

# WebMemo



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## A Step Forward in Reforming the U.S. Arms Export Control Process

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On March 6, the Coalition for Security and Competitiveness, which consists of eight industry associations, proposed a set of reforms to the process that regulates the export of armaments.<sup>1</sup> This proposal would not change underlying arms export control policies or laws but only attempt to make the existing policies work more effectively and efficiently.<sup>2</sup> Reform is appropriate because the arms export control process, including the licensing process, is largely a product of the Cold War and is poorly positioned to meet the security needs of the United States to fight and win the war on Islamic terrorists. The coalition's proposal deserves serious consideration by the Bush Administration.

The current arms export process has overwhelmed the federal bureaucracy that manages the system and the industry that is required to operate within the required restrictions. The State Department, which is responsible for issuing arms export licenses, processes over 65,000 license applications per year. According to industry, this number is increasing at a rate of about 8 percent annually and last year led to a 10,000-case backlog.<sup>3</sup> Further, the existing system is creating barriers to U.S. cooperation with friends and allies in the defense sector in an era when the armaments market is increasingly globalized.<sup>4</sup> These barriers will only increase expenses and delay victory in the ongoing war. Thus, reforms that address these shortcomings are essential.

**11 Reforms of the Arms Export Control Process.** The Coalition for Security and Competitiveness has proposed 11 specific reforms for how the executive branch manages the arms export control

system.<sup>5</sup> These reforms do not require the enactment of legislation and would not change the underlying arms export control policy. The recommendations are as follows:

1. **Issue a presidential statement identifying the core principles of U.S. policy for maintaining the U.S. advantage in national security technology.** The purpose of this proposed statement is to clarify the central purposes of U.S. defense technology policy, not to break new ground. Among the principles that the industry association recommends for inclusion in the statement are: (1) denying access to the most sensitive technology by current or potential adversaries; (2) using such technologies to advance U.S. foreign policy objectives; (3) bolstering U.S. technological leadership; (4) promoting cooperation with U.S. friends and allies; (5) preserving the defense industrial base.
2. **Appoint a senior director of the National Security Council to manage the defense trade, export control, and technology cooperation portfolios.** The purpose of this position is to coordinate more effectively the actions of the various agencies and departments managing the arms export control process.

This paper, in its entirety, can be found at:  
[www.heritage.org/research/nationalsecurity/wm1416.cfm](http://www.heritage.org/research/nationalsecurity/wm1416.cfm)

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3. **Establish a presidential advisory group on defense trade and security cooperation.** The group would provide an important line of communication on the relevant subjects across the Administration, Congress, and industry.
4. **Allocate existing funds to provide additional manpower to the office of the Director of Defense Trade Controls (DDTC).** DDTC is responsible for reviewing arms export license applications and issuing the licenses. Additional manpower will permit the more timely and efficient processing of licensing applications. This will allow DDTC to make additional progress on reducing the backlog of cases.
5. **Establish consistent judgments regarding which commodities are identified as munitions and thus subject to the International Traffic in Arms Regulations (ITAR).** According to industry, the federal bureaucracy is not always consistent in determining which commodities should be subject to ITAR, designating similar commodities differently. This unpredictability makes the process slower and less efficient. This proposal specifically seeks more vigorous oversight of the agencies and departments involved in the designation process.
6. **Allow certain items to be treated as non-munitions for the purposes of export control regulations until a determination has been made that these items belong on the munitions list.** Most of the specific items at issue are commercial aircraft components. The aviation industry would prefer that components certified by the Federal Aviation Administration (FAA) for commercial aircraft not be subject to munitions control during the review process, which is the present practice. This reform may require the government to expedite the jurisdiction determination for these items.
7. **Streamline arms export licensing procedures.** Today's export licensing procedures are "transaction-based"—a specific license is issued to authorize each export transaction. Industry would like to move away from this approach by allowing licenses with broader applications. For example, a single license could allow the export of the same commodity to equivalent end-users. This step, and similar ones, would reduce the number of licenses that need to be processed.
8. **Establish an appeals process that sets precedents on jurisdiction and licensing.** Industry would like the chance to appeal the most important designation decisions that declare a commodity a munition and deny an export license. Appeals would be heard at the inter-agency level by a political appointee or panel of appointees on a quarterly basis. This appeals process would allow industry to make its case at a higher level of authority and give industry more insight into the government's deliberations and future export decisions. But industry should recognize that appeals could slow the overall process and that appeals should be used only when the government's decision has

