

FAST FACTS...

Export Control Reform

Background

The Arms Export Control Act (AECA) and the International Arms Trafficking Regulations (ITAR) require U.S. firearm manufacturers and distributors to obtain an export license for all small arms exports as defined in Category 1 (all firearms up to .50 caliber, other than non-combat shotguns the export of which is controlled by the U.S. Commerce Department) of U.S. Munitions List (USML). The export license process is administered by the Department of State Directorate of Defense Trade Controls (DDTC).

Export license applications with a value of more than \$1 million require congressional notification. The House Committee on Foreign Affairs and the Senate Committee of Foreign Relations jointly review the license applications. Once notified, Congress has 15 days to reject permit applications for NATO nations, Australia, Japan and New Zealand; and 30 days for all other nations.

The Committees require a “pre-clearance” process before they will accept notification. This pre-clearance process includes informal coordination with the committees. There is no time limit on “pre-clearance”.

The pre-clearance process and 15 and 30 day congressional action period, delay permit approvals for weeks and sometimes months. Some manufacturers have experienced delays of up to nine months in getting a small arms export permit.

The notification threshold was reduced from \$14 million to \$1 million in section 1205(a) of the Security Assistance Act of 2002 (division B of the Foreign Relations Authorization Act, Fiscal Year 2003; P.L. 107-228; 116 Stat. 1427). This reduction was done without hearings or an opportunity for industry comments. It was not based on any

threat assessment or perceived or actual abuse of the existing system.

Foreign governments and other entities are increasingly choosing to buy small arms from manufacturers in other countries, largely because of the delays in getting U.S. export licenses. Lowering the congressional notification threshold to \$1 million is having the opposite of its intended affect because most foreign countries have less stringent arms export and end user controls than the U.S.

U.S. Firearms Makers Face a Competitive Disadvantage

Foreign competitors use the lengthy and uncertain U.S. permit processes as a competitive discriminator when competing against U.S. manufacturers.

U.S. import/export data compiled by the U.S. International Trade Commission (ITC) reflects the tilted playing field U.S. firearm manufacturers face. In 2008, the last year for which data is available, 1.468 million pistols and revolvers were imported into the U.S. while exports numbered only 151,290. 2008 imports of rifles and shotguns were 1.093 million, and exports were 435,474.

Sales to foreign law enforcement, military or even civilian sales frequently require initial delivery within one to four months of contract award.

The short delivery periods stipulated in such contracts often preclude U.S. companies from competing for these awards because they cannot guarantee that an export license will be granted within the stipulated time period.

Specific examples of how the congressional notification process has limited the opportunity for American companies to compete for international contracts include:

One domestic manufacturer experi-

enced significant delays after submitting paperwork for a new distribution agreement through DDTC. The company’s distribution agreement with its international arm expired on December 31, 2004. In August 2004, the company submitted application papers for a new distribution agreement. In April 2005, DDTC instructed the firm to submit an amendment to their application. The congressional notification process took several months with a formal approval to the company arriving in August 2005—eight months after the expiration of the original Distribution Agreement and one year after the first paperwork was filed. The long delay resulted in severe damage to the company’s brand, lost sales, and lost profits.

In 2003 and 2004, the opportunity for domestic companies to compete to supply the police in Ecuador and Colombia with handguns was jeopardized when the contracting agencies amended the solicitations to state that the contracts would not recognize a delay in permitting as a force majeure and subjected the winning bidder to substantial fines if there were licensing/permitting delays.

On October 5, 2007, the Polish National Police issued a tender (CPV: 29631100-2) for 25,701 9mm self-loading pistols. The tender required delivery of the first 5,000 items within 30 days of the signing of the contract. Because the export licensing process takes more than 30 days, U.S. companies could not bid on this contract.

On December 21, 2006, the Ministry of Internal Affairs of Portugal released a tender (Public Tender NR. 02/CPI/2006) for up to 50,000 pistols. The tender specified that between 7,750 and 9,750 pistols must be delivered within five months of the contract start date, with deliveries of some units possibly required sooner. Again, because of the probable delays in obtaining U.S. export licenses, U.S. manufacturers could not compete for this business.

