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The Obama Administration's Ambitious Export Control Reform Plan

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On August 31, the White House announced its plan to reform both the policy and process for controlling the export of militarily sensitive commodities and technologies.¹ It is clear that the United States's export control system is in need of reform. The current system is needlessly complicated and establishes counterproductive standards for controlling exports. As a result, America's allies find it difficult to work with U.S. government and industry partners to develop, procure, and ultimately operate advanced weapons systems in a cooperative fashion. Furthermore, U.S. industries can find themselves at a disadvantage in marketing their products to even close and reliable allies. Thus, the Obama Administration is correct in pursuing this reform agenda.

The plan announced by the White House is nothing if not ambitious. By proposing sweeping changes in both the policy for controlling militarily sensitive exports and the process by which that policy is executed, the Administration is attempting to fundamentally alter the export control system. Given the problems with the existing system, there is nothing inherently wrong with this ambitious approach. Nevertheless, it remains a distinct possibility that the White House is overreaching with its new plan and it will fail to achieve the simpler, more streamlined and efficient export control system it is seeking.

The White House's Proposed Export Control Agenda. The export control reform agenda has two basic elements. The first element concerns modify-

ing the policy for determining what commodities and technologies are subject to licensing requirements and other controls. The second element concerns how the federal bureaucracy will apply the new policy and operate the system.

Substantively, the policy changes will seek to integrate the two different control lists for controlling exports, one for munitions and the other for dual-use items. Under these changes, two lists will eventually be replaced with a single list that is divided into three tiers of commodities and technologies subject to controls based on their sensitivity.

Further, the items are to be categorized on the basis of "positive lists." This will build the lists on the basis of narrowing defined objective criteria, as opposed to broad and subjective criteria. The policy change is intended to "erect higher walls around the most sensitive technology." At the same time, the changes are forecast to result in significant reductions in the number of items on the munitions list and the number of items subject to controls more generally.

The organizational and procedural changes are designed to reduce the jurisdictional disputes that lead to slower, more confusing, and contradictory

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decisions regarding which items are subject to more strict levels of scrutiny and export controls. As a part of these organizational and procedural changes, President Obama is planning to sign an executive order creating an Export Enforcement Coordination Center that is designed to strengthen coordination and lessen gaps and duplication among the various federal departments and agencies involved in the export control process. Such action, however, risks just creating an additional layer of bureaucracy.

The Challenge of the White House's Ambitious Approach to Export Controls. At the foundation of the policy changes announced by the White House to the export control system is the idea that the tiered approach to building the positive lists of commodities and technologies to be controlled is a unified policy for producing simple, clear, and concise controls. Furthermore, these new controls would be able to properly account for the full range of countries that are affected and the full range of technologies.

Therefore, this unified policy would be capable of distinguishing between countries that range from the closest and most steadfast allies of the U.S. to its avowed enemies in terms of access to militarily sensitive technologies. Likewise, it is supposed to be able to categorize the full range of commodities and technologies—from the most advanced and sophisticated to the most established that should not be controlled in any way—according to sensitivity.

While this unified policy approach has a compelling logic and the Obama Administration deserves credit for attempting to rationalize the export control system in such a comprehensive way, there is no guarantee that this overhaul will be a success. The alternative is to adopt a bottom-up

and more discriminating approach to export control policy reform.

Such an approach acknowledges at the outset that different countries should be subject to different export control policies and that the specific restrictions to be applied to different countries will also vary accordingly. Even the White House has chosen to hedge its bets regarding the outcome of its unified approach by acknowledging that specific restrictions applicable to select countries like Cuba and Iran will continue.

The bottom-up approach is best represented by America's current arms trade treaties with Australia and the United Kingdom, both of which were signed in 2007.² These treaties would exempt these two reliable allies from export licensing requirements for the vast majority of defense exports. These treaties, however, have yet to receive consent by the Senate for ratification. The White House would be well served by continuing to hedge against an unsuccessful outcome in its unified approach by pressing the Senate to take up and consent to the ratification of these two treaties.

The Senate, for its part, may be less than fully comfortable with the Obama Administration's unified and comprehensive approach to export control reform. If so, it should appreciate the logic of the more tailored and discriminating approach to reform these treaties represent.

Congress Should Also Seek to Reform the Export Control System. As the Obama Administration advances its agenda for reforming the export control system, it will become more likely that its success will depend on Congress adopting supporting legislation. Congress should be working with the Administration now, well ahead of the immediate requirement for legislation, to fashion an effective

1. Press release, "President Obama Lays the Foundation for a New Export Control to Strengthen National Security and the Competitiveness of Key U.S. Manufacturing and Technology Sectors," the White House, August 31, 2010, at <http://www.whitehouse.gov/the-press-office/2010/08/30/president-obama-lays-foundation-a-new-export-control-system-strengthen> (September 6, 2010); press release, "Video Remarks by the President at the Department of Commerce Annual Export Controls Update Conference," the White House, August 31, 2010, at <http://www.whitehouse.gov/the-press-office/2010/08/30/video-remarks-president-department-commerce-annual-export-controls-updat> (September 6, 2010).
2. Baker Spring, "Defense Trade Cooperation Treaties with Australia and the U.K. Will Improve Security," Heritage Foundation *Background* No. 2107, February 8, 2008, at <http://www.heritage.org/Research/Reports/2008/02/Defense-Trade-Cooperation-Treaties-with-Australia-and-the-UK-Will-Improve-Security>.

tive reform of this system. The problems with the current system are real, and Congress cannot afford to ignore them.

A reformed export control system would protect the national security of the U.S. by blocking the transfer of advanced military technology to America's potential enemies, building working partnerships with its friends and allies, and maintaining a competitive defense industrial base. Thus, the advantages of a well-designed reform of the system

are as real as the problems with the current system. Congress would best advance these national security interests by developing a working partnership with the Obama Administration in reforming the export control system.

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