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Administration Makes Needed Reforms in the Arms Export Control Process

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On March 6, 2007, the Coalition for Security and Competitiveness, which consists of eight industry associations, proposed a set of reforms in the process that regulates the export of armaments.¹ This proposal did not include any changes in underlying arms export control policies or laws but sought to make the existing policies more effective and efficient.² The proposal addressed real problems with the current system,³ which is largely a product of the Cold War and poorly suited to helping the U.S. win the war against terrorism.

On January 22, President Bush signed a directive that adopts many of the recommendations proposed by the Coalition for Security and Competitiveness.⁴ While the Administration works to implement these positive reforms, it should also lay the groundwork for more fundamental changes in U.S. arms export control policies.

How the Directive Compares with the Coalition's Recommendations. The Coalition for Security and Competitiveness proposed 11 specific reforms for how the executive branch manages the arms export control system.⁵ They were designed to be achieved through executive branch action and not to require legislative reforms. The following list describes the reforms proposed by the Coalition and explains how the Presidential Directive responds to each.

Proposed Reform #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 coalition recommended for inclusion were (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; and (5) preserving the defense industrial base.

The description of the content of the Presidential Directive released by the White House includes two opening paragraphs that largely confirm the principles outlined above. Thus, the Directive represents a careful balance between maintaining the necessary precautions to prevent the diversion of sensitive defense technology to potential enemies and an efficient arms export control process.

Proposed Reform #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 reform would be to coordinate more effectively the actions of the various agencies and departments managing the arms export control process.

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While the Directive does not establish the position of a new senior director on the National Security Council staff, it does establish a formal interagency dispute mechanism to permit the timely resolution of jurisdictional disputes between departments and agencies regarding licensing decisions. Further, the National Security Council is to undertake a review to make sure that the new mechanism is working properly. If the review finds that the mechanism is not working as well as it could, the option is open to create the position of senior director at a later date.

Proposed Reform #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.

The Presidential Directive does not establish this advisory group, which is the Directive's only real disappointment. This and future Administrations would benefit from a group outside the bureaucracy to provide them with a broader perspective on the complicated issues of export control policy and processes. The Bush Administration would do well to reconsider this proposal.

Proposed Reform #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.

The Presidential Directive promises additional resources to permit the timely adjudication of defense export license applications. While it does not specifically allocate resources to increasing manpower at DDTC, it is likely that at least a portion of the additional resources will go to that purpose.

Proposed Reform #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. The proposed reform seeks more vigorous oversight of the agencies and departments involved in the designation process.

The formal interagency dispute settlement mechanism described above will provide a process for establishing more consistent judgments about which commodities are defined as munitions and subject to ITAR. Clearly, the Bush Administration should work to insure that the dispute mechanism is used to forge more consistent standards.

Proposed Reform #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

1. 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. 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 export of "dual-use" products that have both military and civilian applications. This paper examines only the set of reforms applicable to arms exports.
3. Baker Spring, "A Step Forward in Reforming the U.S. Arms Export Control Process," Heritage Foundation *WebMemo* No. 1416, April 9, 2007, at www.heritage.org/Research/NationalSecurity/wm1416.cfm (January 25, 2008).
4. The White House, "President Issues Export Controls Directive to Reform U.S. Defense Trade Policies and Practices," Fact Sheet, January 22, 2008.
5. 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.

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.

Again, the interagency dispute settlement mechanism should provide a process for addressing the issue of how to categorize commercial aircraft components for the purpose of maintaining the munitions list. If the Bush Administration uses this mechanism to establish consistent standards regarding the commodities subject to ITAR, it should go a long way toward resolving the problem of commercial aircraft components.

Proposed Reform #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.

The description of the Presidential Directive released by the White House on January 22 states that it is designed to allow the government to respond more expeditiously regarding arms export-related decisions. This will likely result in streamlined procedures that are generally consistent with those described above.

Proposed Reform #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 interagency 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.

This proposed reform carried the risk that the appeals could slow the overall licensing process.

The Presidential Directive offers an alternative approach to achieving the same goal. Specifically, licensing managers could use the streamlined process to review past decisions regarding the categorization of the same or similar commodities as munitions to ensure consistent decision-making and to build a pattern of precedents for future decisions. Properly instituted, the procedure should reduce the need for a separate appeals process.

Proposed Reform #9: Provide advance notice to exporters of "intent to deny" and "intent to return without action" to allow adjustments in 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 the need to resubmit the entire application.

It is not certain from the description of the Presidential Directive whether the expeditious process it establishes will allow industry the opportunity to fix technical flaws or errors in licensing applications. On the other hand, this reform is not inconsistent with the Directive as it has been described. The Administration, therefore, should encourage the State Department, in executing the Directive, to afford industry this opportunity. Appropriately applied, this step should serve to increase the overall efficiency of the licensing process.

Proposed Reform #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 it more efficient. Industry is particularly interested in seeing these efficiencies applied to transactions that require congressional notification and review.

The description of the Presidential Directive states that it upgrades the electronic licensing system. As such, the Directive appears to be consistent with this proposed reform.

Proposed Reform #11: Establish specific timelines for the review, approval (or denial), and issuing of export licenses. Industry would prefer a quicker timeline with the following bench-

marks: Determinations requiring only the State Department are made within 10 calendar days; more complex transactions requiring review by several departments take no more than 10 days; the transmittal of a license application to additional departments takes no more than 10 days; the multi-department decision regarding the license application requires no more than 30 days; the State Department makes a final licensing decision no more than five calendar days following the completion of an interagency review. Thus, industry seeks a 55-day limit on even relatively complex license applications.

The Presidential Directive establishes a 60-day goal for decisions on license applications. Thus, it comes close to the reform proposed by the industry coalition.

Conclusion. President Bush's January 22 Directive adopts most of the reforms proposed by the Coalition for Security and Competitiveness last March. Thus, it represents a significant step forward in reforming the processes used by the State Department and other executive branch agencies to administer arms export laws and policies. While the

Directive is not the ultimate strategy for adapting to the post-Cold War world, it will make the arms export system more effective and efficient.

The new security environment, however, requires fundamental policy and legislative changes. The Directive addresses only how the executive branch operates the machinery of the arms export control system. It does not address how to achieve more fundamental goals, including targeting arms export restrictions, bringing U.S. friends and allies into the system in order to facilitate joint actions in the fight against terrorists, and accounting for the fact that defense procurements are increasingly dependent on an industrial base that cuts across national borders. While it works to implement the new Directive, the Bush Administration should start laying the groundwork for more fundamental changes in U.S. arms export control policies.

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