

By David Hayes, Chairman of the Export Group for Aerospace and Defence (EGAD)

The history of US export control reform has been a long and, for the most part, unproductive one. There is, unfortunately, little to support any optimism that the current attempts, of which I am by the way an advocate, will result in the revolution which they seek to bring about. In fact, anything beyond a little evolution may be too much to expect.

That the current Administration has the will to make the changes is not in doubt; perhaps even a greater will than previous efforts, e.g. National Security Presidential Directive 19. The difficulty lies in the probable actions of both Congress and the Senate; particularly at a time when both chambers are as polarised as is currently the case after the healthcare reform legislation and with the 2010 midterm elections looming. Accusations of "Weak on national security" will be bandied about, both by opportunists and those with genuinely held concerns that any changes will be detrimental to US national security. My own view is that failure to make the changes will be of greater detriment but I am not an American.

That such reform would be welcomed by global industry is beyond doubt and is supported by the responses to a Department of Commerce survey into the adverse impact of US export controls on international trade, including significant input from the UK trade body EGAD, and the Japanese counterpart CISTEC.

Whilst it is claimed that all of the aspects currently envisaged can be achieved by Executive Order, recent history in this field is littered with cases where the original intentions have been thwarted. An example is the US-UK Defence Trade Cooperation Treaty; hailed by some as a huge breakthrough but in reality likely to be of little, if any, practical use to industry. When first aired, this was to have allowed a wide range of hardware and technology transfers previously requiring licences under ITAR to take place without such authorisations, subject to conditions. Exclusions, we were told, would be limited to two very sensitive areas of technology.

What we have is a Treaty, as yet unratified by the Senate, which contains a list of exclusions longer than a politician's expense claim and other conditions which render it practically unworkable. Despite these restrictions, and the fact that this is a bilateral Treaty with a close ally, the Senate has still raised concerns and not completed ratification. If evolution is so difficult; what chance revolution?

Some reform has been going on under the new management team in the Directorate of Defense Trade Controls (DDTC). For example, licenses and agreements are being turned around more rapidly and new arrangements are in place for foreign and dual-nationals of NATO/EU and other friendly nations. Whilst not addressing many of the anachronistic elements of the system referred to by Secretary Gates, these changes have improved things for industry. Ironically however there is almost an inverse relationship between these changes and the utility of the Treaty: the easier it becomes to obtain licenses/agreements which offer

more flexibility than does the Treaty, the less relevant the Treaty becomes, to industry at least.

If the reforms promised by Secretary Gates do materialise (full text here), they will have the potential to transform the international trade landscape beyond anything which most of us will have experienced. Whether the reforms will materialise and in what form remains to be seen but it should not be assumed as a given that whatever emerges from the reforms must necessarily be better than the status quo.

We had a politician in the UK once whose mantra was "Things can only get better": they couldn't and they didn't!

EGAD is the only trade body in the UK dealing with export control issues.
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