
Defense Trade Controls

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As you know, today the United States and other high technology countries are targeted by proliferators and terrorists seeking equipment and technology for weapons of mass destruction, missiles, and conventional weapons. It is clear that combating the twin threats of terrorism and proliferation will be one of the central tasks of the new century. There could hardly be a more dangerous security scenario for any country in the world than the combination of bad actors and bad materials. All our energies must be bent to prevent this sort of situation.

Enemies of modernism and open societies are on the move. They are constantly changing their tactics, locales, modalities, technologies, command structures, and methods of procurement. Their contemptible operations extend from the Twin Towers in New York City to Madrid, Casablanca, Istanbul, and Bali. Every day on our television screens we see the handwork of this enemy, targeting innocent civilians in the hopes of disrupting those countries' progress toward a democratic and peaceful future. And of course the fact that we are meeting here today in the great city of London reminds us of the brutal attacks on the public transportation system that took place on July 7, 2005.

We know these adversaries want access to our defense technology so they can use it against us. We know this because of intelligence information and enforcement efforts.

- This year, two Iranians, Mahoud Seif and Shahrazed Mir Gholikhan, were indicted in a U.S. court and convicted in an Austrian court for attempting to smuggle Generation III night vision goggles to Iran. A third suspect is still at large. This operation was an exceptional example of cooperation between U.S. and Austrian law enforcement authorities.
- This year, dual Lebanese-Canadian citizen Naji Antoine Khalil pled guilty in a U.S. court to attempting to export night vision equipment and infrared aiming devices to Hizballah.
- This year, Colombian citizen Carlos Gamarra-Murillo pled guilty in a U.S. court to brokering and exporting defense articles without a license. The weapons he was trying to export were destined for the Revolutionary Armed Forces of Colombia (FARC), in exchange for cash and cocaine.

We are here today at this conference to talk about export controls, which are nonproliferation in action. They are our first line of defense in denying our enemies the access to the weapons they would turn against us. And export controls are a very cost-effective tool.

Let me give you but one pressing example: One of the responsibilities of the Bureau of Political-Military Affairs, of which I became Assistant Secretary last month, is to conduct a program to destroy Man-portable Air Defense System (MANPADS) to keep them out of terrorist hands. So far, this program has resulted in the destruction of 14,000 MANPADS systems, and we have agreements in place with other countries to destroy 10,000 more. And as you know, the United States and other countries are considering deploying counter-MANPADS systems on civil aircraft to protect them against the proven terrorist threat.

How much more effective in terms not only of dollars, pounds sterling or euros, but also in terms of human lives would it have been to have exercised responsible export controls in the first place and kept these weapons out of the hands of our enemies?

The people in this room, like myself, probably spend more time on airplanes than do paperback novels. We should care. Now, nobody is more aware than this audience of the many considerations that must guide our defense export control decisions in the U.S. There are issues of defense cooperation and alliance interoperability. There are issues of globalization and the defense industrial base. But, let me be absolutely clear: while all these factors and others are part of our decision-making process, the polar star that should guide all our export control decisions in a world at war must be national security. This is the leg of our export control stool that can never be compromised.

As many of you are aware, the U.S. Congress is particularly concerned with making sure that national security concerns drive our thinking about defense trade. Indeed, the Congress has been very critical at times of administration efforts to rethink the defense trade calculus in the past few years.

In response, some critics have said that the U.S. Congress does not fully appreciate the need for international defense cooperation and especially for an alliance-leading, coalition-seeking America to share defense technologies with allies in the war on terrorism.

I think this is a misreading of the political currents in America and an unfair assessment of how our legislature is viewing these issues. Even the Congress' most critical assessment of administration defense trade control proposals expressed support for deepening defense cooperation with "two of our closest allies" and explained that the appropriate committees would consider other appropriate ways to facilitate bilateral cooperation. So I think it would be a mistake to characterize the debate in the U.S. as between an administration bent on loosening defense trade controls and a Congress not cognizant of the pressing operational need for defense cooperation. Either of these observations would be a caricature of the truth. There will be no loosening of national security considerations on my watch and I also feel confident that Congressional leaders will take up the cause of defense cooperation if presented to them in that context.

