



U.S. Launches Review of Export Control Regime

Hong Kong Trader, 28 Aug 2009

A February 2009 hearing by the House Science and Technology Committee offered a glimpse of the potential changes that may be considered by Congress and the White House. Witnesses at that hearing emphasised that the current system puts U.S. companies at a disadvantage in the global marketplace and that reforms could play an important role in government efforts to promote economic recovery and national security. In order to fix what is viewed by experts as a broken system, retired Air Force Lieutenant General Brent Scowcroft recommended the creation of two administrative entities, possibly within the National Security Council, as a first step toward reforming the current export licensing system. The first entity would be a small co-ordinating centre serving as a "one-stop-shop" for all export licence applications. The chief role of this centre would be to determine whether the Commerce or State departments should handle the licence application and to then dispatch the application to the appropriate place for decision. The second entity would be an appeals panel, possibly composed of retired federal judges, to hear and decide disputes about whether export licences are required and whether particular decisions to grant or deny licences were made properly.

Scowcroft also proposed to apply "sunset" requirements to all items on U.S. export control lists, requiring annual determinations on whether removing controls on a specific item would present a substantial risk to national security. In addition, he is of the opinion that the administration of existing export control statutes (the Arms Export Control Act and the EAA) should assure the scientific and technological competitiveness of the United States for both national security and economic prosperity. Finally, Scowcroft backed the establishment of an economic competitiveness exemption that eliminates export controls on dual-use technologies where they, or their functional equivalents, are or soon will be available without restriction in open markets outside the United States. Scowcroft believes that President Obama should implement these recommendations through an executive order as early as possible. In fact, it is possible that some of the more significant and business-friendly changes to the current U.S. export control regime could be accomplished in such a fashion in order to avoid a protracted congressional fight that could paradoxically result in more stringent regulations.

The Coalition for Security and Competitiveness, a group of 18 international trade groups and associations, applauded President Obama's leadership in this area and expressed its support for "practical measures aimed at improving the effectiveness and efficiency of the export control regime." The coalition has requested a meeting with an appropriate senior advisor to discuss export control reform, including the recommendations it developed several years ago, and the White House has reportedly responded by offering to have new Undersecretary of State for Arms Control and International Security Ellen Tauscher meet with coalition members.

In a related action, the Bureau of Industry and Security recently issued a proposed rule that would update and clarify export and re-export licence requirements on striking weapons, restraint devices, shotguns and parts, optical sighting devices and electric shock devices. It would also add equipment designed for executions to the Commerce Control List.

The BIS notes that this proposal represents the first stage of an on-going review of crime control export licence requirements and policy and addresses relatively simple extensions, modifications or removals of items currently on the Commerce Control List or additions to that list of items that have a clearly identified crime control or law enforcement nexus. In one or more subsequent stages, the BIS intends to address more complex issues such as whether, and, if so, the extent to which biometric measuring devices, integrated data systems, simulators and communications equipment should be listed on the CCL; the degree to which software and technology related to commodities on the CCL should be listed and how they should be described; and general policy issues such as whether the range of destinations to which crime control licence requirements apply should be modified.