In March of 2008, a domestic manufacturer received an order from the U.S. Army for 7,500 pistols valued at \$2.265 million to be delivered to the Iraqi government. This order replaced the order of a foreign competitor who could not fill the order. On March 7, 2008, the manufacturer submitted an export license application for the pistols (case #050092728) to the Directorate of Defense Trade Controls. After numerous meetings and discussions between the manufacturer, the U.S. Army, DDTC, the House Foreign Affairs and the Senate Foreign Relations Committees, Congressional Notification was accepted on or about September 25, 2009 and the license was approved on October 27, 2008, nearly nine months after submittal.

Corrective Action Suggested

U.S. companies involved in manufacturing and exporting firearms and products covered under the USML agree that exports should be properly licensed. Our industry supports the strict oversight of the lawful export and sale of firearms and associated components. However, delays caused by the congressional notification process are costing the firearm industry lost international sales and that means U.S. jobs and tax revenue. We are urging Congress to:

- Restore the AECA's \$1 million congressional notification requirement to \$14 million for Category 1 small arms.
- Streamline the pre-notification / notification process so that companies can know within a time certain when an export licensing decision will be made.
- Implement the dual-use export control system to facilitate trade among reliable foreign customers while imposing additional scrutiny on foreign customers and nations that act contrary to U.S. foreign policy and national security interests.
- Increase DDTC's funding so that more personnel can be hired to expedite the export permit process.

Such changes would allow strict congressional oversight of U.S. firearm exports while leveling the playing field so U.S. companies, already governed by some of the most strict export regulations in the world, remain competitive against foreign competition.

Additional Recommendations for Export Control Reforms

While we look forward to engaging with the Administration and Congress in a dialogue about modernizing our nation's export control system as recently outlined by Defense Secretary Robert Gates, the firearm and ammunition industry urges Congress to immediately make the following badly needed reforms:

- **Registration Fee** - Increase funding for DDTC so that burdensome registration fees can be lowered. DDTC is required to be 75% self-funded (See National Security Presidential Directive #56, January, 2008). As a result, DDTC has imposed burdensome registration fees for all "manufacturers" of "defense articles" on the USML, which includes firearm and ammunition manufacturers, and component part manufacturers*, who are required by the AECA and the ITAR to register with DDTC even if they do not actually export. Export controls exist to protect national security and therefore should be funded with appropriated dollars, not a "user fee." For many small companies in our industry the registration fee is too costly. Many of the larger manufacturers find it difficult to contract out work to component parts manufacturers due to the registration fee and attendant ITAR recordkeeping requirements, particularly when they are not exporting anything.
- **Transfer Export Control of Sporting Firearms and Ammunition to the Commerce Department – Bureau of Industry Security (BIS)** – Sporting firearms and ammunition products are "dual use"



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products. Currently, only sporting shotguns are controlled by BIS under Export Administration Regulations (EAR) and on the Commerce Control List (CCL) with an ECCN classification. The commercial export of sporting firearms and ammunition to sportsmen and hunters does not represent a threat to U.S. national security. These products are widely available to sportsmen and hunters in foreign markets readily supplied by foreign manufacturers and suppliers, particularly European companies, against whom U.S. firearm industry companies compete. NSSF recommends moving sporting firearms and ammunition products off of the USML (Categories 1 and 3) and over to the CCL, except for the export of automatic firearms (which are not sporting arms) and the export to foreign law enforcement and militaries which would remain on the USML and controlled by DDTC. The BIS is better suited to control the export of "dual use" products. This change would save DDTC an estimated 4 man-years of time as Categories 1 and 3 licenses account for approximately 10% of DDTC workload. And, it would greatly streamline the export process for our industry. Importantly, it is consistent with and will assist in achieving the Administration's National Export Initiative (NEI) objective of doubling U.S. exports in the next five years thereby creating more jobs for Americans. In the post-Cold War era, the time has come for Congress to build "higher walls around fewer things" so that American companies can better compete in an increasing global economy while at the same time improving the ability to protect our national security and the security of our allies.

* Firearms and Ammunition, and components of, are "defense articles" listed on the USML under Category 1 and 3, respectively.

PROMOTE

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