Our legislative bodies are keenly aware that within the uncompromising context of national security there are ways to promote defense cooperation and interoperability among allies and coalition partners. They know this because they know that America is in the alliance and coalition building business. Today, more than thirty countries are contributing military forces to the Coalition in Iraq. Over forty, many of them the same countries, are serving in Afghanistan. The North Atlantic Treaty Organization (NATO) is undertaking robust out-of-area operations ranging from Afghanistan to Africa even earthquake relief in Pakistan. For all the mistaken labeling that the U.S. gets from some quarters as a unilateralist country, nobody knows better than we how much we need our allies and coalition partners. And those allies and partners need access to military technology so they can operate effectively against our common enemies and do so in a way that makes joint Coalition operations viable. And that means defense industry cooperation, across borders and across continents.

Some of those countries are the same long-standing allies that I soldiered with when I was patrolling the Inner-German border when the Berlin Wall fell sixteen years ago. Here our United Kingdom (U.K.) hosts deserve pride of place. Some are the new NATO members, like Poland, Romania, Estonia, Latvia and Lithuania. But some are also relative newcomers to the Coalition of the Willing. El Salvador has 1100 soldiers in Iraq. And who would have predicted even a few years ago that U.S. soldiers would be fighting in Iraq alongside contingents from Albania, Georgia, Azerbaijan, and Mongolia?

If defense cooperation is to be successful, it is imperative that shared technology does not fall into the hands of those who would use it against us or our friends and allies. Defense export controls are an integral part of our broader security agenda, whether it is the global war on terrorism, preventing the spread of weapons of mass destruction, or bolstering regional stability around the globe.

Never has this mandate of defense trade controls, which has fallen to the Department of State since 1935, been more important to U.S. national security and that of our friends and allies. All

U.S. arms transfers under the foreign military sales (FMS) program are subject to the approval of the bureau that I lead. In addition, the export of U.S. defense articles and services under license is regulated by our bureau's Directorate of Defense Trade Controls.

Never has this mandate been more challenging to carry out. The strategic environment of the 21st Century has grown more complicated and more sophisticated. Technology changes far more rapidly than the regulatory regime. Globalization challenges borders and laws made in another time. There is a revolution in military affairs and a revolution in strategic affairs with modern militaries focused less on defense of territory and more on power projection, networked warfare, and counter-terrorism and counter-insurgency operations. We in the Political-Military Bureau have responded to this environment and its challenges in several ways.

First and foremost, we've responded to these complexities in part through more aggressive compliance efforts. In fiscal year 2005, we more than doubled the number of U.S. companies contacted in the Compliance Visit Program to review their internal compliance procedures. I might point out that during this period, there were seventy arrests and sixty criminal convictions (up from forty-five the previous year) for violations of the *Arms Export Control Act* and the *International Traffic in Arms Regulations*.

Where the export control sins aren't sufficiently serious to require criminal prosecution, we can resort to civil enforcement actions. Last fiscal year we concluded four new consent agreements that imposed monetary penalties that totaled \$35 million. While these fines are highly visible, these consent agreements also impose remedial compliance measures that help industry do a better job of complying with the regulations in the future.

In short, we are not just about large monetary penalties. We also encourage industry to self-report violations uncovered by their internal compliance programs, and last year we received 396 of these voluntary disclosures, more than one a day, every day, including Christmas. In addition to fostering industry's commitment to self-compliance, this program has also allowed us to learn of problems more quickly and address national security or foreign policy problems created by these violations. We also conducted more than 500 pre-license and post-shipment checks under our Blue Lantern program, and in eighty of these checks we uncovered information that did not quite square with the license application.

For example, we recently did a pre-license Blue Lantern investigation to establish the bona fides of a transaction for satellite components that were supposedly going to be used in a scientific experiment by a professor at a university in Asia. The Blue Lantern check established that there was no professor by that name at the university, and that the university itself had no satellite-related program. It was essentially a medical school. Needless to say, the license was denied.

