USML to the CCL because those items will no longer require an individual export license.

Facts

- Certain end-items, such as aircraft, that move to the CCL will continue to require a license. This requirement would change **only** if an exporter asks that an end-item be made eligible for

export under a license exception for the ultimate end-use by 36 governments – the NATO allies and most countries that are members of all four multilateral export control regimes (listed in Country Group A:5 of Supplement No. 1 to part 740). Such a change is **only** authorized if the Departments of Commerce, Defense, and State agree unanimously to the exporter's request. Any such change would be published.

- Certain parts and components that move to the CCL will be eligible for export without a specific export license when they are intended for the ultimate end-use of the same 36 governments. These less sensitive items – like switches, fuel pumps, and adapters – are not lethal items and are not crime control items. However, they remain controlled commensurate with their level of sensitivity. ***Importantly, no items are being de-controlled.***
- Moreover, there are additional compliance measures that include every recipient of any of these items to sign a written STA certification that they understand and accept the U.S. export control requirements. ***This means that the USG continues to have a paper-trail to ensure compliance and to enforce U.S. controls.***
- As part of the reform effort, the United States has 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 loosening U.S. controls, 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 USML controls was only half of the comparable prison sentence for violations of the CCL controls. They are now the same standardized maximum.

Myth 10:

There is no need for any change to the current system because all items on the USML are not treated the same as the Administration contends. For example, shipments of munitions list parts and components below a certain dollar value can ship without export licenses now. There is no need to move them to the CCL's "more flexible licensing mechanisms"; rather, the Administration should use its existing legal authority to apply more exemptions to the requirements for State license.

Facts

- Even if an item can be shipped without a specific Department of State license under an exemption, control on the USML still involves many more requirements. A manufacturer, broker, and exporter of any item on the USML must also annually register, pay annual registration fees, and obtain a separate authorization for export or re-export for any end-item, domestic or foreign, into which any of these items is incorporated. The reach of U.S. munitions control never ends until the original U.S. item – be it a bolt, brake pad, or radar system -- 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 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, USG 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.

- These requirements encourage Allies and partners to design out U.S.-origin products by procuring locally or conducting the research and development needed to produce their own products.
 - This design-out of U.S.-origin items with comparable foreign-made items means that the United States has *no control* over the transfers of such items and has *less visibility* in their transfers to destinations, end-users, and end-uses of concern, including human rights abuses.
 - This also results in lost U.S. sales, lost U.S. 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.

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