



Australian Government
Department of Defence

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UNITED STATES EXPORT CONTROL REFORM

In August 2009, President Barack Obama initiated a comprehensive interagency review of the current US export control system, calling for fundamental reform.

Although the United States has one of the most robust export control systems in the world, the US Government has decided that it must be updated to address the changing economic and technological landscape.

An assessment was conducted by an interagency task force created at the direction of the President and included all departments and agencies with roles in export controls. The assessment found that the current US export control system does not sufficiently reduce national security risk based on the fact that its structure is overly complicated, contains too many redundancies, and tries to protect too much.

The current US export control system is based on two different control lists administered by different departments, three primary licensing agencies, a multitude of enforcement agencies with overlapping and duplicating authorities, and a number of information technology (IT) systems. This fragmented system, combined with the extensive list of controlled items, resulted in almost 130 000 licences in 2009. This limits the ability of the US Government to adequately control and protect those key items and technologies that must be protected for national security.

Key Recommendations

The US Government has determined that fundamental reform of the US export controls system is needed in four component areas, through transformation to a:

- Single Control List;
- Single Primary Enforcement Coordination Agency;
- Single IT System; and
- Single Licensing Agency.



Implementation

To implement the new system, the US Government has prepared a three-phase approach and is currently working on specific reforms which can be initiated immediately and implemented without legislation.

Phase 1: Makes significant and immediate improvements to the existing system and establishes the framework necessary to create the new system. This includes implementing specific reform actions already in process and initiating review of new ones. The key actions in each of the component areas include:

- Control List – refine, understand and harmonise definitions to end jurisdictional uncertainty between the two lists.
- Licensing – implement improvements to streamline licensing processes and standardise policy processes.
- Enforcement – creation of an Enforcement Fusion Centre.
- IT – creation of a single US Government point of entry for exporters.

Phase 2: Implements the new US export control system. This phase would complete the Phase 1 reforms and initiate new actions contingent upon completion of Phase 1 items.

- Control List – restructure the two lists into identically tiered structures.
- Licensing – restructuring licensing requirements to better address risks from diversion.
- Enforcement – expand outreach and compliance.
- IT – transition towards a single electronic licensing system.

Phase 3: Completes transition to the new US export control system. Legislation would be required for this phase.

- Control List – merge the two lists into a single list.
- Licensing – implement a single licensing agency.
- Enforcement – consolidate activities into a Primary Enforcement Coordination Agency.
- IT – implement a single, enterprise-wide IT system for both licensing and enforcement.

Australian officials continue to work with their US counterparts to convey Australian perspectives on US export control reform and to ensure that the US is aware of the experiences of Australian industry. Australian views are being heard, as seen in the use of an Australian example by US Secretary of Defense Robert Gates when he discussed the Administration's reform agenda in April 2010.

The Australian Government welcomes the US Administration's program to reform the US export control system, and we continue to work with our US counterparts to ensure that Australia remains well informed of proposed changes, and that US officials are aware of Australian perspectives.

Proposed Reform to US "Dual National" Policy in its Export Control System and Australia's Anti-Discrimination Legislation

The Australian Government welcomes the United States Government's commitment to release a new policy towards so-called "dual nationals" as a key component of the US Administration's broader export control reform agenda. This reform has been an early and prominent aspect of the US Administration's reform of the US export control system. Currently, Australian companies undertaking work on projects involving controlled US defence technologies, or requiring access to US controlled technical data and detailed specifications, must adhere to the obligations in US export agreements and licences for controlling access to the technology and data.

The US Government controls access to US controlled technology and requires information on employees born in certain third countries who may have access to controlled information. This requirement potentially places Defence and Australian companies into conflict with Australian anti-discrimination legislation.

The Australian Government, and the governments of other United States allies, have been raising long-standing concerns with the US Government over the policy's inconsistency with anti-discrimination legislation.

The Australian Government responded to the release of a draft new policy in 2010 with formal comments, and followed these up in discussions with US officials. US officials have said that they are working on a final policy for release in the near future. While we will need to await the release of the final policy in order to comment, we are hopeful that the new US policy would reduce significantly the risk of legal challenge under State and Territory anti-discrimination law. Based on discussions between officials, we expect that the new rule will state that access to US technology will be dependent on an assessment of diversion risk rather than focussing on place of birth.

Defence will provide guidance to Australian industry on the new US policy. This will take the form of guidance only – Australian industry will need to ensure that it continues to comply with US policy on this matter. Defence has been consulting industry over the past few months on what the new policy will mean for industry. While industry has been supportive of the new policy in general, there remains some concerns about how industry – and especially small and medium sized enterprises - will be able to implement tests of "substantive contacts" to countries proscribed by the US export control system. Defence's guidance to industry will focus on this issue.

Once completed, the guidance will be published on the website of the Defence Export Control Office (DECO). DECO will continue to provide advice on the new policy to industry, as well as continue to consult with industry on the implications of other US export control reforms for Australian companies.

Multiple Moving Parts

The program of the US Administration to reform the US export control system, including the long-awaited amendment to its "dual-national" policy, are not the only significant changes underway that will impact on Australian industry's interaction with the US. The Defence Trade Cooperation Treaty will also be an important component. This Treaty will create a framework for two-way, licence-free trade in certain defence articles between Australian and US members of an "Approved Community". Further information on the Treaty can be found in DECO's information flyer, "Changes to Australia's Export Controls: The Defence Trade Cooperation Treaty (DTCT) and what it means for Industry".

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