Second, we have worked hard to ensure that our defense trade controls are timely and nimble enough to meet the urgent needs of our battlefield allies. To do this, we have instituted an expedited licensing procedure for the urgent needs of our Coalition partners in Afghanistan and Iraq. In fiscal year 2005, 768 licenses were handled under this expedited program, and the median processing time for these cases was seven calendar days. The American participants in this conference will confirm that there is not much more that you can expect from the U.S. federal government in a week.

Third, the nature of international defense trade has grown infinitely more complex. More and more we find it shifting toward direct commercial sales as U.S. and foreign defense companies seek to form international partnerships. In the last three fiscal years, applications to the PM Bureau for arms export licenses have grown at eight percent per year, and during the fiscal year that just ended, the Directorate received more than 65,000 export applications of all types. And every party to each of these transactions, not just the exporter and the recipient but everybody in between, such as freight

forwarders and shippers, is checked against a watchlist with more than 100,000 names of suspect parties.

One step we have taken to meet this growth is our new system for fully electronic defense trade, which is making our export licensing process faster, simpler, and more efficient. Today, D-Trade can be used for licenses for the permanent export of unclassified hardware, and about 15 percent of all license applications are received through the new system. License processing times for D-Trade cases are half those of paper licenses. Over the next year, D-Trade will be expanded to include all other export license applications, including agreements, as well as commodity jurisdictions and several compliance functions.

Not only has defense trade become more complex, but the nature of what is being exported has become more sophisticated as well. For the most part, “defense articles” used to mean weapons themselves and their component parts. But today the most sensitive defense exports don’t necessarily go “bang.” Exports of night vision equipment, for example, are treated with particular care. As someone who spent a good portion of the 1990s in the special operations world, I know how important it is for U.S. forces and our Coalition partners to “own the night.” Staying abreast of the technology environment is a challenge in itself. This is particularly true for the role that information technology plays in our defense. I am very aware of this phenomenon, having lead three information technology companies and sat on the boards of several others. For example, the Joint Strike Fighter combat effectiveness relies on integrated software far more than any previous U.S. fighter aircraft, such as the F-16.

Another trend we face is in the nature of the export applications. Although the majority of applications are for hardware, the most important and complex cases are for defense services, including the export of technical data instead of hardware. The Joint Strike Fighter program is still in its Systems Development and Design phase, but we have already approved hundreds of Technical Assistance Agreements worth several billions of dollars. In Fiscal Year 2005, we authorized the export of \$28 billion in defense services, compared with \$29.5 billion in defense articles.

Related to this is the challenge of controlling the export of defense technology by “intangible” means, including by e-mail, fax, or Internet. In the 21st century, no country can claim that it has a modern or effective export control system if it does not control intangible transfers. For example, almost all the work being done on the Joint Strike Fighter is being transferred electronically, through a Virtual Private Network. The security of such networks is critical to the companies involved. But governments also have to have the legal and regulatory authority to control the export and re-export of the technical data that travels over these electronic networks.

Casting its shadow over each of these trends is the impact of globalization in the world economy, including the defense industry. Until recently I was President of the U.S. subsidiary of an international corporation in the information technology field that was cleared to do classified work for the U.S. government. We had to maintain an arms-length relationship with our parent company under rules established by the Pentagon’s Defense Security Service. We maintained a separate board of directors with security clearances and had a government security committee of the board to ensure that the firewalls between my subsidiary and the foreign-owned parent were robust and monitored. Under certain circumstances, our company had to have a license to discuss technical data with officials of the parent company. This added some layers of complexity to an already complex business, but it was necessary, and it is an example of how we have tried to accommodate globalization trends to the over-arching requirements of national security.

Another example: in 1999 BAE Systems established a North American entity, which is now called BAE Systems Inc. and is the 6th largest supplier to the Department of Defense. This year, BAE Systems Inc. acquired United Defense which itself had acquired Bofors in Sweden in 2000. Thus, the North American subsidiary of a British defense company is now itself the owner of a Swedish defense

company. And Peter Lichtenbaum and I as regulators have to deal with the export control issues that such relationships create.

Similarly, transnational development of new defense systems or capabilities within structures such as the E.U. pose challenges to our regulatory regime. Projects whose development spreads across the Continent may require multiple licenses and agreements to govern the flow of U.S. defense articles and technical data. But we are committed to making that flow as smooth as possible once again, within the context of national security.

