June 30, 1987

HOW EXPORT CONTROLS DEFEND THE NATIONAL INTEREST

INTRODUCTION

Recent revelations about the transfer of important militarily useful technologies from America's allies to the Soviet Union have highlighted the importance of the United States export control system. As the Congress this week considers trade legislation, including amendments to the Export Administration Act (EAA), which regulates technology transfer, it should keep in mind that tight restrictions on technology transfer are crucial to protecting U.S. security. The conventional military balance in Europe and elsewhere, for example, has been maintained by offsetting Warsaw Pact numerical advantage with the technological superiority of Western weapons systems.

National security export controls, first established at the end of World War II, have been a major factor in preserving the significant technological advantage of the defense systems of the U.S. and its allies. Today, however, the U.S. export control system is under assault. Some members of Congress, along with a small part of the business community, seem determined to loosen or eliminate many current controls on exports of militarily sensitive technology.

Undermining the Military Balance. In fact, recent technology slippage to the Soviet bloc, such as the newly discovered incidents involving Japan's Toshiba Machine Corporation and Norway's Kongsberg Vapenfabrikk, indicate that controls actually may need to be strengthened. If the export control system and the military balance which it supports are undermined, the U.S. either would have to increase defense spending dramatically to maintain the strategic and conventional military balance or accept Soviet bloc military predominance.

To assure adequate technology transfer controls, the Congress should:

1) **Make clear that the Defense Department** must have a strong role in the export control process to counter the Commerce Department, which naturally seeks to emphasize U.S. exports rather than U.S. security;

2) **Give the President clear authority** to restrict and regulate financial transfers, such as bank loans and other credits, to the Soviet bloc; and

3) **Give the President more authority** to promote allied cooperation in export control efforts. For example, the President should be given the authority to bar exports to the U.S. from overseas companies that have violated U.S. or CoCom export controls. The President also should be able to block or revoke U.S. government procurement contracts to companies in other nations that have violated these same restrictions. Finally, the President should be urged to pressure U.S. allies into giving their own defense ministries a much more prominent role in the export control process. Currently, almost all U.S. allies allow the trade ministries to dominate this process.

Few issues are as myth filled as is that of export controls. It is essential for U.S. national security that policymakers take a dispassionate look at export controls and go beyond the accepted wisdom. Such a review will reveal that current export controls actually need to be strengthened, not diluted.[1]

DETERIORATION OF CONTROLS

The Decontrol Campaign

Prior to World War II, U.S. export controls were instituted on an ad hoc basis against specified nations. As the Soviet threat emerged after World War II, the U.S. took multilateral and unilateral steps to control exports for security reasons: multilaterally, the U.S. in 1949 joined with Western European nations to coordinate export controls through the Coordinating Committee (CoCom);[2] unilaterally, the Export Control Act of 1949 gave the President substantial powers to restrict or prohibit trade with communist bloc nations.

During the 1970s, influenced by U.S.-Soviet detente, the statutes and their administration were relaxed to encourage greater trade with the Soviet bloc. Spurring these changes were the desire to further detente and the pressures from various private interests to promote the export of technologically sophisticated U.S. goods. In the Nixon, Ford, and Carter Administrations, meanwhile, low priority was given to national security export controls.

Western Trucks Invade Afghanistan . As the 1980s began, the consequences of weakened export controls began to appear. An April 1982 CIA report reveals that the Soviets had taken advantage of the detente period to obtain "vast amounts of militarily significant Western technology through legal and illegal means." Through these acquisitions, the report concludes, "the Soviets and their Warsaw Pact allies have derived significant military gains..., particularly in the strategic, aircraft, naval, tactical, microelectronics, and computer areas." Example: Moscow's acquisition of Western

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1. See: Juliana Geran Pilon and W. Bruce Weinrod, "Staunching the Technology Flow to Moscow," Heritage Foundation Backgrounder No. 292, September 23, 1983.

2. CoCom is the Coordinating Committee, an organization through which the NATO countries and Japan coordinate national security export controls.

equipment and technology "permitted the Soviets to systematically build a modern microelectronics industry which will be the critical basis for enhancing the sophistication of future Soviet military systems for decades." This sensitive transfer was sufficient to "meet 100 percent of the Soviets' high quality microelectronic needs for military purposes, or 50 percent of all their microelectronic needs."[3] A more dramatic example of Soviet use of Western technology, of course, was the trucks which carried the invading Soviet divisions into Afghanistan in 1979; they were manufactured in a plant designed and equipped by American and West European firms.

