



The NAM Blueprint for a 21st Century Export Control Regime

The National Association of Manufacturers (NAM) supports the Administration's commitment to export control modernization and appreciates the opportunity to provide recommendations for the inter-agency review. The fundamental reform proposals set forward here are intended to complement the near- and medium-term recommendations we provided to the Administration earlier this year.

We believe the near and medium-term recommendations provided earlier this year are critical to improving the system and can be accomplished within existing legislative and regulatory structures. We also believe it is imperative that this review not only address immediate national security, defense industrial base, and manufacturing imperatives, but also lay a solid foundation for the future.

Near-term reform is critical to safeguard national security and a healthy defense industrial base, and indeed our broader manufacturing sector. Fundamental reform is necessary to create a system that will serve the needs of the United States well into the future. These are not mutually exclusive, and both are vitally necessary.

Modernizing the export control system is no small task, and it will take significant time to create a 21st century control regime. The NAM believes that fundamental reform will require significant review, collaboration, and political will and that it will take time to craft and implement a thoughtful, practical and rational regime. Thus, we urge the Administration to continue implementing near and medium-term reforms while also working towards a fundamental makeover of the system.

The following proposals related to fundamental long-term reform have been developed through an intensive member company-driven policy process involving NAM member manufacturers large and small and in all sectors of manufacturing.

Fundamental reform must be premised on creating an administrative structure that addresses the flaws of the current system and ensures that security and competitiveness are complementary by establishing a unified, focused, and dynamic control list; improving multilateral engagement; facilitating technological development and innovation; promoting industry and government collaboration; and ensuring that the export control system is responsive, flexible, proportional, measurable, and accountable to all key governmental and non-governmental stakeholders.

The NAM provides the following seven recommendations to create a 21st century export control regime.

Recommendation #1: Establish a permanent interagency team (similar in structure and composition to the interagency team formed in December 2009) to review and assess overall policy objectives and performance of the export control regime annually. This team should include representation from all government stakeholders – national security, intelligence, defense, foreign policy, commerce, innovation, and logistics – and should include mechanism to enable key external stakeholders in the business, labor, academic, and other NGO communities to provide input.

Recommendation #2: Co-locate technical experts from the Departments of Defense, Commerce, State, and other relevant agencies to create a new unified control list, determine foreign availability, create country control charts, and review levels of control. These experts should be engineers and industry-expert analysts who are fully up to speed on technology developments, technology life cycles from a global perspective, and who are available to the business community and other key external stakeholders for close consultation. Additionally, this team should be involved in the Department of Commerce “escalation process” to the NSC when required.

Recommendation #3: Create a unified control list with two chapters: one for munitions items and the other for dual-use items. The unified control list should be built around the following parameters:

- A zero-based review of controls with a focus on “building higher fences” around truly critical items and technologies as informed by an appropriate set of criteria, such as foreign availability and consensus security assessments
- Creation of uniform categories of control based on destination and end-users
- A common sense approach to classifying components of items on the list
- Re-defining how modifications to an item affect its classification
- Use of a common nomenclature such as the Harmonized Tariff system (HTS)
- Use of country controls to determine the level of control needed for exports of both munitions and dual-use items to all destinations subject to foreign policy concerns
- Use of sunset provisions to keep the list dynamic and current
- The results of an annual review and sunset of items or technologies on the Militarily Critical Technologies List (MCTL) that are no longer deemed critical to national security.

Recommendation #4: Improve Multilateral Engagement

- Create a G20-like forum to promote harmonization of export control systems and to drive for consistent implementation of standards across members. Suggested initial participants should include: the United States, Japan, Australia, Canada, EU countries, Brazil, India, China, and Russia
- Expand the role of the multilateral regimes by creating policy experts groups to work on harmonization among member countries and development of best practices
- Expand the role of technical experts within the multilateral regimes to perform global capability assessments to minimize control of technologies which are developed in and indigenous to countries outside of the regimes
- Work with regime members and key non-regime member countries to create consistent application of the lists at the international level to avoid different standards for licenses, conditions, review standards, validity periods, etc

Recommendation #5: Create a new licensing system built around a single electronic interface and a broad range of authorizations and exceptions that: takes advantage of auditable compliance systems implemented by trusted country partners, exporters, and importers; limits the use of transaction by transaction licensing; and imposes minimal administrative burdens on both government and industry. Key tools for this system should include:

- License-free authorizations for exports to allies and partner countries
- Expansion of license exceptions including an intra-company transfer (ICT)
- Expansion of the validated end user program
- Create a trusted exporter program (similar to the C-TPAT construct)
- Streamlined licensing to support USG programs involving allies

Recommendation #6: Review U.S. economic sanctions policy, with special attention to unilateral sanctions. No comprehensive review of the export control system would be complete without an assessment of how sanctions-related controls are applied. While industry understands the security objectives for which sanctions stand, a new export system should establish a framework for evaluating sanctions-related controls on a regular basis and whether the benefits of their imposition outweigh the costs. Specifically we propose:

- Creation of an uniform structure to reduce the complexity and improve compliance
- Moving trade controls administered by the Office of Foreign Asset Control (OFAC) to the Bureau of Industry and Security (BIS)

Recommendation #7: Change the trade controls culture and promote unified approaches across licensing agencies that properly balance national security and economic security imperatives. We understand that creation of a single agency to handle trade controls is being considered by the interagency team. Conceptually this could address some short-comings of the existing system. However, in practice such a structural change will be successful only if long-standing paradigms, approaches to control, relationships, procedures, and customs of existing agencies are changed. This will take a significant investment in training, teambuilding, and outreach, as well as establishment of meaningful metrics for measuring success. Changing this culture must be addressed before creating a new single entity.

If those concerns are effectively addressed, including the creation of a workable transition plan, and if progress is made on implementing the near and medium-term reforms, then it may be appropriate to discuss creation of a single *independent* agency to administer a modern export control regime built around the parameters set forth in this blueprint as well as the near and medium-term recommendations earlier submitted.

Conclusion

This blueprint is provided to the Administration's review to augment the previous recommendations submitted by the NAM. It is our strong belief that our near and medium-term reforms are compatible with the additional recommendations for fundamental reform provided in this document. We urge the Administration to continue implementing near and medium-term reforms while working towards a fundamental makeover of the system.