Given the increasingly global nature of defense trade, a key element of our defense export policy is to strengthen international export controls, which is also a major pillar of our broader nonproliferation policy. Our colleagues in the Bureau of International Security and Nonproliferation work closely in the multinational export control regimes, including the Wassenaar Arrangement, to develop effective international export controls. I mentioned our efforts to address the MANPADS threat earlier in this speech, and Wassenaar has done some useful work on MANPADS controls. In addition, we have invested heavily in helping other countries bring their export control systems in line with international standards.

While much of our work is aimed at meeting the threats posed by emerging challenges in the area of terrorism and nonproliferation, we also scrutinize potential defense exports for their effect on regional stability. And so we must recognize that international defense trade controls is not simply dependent on complementary regulatory regimes, but on common perspectives about security threats. Even if there was an extraordinary and unimpeachable commonality in national defense trade control systems around the world, it could be irrelevant in the face of profoundly different approaches to some security challenges. I certainly do not mean to imply that we should all feel the same way about every strategic issue in the world, but there should at the very least be an appreciation and respect for each others perspectives on security issues that may be closer to home for some than for others. In that regard, I want to offer our perspective on the E.U. embargo on arms sales to China. President Bush and Secretary Rice have made clear to our E.U. friends at the highest possible level our strong opposition to the possible lifting of the E.U. embargo. So have other regional states, including Japan.

The United States strongly welcomes the efforts of the European Union to improve its *Code of Conduct on Arms Transfers*, whose normative criteria strongly resemble those of the U.S. *Conventional Arms Transfer Policy*. However, we do not believe that even a strengthened *Code of Conduct* is an adequate substitute for the E.U.'s China arms embargo.

As we have pointed out in our discussions with our E.U. colleagues, the European Union's own public reports on arms transfers show that some E.U. member states currently approve arms transfers to China under both the embargo and the *Code*. Indeed, E.U. data show that those member states approve more licenses for China than they deny.

This does not provide us a strong feeling of confidence that the *Code of Conduct* alone without an embargo would be an effective guarantee that lifting the embargo would not result in a qualitative or quantitative increase in E.U. arms transfer to China, as the European Council said in December.

I want to leave our European friends in no doubt that if the E.U. lifts its embargo on China, this will raise a major obstacle to future U.S. defense cooperation with Europe. In addition, there is no doubt as to the strength of Congressional feeling on this issue. I think we can count on it: should the E.U. lift its embargo, the U.S. Congress will legislate.

This is of course not where we want to go. We want our defense cooperation with our European friends and allies to increase. I am encouraged by the U.S. and E.U. strategic dialogue on East Asia, including China, and I hope it leads to an appreciation and respect for the various positions of the parties, especially those who have tens of thousands of service members carrying out the day to day tasks of security in that part of the world.

In closing, I believe the context for the thoughts I have offered you this morning can be summarized in three fundamental principles. First, because of the threats to America and her allies and partners, even in the globalized world, national security can never be compromised and must take precedence over considerations in the defense trade calculus. Second, because it is absolutely necessary today for nations to fight together to combat the threats to their common security we must work harder to find politically digestible ways to spur defense cooperation among trusted allies. And third, in order to do this, the military forces of partner nations must be interoperable and capable, which places a premium on sharing of defense cooperation, and I cannot emphasize this enough on the protection of defense technology.

As I take up my duties in the Department of State, I will heavily invest my personal energy and leadership in continuing to ensure that we have even more efficient systems and processes in place to safeguard U.S. defense technology, while at the same time allowing the governments and defense industries of our respective nations to cooperate on behalf of security, stability, and the spread of democracy throughout the world.

I will close my remarks with a quotation from Sir Winston Churchill, an honorary American citizen who also has some connection with our British hosts. Churchill, a man who was visionary and pragmatic all at once, might have been talking about export controls when he said: "It is a mistake to try to look too far ahead. The chain of destiny can only be grasped one link at a time." Just so. Let us go forward in all our various capacities and try to frame common solutions to today's great threats in ways that are achievable and sustainable.