In September 1985, the CIA updated its report, stating that since 1982, "it has become even more evident that the magnitude of the Soviets' collection effort and their ability to assimilate collected equipment and technology are far greater than was previously believed."[4]

Compensating for Soviet Gains. The increases in U.S. defense expenditures this decade were required in large part to compensate for those Soviet advances made possible through the application of Western technology. A 1985 Pentagon report estimates this cost to Western defense budgets to be between $20 billion and $50 billion per year. The cost of offsetting, for example, Soviet gains in cruise missile defenses--improvements made possible by acquired Western technology--was estimated at $2 billion for the first year and $30 billion over time.[5] The U.S., in essence, is paying twice: first to develop the technology and second to offset Soviet bloc use of it.

The 1985 Amendments

Between 1983 and 1985, Congress conducted a tortuous review of the Export Administration Act, the law imposing controls on exports. This review culminated in a 1985 law further weakening controls and limiting presidential authority to enforce controls. Major categories of national security export controls were eliminated entirely: licenses could no longer be required for certain spare parts, and sophisticated though not state-of-the-art goods and technology could be shipped to any CoCom country without governmental review. Statutory time limits for reviewing export license applications were cut by a third overall; for exports to CoCom countries the exporter could assume license approval if he failed to hear from the Commerce Department within 30 days, regardless of the complexity of the application or the sophistication of the equipment. In addition, the President's authority to employ foreign policy controls was sharply curtailed and encumbered by elaborate procedures.

Closing Loopholes. On the other hand, the legislation also boosted in some respects the nation's ability to control its exports of militarily useful goods. The law, for example, created of the position of Under Secretary of Commerce for Export Administration. This elevates the prominence of export control operations and partially insulates them from the trade promotion operations at the Commerce Department.[6] All overseas enforcement authority, meanwhile, was assigned to the Customs Service, which has the resources, law

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3. "Soviet Acquisition of Western Technology," April 1982, reprinted in East-West Trade and Technology Transfer, Hearing before the Subcommittee on International Finance and Monetary Policy of the Committee on Banking, Housing, and Urban Affairs, United States Senate, 97th Congress, Second Session, Washington, D.C., 1982, pp. 23, 24, 31.

4. Soviet Acquisition of Militarily Significant Western Technology: An Update, September 1985, p. 1.

5. Office of the Undersecretary of Defense for Policy, Assessing the Effect of Technology Transfer on U.S./Western Security (Washington, D.C.: 1985), pp. E-5, E-6, and 4-8.

6. This provision of the 1985 amendments has yet to be implemented. While the provision was originally mandated for implementation by October 1, 1986, the Commerce Department obtained a one-year delay and has sought further delay or elimination of the position entirely.

enforcement background, and the intergovernmental arrangements to ensure effective tracing and interdiction of EAA violations. Various loopholes were closed that had been used to circumvent previous controls. Example: The Customs Service now has explicit authority to prohibit sales of sensitive items to the embassies of Soviet bloc countries.

Some executive branch actions, moreover, have served to strengthen the export control system. Budgetary resources, though still modest, have been increased significantly for the export control efforts of the Commerce and Defense Departments and the U.S. Customs Service, and each of these agencies reorganized their export control operations to enhance effectiveness: the Commerce Department upgraded and increased the visibility of its export control activities, the Department of Defense created the Technology Security Agency and upgraded its review process from a mere technical exercise to one that includes evaluation of security policy implications of technology transfers, and the Customs Service initiated its aggressive enforcement program, Operation Exodus.

Soviet acquisition of sensitive Western goods and technology is a continuing danger to the U.S. and its allies. The 1985 law and concurrent administrative actions only have begun redressing the deterioration of the U.S. export control system. U.S. intelligence agencies estimate that the Soviets each year spend at least $1.4 billion on clandestine technology transfer operations designed to foil U.S. and Western controls. This estimate does not include the activities of the Soviets' Eastern European allies or their open efforts to purchase Western technology.[7]

ISSUES BEFORE THE 100th CONGRESS

Concerns about the U.S. export control system are particularly relevant now. As a part of its consideration of trade reform legislation, Congress will be debating proposed changes in the Export Administration Act (EAA) which regulates U.S. technology transfer.

In the 100th Congress, several bills have been introduced to amend the Export Administration Act. With one exception, each of these bills responds to the trade promotion concerns that guided the detente era amendments. Some of the provisions that have been offered are designed not only to undermine the national security provisions adopted in 1985 but to take trade relaxation beyond proposals offered in the past. The one exception would give the President authority to control financial transfers to Soviet bloc countries and countries identified by the Secretary of State as supporting terrorism.