1. The Coalition for Security and Competitiveness, "Eight Associations Urge President Bush to Implement Modern Export Control System to Enhance U.S. Security, Competitiveness," Press Release, March 6, 2007, at [www.securityandcompetitiveness.org/resources/printer/2243.html](http://www.securityandcompetitiveness.org/resources/printer/2243.html). At the time of the release, the coalition consisted of the following eight associations: the Aerospace Industries Association, the Association for Manufacturing Technology, the Coalition for Employment Through Exports, the Electronics Industries Alliance, the Information Technology Industry Council, the National Association of Manufacturers, the National Foreign Trade Council and the U.S. Chamber of Commerce.
2. The group also issued a set of companion reforms for the system that regulates the exports of "dual-use" products that have both military and civilian applications. This paper examines only the set of reforms applicable to arms exports.
3. The Coalition for Security and Competitiveness, "Eight Associations Urge President Bush to Implement Modern Export Control System to Enhance U.S. Security, Competitiveness."
4. See Jack Spencer, ed., *The Military Industrial Base in an Age of Globalization: Guiding Principles and Recommendations for Congress* (Washington, D.C.: The Heritage Foundation, 2005).
5. The Coalition for Security and Competitiveness, "Recommendations for Modernizing Export Controls on Munitions List Items," March 6, 2007, at [www.securityandcompetitiveness.org/proposals/printer/2241.html](http://www.securityandcompetitiveness.org/proposals/printer/2241.html).

broader implications than the approval of a specific export.

9. **Provide advance notice to exporters of “intent to deny” and “intent to return without action” to allow adjustments to applications prior to a final decision.** In some cases, the exporter has not provided a clear description of the transaction under consideration. In other cases, the exporter may have made errors in completing an application. For routine and innocent mistakes, prior notice would allow simple corrections and avoid having to resubmit the entire application.
10. **Accelerate the establishment of an electronic system for processing and tracking license applications.** The government is in the process of upgrading its licensing system to make the overall system work more efficiently. Industry is particularly interested in seeing these efficiencies applied to transactions that require congressional notification and review.
11. **Establish specific timelines for the review, approval (or denial), and issuing of export licenses.** For example, industry would like process decisions requiring only the State Department to be made within five calendar days. More complex transactions requiring review by several departments should take no more than 30 days. Finally, industry believes that the State Department should make a final licensing decision no more than five calendar days following the completion of an inter-agency review.

#### **Considering Industry’s Reform Proposals.**

Because the industry coalition’s package of reforms does not require legislative action, the question is whether the Bush Administration will consider making the relevant changes to the arms export control process. But Congress should not be disinterested in these proposals. Congress should have a keen interest in how the Bush Administration may change the way it executes the Arms Export Control Act. Further, any changes proposed at the administrative level can and should point to appropriate

companion reforms at the legislative and policy level in the future.

The coalition has asked President Bush to meet with its leaders to discuss the reform package.<sup>6</sup> As yet, this meeting has not taken place. Given that responsibility for executing arms export control laws is spread among a variety of executive branch departments and agencies, the coalition’s reform package merits presidential consideration. President Bush should meet with industry leaders to discuss the general aspects of the arms export control process and the industry’s reform proposals. The precise details of the reform package need not be the subject of this meeting and should be left to future meetings between industry officials and representatives of the relevant departments and agencies.

**Moving to Fundamental Reform.** While promising, the reform package proposed by the Coalition for Security and Competitiveness, even if adopted in its entirety, is not the ultimate answer to the question of how to make the arms export control system meet the needs of the post-Cold War world. These reforms will only make the current system work more effectively and efficiently. The changed security circumstances brought about by the end of the Cold War and the beginning of the age of global terrorism, however, require fundamental policy and legislative changes.

Changes in how the executive branch operates the machinery of the arms export control system will not address the fundamental matters of how to target arms export restrictions, how to bring U.S. friends and allies into the system in order to facilitate joint actions in the fight against terrorists, and how to account for the fact that defense procurements are increasingly dependent on an industrial base that cuts across national borders, among other issues. The reforms required to make arms export control policy meet these needs will require legislative action. Congress, therefore, needs to initiate a long-term effort for considering changes to the Arms Export Control Act. The Bush Administration and industry should be prepared to support Congress in that enterprise.

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6. The Coalition for Security and Competitiveness, “Letter to President Bush,” March 6, 2007, at [www.securityandcompetitiveness.org/resources/show/2244.html](http://www.securityandcompetitiveness.org/resources/show/2244.html).

**Conclusion.** Changing the arms export control system, whether at the executive or legislative level, is an inherently complex undertaking. It requires putting in place a set of restrictions and the organization for upholding those restrictions that can be sustained in an environment where security circumstances, allied relationships, threats, and technology are changing, sometimes dramatically, and with little notice. Further, the damage resulting from poor choices may be immense. They include seeing the U.S. and its friends and allies attacked with weapons it developed, creating a defense industrial base that is too fragmented to put advanced technologies in the field quickly enough to counter emerging threats, undermining relationships with friends and allies in the conduct of the war, and accelerating the emergence of a peer competitor in international politics.

The risks involved in changing arms export control practices, policies, and laws should prompt care and caution on the part of those involved but should not lead to paralysis. The fact is that the risks stemming from inaction are significant. It is appropriate, therefore, to start with changes in the process for managing existing arms export control policy, such as those proposed by the Coalition for Security and Competitiveness, where the risks are relatively low. From this starting point, Congress, the Bush Administration, and industry should prepare for a careful and thorough consideration of options for reforming the policy itself.

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