Specific Deadlines . The Administration has its own bill (H.R. 1155/S. 654) which would make several adjustments to the current export control system. It would provide specific deadlines for reviewing the question of whether a controlled item is already available to the Soviets from an uncontrolled source and should therefore no longer be controlled. It would begin to apply this concept of foreign availability to non-Soviet bloc countries, so-called West-West trade, where an expedited licensing procedure would be applied. A license allowing multiple exports without individual license review, so-called distribution licenses, would be authorized for exports to the People's Republic of China.

During congressional debate, a number of issues raised by this legislation will be considered, including:

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7. Soviet Acquisition of Militarily Significant Western Technology: An Update , op. cit. , p. 6. In comparison, the Department of Commerce was appropriated a record high $35.8 million in 1987 for export control activities.

Re-export Controls

Current law not only authorizes controls on exports from the U.S. or by persons subject to U.S. law, but also controls the resale or re-export of controlled items by their recipients. The U.S. views a re-export in the same way as it views an initial export, screening applications with respect to destination, proposed use, the possibility of diversion to the Soviet bloc, and so forth.

Opponents of re-export controls point to complaints by other nations that U.S. re-export controls are a violation of their sovereignty. They also contend that since CoCom countries promise to maintain comparable export controls, U.S. re-export controls are superfluous. Finally, opponents insist that because actual compliance with U.S. re-export controls is very low, the U.S. gains very little from such controls.

Terrible Fact. To be sure, Washington would not have to control the re-export of U.S. items from its allies if the allies actually were effectively controlling the re-exports. The problem is that they are not. U.S. allies' efforts have improved, but they remain uneven. No one seriously claims that CoCom control efforts measure up to those of the U.S. The terrible fact remains that U.S. security is undermined just as much if the Soviets obtain technology directly from the U.S. or from an American ally.

In fact, recent events demonstrate that re-export controls probably need strengthening. Just this month, it was revealed that two firms in CoCom countries have provided Moscow with what may be its most valuable Western technology bonanza ever. Toshiba Machine Company of Japan and Kongsberg Vapenfabrikk of Norway are believed to have sold directly to the Soviet Union technology that will reduce significantly the noise of Soviet submarine propellers. Since propeller noise is one of the principal methods of submarine detection, this transfer will erode dangerously the ability of U.S. and NATO forces to detect and monitor the movements of Soviet nuclear missile and attack submarines.

The Oslo newspaper Arbeiderbladet reports that, as a result of this Soviet gain, the range in which the West is able "to locate and identify cruising Soviet submarines has fallen from 100 nautical mile to 5 nautical miles."[8] Upon learning this, former Assistant Secretary of Defense Richard Perle told the House Committee on Foreign Affairs' International Trade Subcommittee, "the end result of that capability now in Soviet hands is that numbers of American military systems...will have to be upgraded at enormous expense, in the hundreds of millions immediately and over the long term in the billions, and the benefit of those two companies in CoCom countries was a handful of pennies."

Weakness of Allied Efforts. This example highlights the weaknesses in the control efforts of U.S. allies. To be sure, the Japanese maintain a control list similar to Washington's. The problem is that Tokyo is reluctant to impose any felony penalties on violators of export controls. And a company Toshiba's size easily can absorb the civil fines the Japanese government might impose for export control violations. In the Toshiba/Kongsberg case, moreover, Tokyo dragged its feet for two years before following up on the information that illegal shipments were taking place.

Without U.S. controls on re-exports of U.S. items from CoCom countries, and the U.S. penalties that violation can bring, many more sensitive items would find their way into the Soviet bloc. While the enforcement efforts of CoCom countries have improved in the last

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8. Halvor Elvik, "Kongsberg Had License," Oslo Arbeiderbladet, March 24, 1987, p. 6.

five years, they clearly have not done so enough for the U.S. to rely on CoCom countries to defend U.S. national interests.

Role of the Defense Department

The Export Administration Act provides an essential role for the Department of Defense in the national security export control process. This includes participation in formulating the list of items to be controlled, formulating control policy and regulations, assessing the national security impact of proposed export control policies, and reviewing applications for export licenses.

Opponents of Pentagon participation in the control process are concerned that this inhibits legitimate trade and have sought to weaken its role. They argue that it adds an extra layer of bureaucracy that slows the process of obtaining approval for the sale overseas of many products. This, they say, in turn reduces U.S. global competitiveness.

Essential Pentagon Role. What this argument ignores is that the Commerce Department lacks the resources and perspectives to carry out the national security purposes of the Act. The Pentagon's participation thus is absolutely essential. In a recent report, an industry and private sector panel under the auspices of the National Academy of Sciences, while hostile to Defense Department participation in the national security control process, observes that it was the Defense Department's "determined efforts to reinvigorate the national security export control regime [that] have been useful in raising the general level of awareness in the United States and in other CoCom countries."[9]

Size of the Control List

Under the EAA, the Commerce Department maintains a list of "goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States."[10] This Control List corresponds to the lists of controlled items maintained by all of the members of CoCom.

The list contains hundreds of items. Some critics argue that the list is too long and that it controls items representing relatively old technology that do not need to be controlled. Critics also assert that paring the Control List would enhance enforcement of the remaining controls, while reducing the burden of export licensing on American exporters.

The length of the Control List, however, is irrelevant. The question should be whether the list, whatever its length, contains those items that will enhance the military capabilities of America's adversaries. Those calling for a reduction of the Control List have not produced a list of specific items to be removed.

There are various legislative proposals to reduce the control list. To cut the list arbitrarily, however, would allow U.S. products and technology to be exported to the Soviet Union and its allies that will bolster their military potential.

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9. National Academy of Sciences, Balancing the National Interest: U.S. National Security Export Controls and Global Economic Competition (Executive Summary) (Washington, D.C.:, 1987), pp. 20, 27. The panel was made up exclusively of individuals from industries likely to gain from reduced export controls, university administrators, and officials from previous Administrations either hostile to the current Administration and/or who presided over the deterioration of the export control system.

10. The Export Administration Act of 1979, Section 3(2)(A).

Emergency Trade Controls

In addition to the Export Administration Act, the President retains authority to control exports in emergency situations under the International Emergency Economic Powers Act (IEEPA). This includes authority to control exports for both foreign policy and national security reasons. Jimmy Carter relied on this authority to freeze Iranian assets during the hostage crisis. Ronald Reagan used this authority in 1984 and 1985 to maintain national security and foreign policy export controls when congressional impasse prevented a timely renewal of the EAA. The recent Libyan controls are a good example of when controls served both national security and foreign policy purposes.

Critics of the recent use of IEEPA to impose trade controls assert that the President has used this authority to get around EAA restrictions on presidential export control. They claim, for example, that the President used the IEEPA to avoid the EAA requirement that foreign policy controls, such as those placed on Libya last year, cannot void existing contracts.

The President indeed may have relied upon his IEEPA authority to avoid the EAA restrictions. But this merely confirms the EAA's inadequacies in this area.

Controls on Financial Transfers

The EAA authorizes the President and the Secretary of Commerce to control financial transfers to Soviet bloc countries. Neither the President nor the Secretary of Commerce has used this authority to date. Because of this and because of the substantial capital transfers to the Soviet Union and its allies, there are now proposals for legislation strengthening presidential authority to control financial transfers to countries posing a threat to the U.S.

Those proposing such controls argue that the Soviet Union, with its chronic shortage of hard currency, would not be able to carry out its full program of acquisition of Western goods and technology, support for client regimes, and supply of insurrectionary movements worldwide were it not for funds obtained from the West. They contend that the President should have and exercise authority to control financial transfers that undermine U.S. national security and foreign policy. Thus, legislation has been introduced that specifically would empower the President to restrict or regulate transfers of money or credits by U.S. financial institutions to Soviet bloc nations.

Financial transfers can have as profound an effect on U.S. interests as can the transfer of certain goods and technologies. In addition, financial controls can complement efforts to control goods and technologies by limiting the Soviets' purchasing power; even smugglers must be paid, and few of them will accept rubles.[11]

THE MYTHS OF CONTROL RELAXTION

Several myths have figured prominently in the efforts to relax or eliminate national security export controls.

11. See Roger W. Robinson, Jr., "East-West Trade and National Security," Heritage Foundation <u>Lecture</u> No. 50.

Myth No. 1. There is so much cooperation that controls on any nation other than those of the Soviet bloc is unnecessary.

Neutral states, such as Sweden and Switzerland, are increasingly cooperating with CoCom controls. CoCom, meanwhile, has updated joint controls on computer hardware and software and is reviewing on a continuing basis controls on other sensitive exports.

The reality, however, is that international cooperation remains insufficient. Sensitive U.S. exports to Western Europe or Japan still find their way to Moscow. Several CoCom countries do not have adequate enforcement resources to counter Soviet bloc acquisition efforts. Others, such as Japan and West Germany, are reluctant to impose felony penalties for violations of controls.

Myth No. 2. Export controls are driving U.S. high technology companies out of business.

In reality, the numbers of allegedly lost sales are greatly exaggerated. In 1984, the last year for which figures are available, the U.S. denied for national security purposes less than three one-hundredths of one percent of all exports.[12] In fact, a high technology company's growth in export sales, limited as it supposedly is by export controls, often outpaces its growth in the domestic U.S. market, where export controls are not a factor.

Myth No. 3. The Soviets are too backward to use U.S. technology.

This focuses solely on the Soviet civilian economy, which is backward by Western and even by some Asian standards. By contrast, the Soviet military economy efficiently absorbs advanced technology. Western intelligence estimates that efficiencies in the military sector allow the Soviets to place a new technology on the battlefield in half the time that it takes the West to do so.

Myth No. 4. The Soviets are so far advanced that they have little to gain from U.S. technology.

This too is wrong, otherwise Moscow would not be waging its massive effort to obtain Western technology. The Soviets do not have a civilian economy that generates innovation. Much of the technology in Soviet weapon systems has been traced directly to the private sector in the West. Where the Soviets are advanced is in applying the technology they have acquired.

Myth No. 5. Technology should be controlled, but not products.

The reality is that in many cases the product is the technology. This is true for computers, machine tools, scientific and diagnostic equipment, and other equipment that can be used to design and produce other high technology products. The Soviets, moreover, have moved away from a policy of what is called reverse engineering--duplicating and manufacturing for themselves advanced Western equipment. That policy doomed them to be forever at least a generation behind the West. Instead, they now seek whenever possible to obtain, in quantity, the actual Western hardware.

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12. Applications for \$58.2 million of U.S. exports were denied for national security reasons in 1984. See, the United States Department of Commerce, <u>Export Administration Annual Report FY 1984</u> (Washington, D.C., 1985), p. 32. U.S. exports in 1984 were \$219.9 billion. See: <u>Economic Report of the President</u> (Washington, D.C., 1987), p. 360.

Myth No. 6. American businessmen are patriotic and would not sell sensitive goods and technology to the Soviets, even if allowed.

This surely is true 99 percent of the time, but not all the time. The Soviets have been able to identify individuals and even American firms which close their eyes to U.S. security needs in return for Moscow paying attractive prices. Even those businesses careful to comply with control laws would be subject to pressures from their sales offices, and those companies that choose to strictly restrict technology would be at a disadvantage in competing with those allowing looser controls.

Myth No. 7. U.S. businesses are so worried about keeping technology from competitors that export controls are not needed to keep them from sharing technology with the Soviets.

The truth is that firms often treat their technology and products as assets to be sold for the right price. Billions of dollars are earned each year by companies selling patent rights. If commercial fears do not prevent U.S. companies from selling technology to the Japanese, why should such fears discourage sales to Moscow?

Myth No. 8. The U.S. does not need to control exports to Eastern Europe as rigorously as to the Soviet Union.

The Eastern European regimes carefully cultivate this perception. The fact is that their intelligence services cooperate closely with the Soviets. The "liberal" Polish and Romanian services, in fact, may be the most cooperative.

Myth No. 9. It is impossible anyway to keep sensitive goods and technology out of Soviet hands.

It is impossible to prevent all militarily relevant technology from reaching Soviet hands forever. But it is both possible and desirable to raise the costs and difficulty to Moscow of efforts to obtain such technology and to prevent current generation technology from reaching the USSR. By doing this, the West can assure that it always remains at least a technological generation ahead of Moscow. Given NATO's quantitative inferiority in the conventional military balance, maintaining NATO's qualitative edge is the only way to deter Soviet aggression or defeat it should it occur.

CONCLUSION

U.S. export control laws should be strengthened by:

1) **Giving the President** additional tools to enforce export controls and to encourage increased cooperation from America's allies;

2) **Requiring that adequate resources** be devoted to the administration of export controls by the Commerce and Defense Departments, particularly in view of the establishment of the position of Undersecretary of Commerce for Export Administration;

3) **Filling the existing gap** in the President's control authority by reemphasis of his authority to control financial transfers to U.S. adversaries.

If the U.S. seeks to be secure, it must choose between the costs of an effective export control system and dramatically increased defense spending. If the U.S. is not going to maintain its technological edge, then it will have to balance the Warsaw Pact in numbers. The Israelis, who rely on Western arms against overwhelming numerical odds, have shown that the technological edge can make the essential difference on the battlefield.

Progress has been made in slowing the flow of sensitive goods and technology to the Soviets but more can be done. Congress should reflect on the comments made in 1980 by the late Senator Henry Jackson that a strong export control policy "is vital to safeguard our national security interests. It is also essential if we want our friends and allies to take us seriously when we ask for their cooperation."

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