Export Controls and Non-proliferation Regimes in the Post-Cold War World

By

Lynn E. Davis
Under Secretary of State for International Security Affairs

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The international security environment has undergone tremendous change over the past few years. The United States is faced today with an entirely new set of threats and opportunities. As a result, the need to revamp our export control system has taken on a new sense of urgency. I would like to take this opportunity to address the question of why the United States will continue export controls in the post-Cold War world and introduce how our draft Export Administration Act contributes both to the economic security of Americans and our non-proliferation goals.

In the past, we and our allies had a clear understanding of the need for export controls. The Warsaw Pact countries, as well as other communist countries, posed a serious and clearly defined threat to the United States and to the West generally. We undertook to deny them access to weapons, dual-use items, and technologies. We and our allies agreed upon procedures for controlling exports to these destinations, including allowing for any nation to veto a specific export.

Now we face a very different threat. There are still serious dangers, but there are more uncertainties. The spread of weapons of mass destruction and sophisticated conventional arms is perhaps the single most important security threat. The demand for such weapons remains high, as in Iran and Libya. With the collapse of the Soviet Union, the New Independent States in Central and Eastern Europe have new commercial incentives to expand trade in arms and sensitive dual-use items. In many cases, they also inherit weak control systems.

Our export control system for the post-Cold War world needs to respond to these new security threats. The overall Clinton Administration approach is to:

- Reduce the demand for dangerous weapons and technologies through support for international non-proliferation norms and through strategies to reduce regional instability;

- Pursue a multilateral export control approach to achieving our nonproliferation goals through the MTCR [Missile Technology Control Regime], the Australia Group (AG), and the Nuclear Suppliers Group (NSG);

- Design a new multilateral arrangement to replace COCOM [Coordinating Committee for Multilateral Export Controls], involving transparency and restraint in arms and sensitive items;

- Liberalize export controls and redesign export control procedures and processes in light of the dramatic changes in the world, and keep controls focused only on weapons of mass destruction, missiles, dangerous conventional arms, and other threatening military capabilities; and

- Reserve the right to impose unilateral controls in those limited and extreme circumstances that may require them.

Let me describe each of these briefly, focusing specifically on how the Administration's proposed new Export Administration Act contributes to each of these goals.

CLINTON ADMINISTRATION NON-PROLIFERATION STRATEGY

President Clinton unveiled the overall U.S. non-proliferation policy in his speech to the UN General Assembly last September. In that speech, he pointedly elevated the importance of preventing the spread of weapons of mass destruction and sophisticated conventional weaponry on the international security agenda. In addition, the policy sets out broad strategic aims and goals for the United States.

We will reinforce international norms against proliferation by strengthening existing international agreements and proposing new ones to meet the challenges of the new international security environment. This will include, among other steps, seeking the indefinite extension of the Non-Proliferation Treaty in 1995 and negotiating a Comprehensive Test Ban Treaty.

We will try to reduce demand for dangerous weapons, through regional diplomacy—as in North Korea, the Middle East, and South Asia—to respond to the underlying sources of insecurity and instability.

MULTILATERAL NON-PROLIFERATION REGIMES

Our policy recognizes that unilateral steps to control exports will not stop the supply of dangerous items to proliferators. Technology has diffused to many countries. We need to persuade other suppliers to support multilateral approaches to constrain the supply of sensitive equipment, material, and technology. We are seeking to ensure that NPT parties with full scope safeguards who continue to maintain clandestine nuclear weapons ambitions, such as Iran, cannot receive items of concern from the members of the Nuclear Suppliers Group. We are encouraging the MTCR partners to focus on missile-related exports from non-partner countries like North Korea. We are engaging in dialogue with key suppliers like Russia and China that are not members of all the key regimes to ensure their export policies do not undercut the international consensus.

MULTILATERAL REGIME TO REPLACE COCOM

COCOM's future came to the fore when we undertook to respond to the new security challenges and design a multilateral approach to our non-proliferation goals along with multilateral approaches to export controls. President Yeltsin raised COCOM—along with other Cold War era restrictions—at the Vancouver summit and expressed concern that it was harming reform and standing in the way of building a new strategic partnership with the West.

The end of the Cold War, the disintegration of the Soviet Union, deep cuts in the strategic arsenals of both sides, and the goal of assisting economic and political reform in Russia and the other New Independent States—rather than retarding their economic development—all led us and our allies to the view that the COCOM arrangement had outlived its strategic rationale and could not be sustained.

That said, rather than sweeping away the COCOM arrangement, we decided there were good reasons for an orderly transition in which the arrangement would be closed down with care and a new regime established to respond to the new security threats. Though COCOM's mandate was restricted to East-West transfers, it had served over the years as a useful body for Western countries to expand cooperation among themselves in various ways—e.g., elaboration of control lists, licensing standards, etc.—patterns of Western cooperation we wished to preserve and which

we considered very valuable in addressing new dangers to international peace and security through coordinated action with friends and allies.

High on our list of concerns was the need to ensure stability in the Middle East and South Asia—to deter destabilizing buildups of conventional weapons and other sensitive technologies and prevent the acquisition of such items by dangerous states, such as Iran.

These factors led us to approach our allies in mid-1993 with a proposal to create a new, more broadly based mechanism with a security rationale tailored for the post-Cold War world. We outlined multiple objectives in our proposal:

- To deal firmly and creatively with dangerous states—e.g., Iraq, Iran, North Korea and Libya—that are contributing to tensions in regions such as the Middle East;

- To further the process of engaging Russia and other New Independent States in establishing effective export control systems and combating the global proliferation of weapons and sensitive dual-use technology;

- To close gaps in the non-proliferation regimes and improve our ability to enhance regional stability by controlling conventional arms and sensitive dual-use sales on a multilateral basis for the first time; and

- To remove disadvantages placed on U.S. exporters by the lack of adequate multilateral coordination on sensitive transfers to terrorist states and on other threats.

A series of international expert meetings, convened to consider the U.S. proposal, led to a high-level meeting of the 17 COCOM governments last November 16 in The Hague. At that meeting, our Western partners agreed on a set of political principles that endorsed the broad outlines of our proposal and also agreed on a work program for phasing out COCOM and inaugurating a new arrangement. The timetable is to achieve both by March 31, 1994.

Moreover, discussions among the 17 COCOM governments have recently been broadened to include the European neutrals and New Zealand. Russia has expressed interest, at the highest levels, in participating in the new arrangement and being among the founding members. At the Moscow summit, Secretary Christopher and Foreign Minister Kozyrev issued a joint statement in which they welcomed the decision to establish a new multilateral regime for enhancing responsibility and transparency in the transfer of armaments and sensitive dual-use technologies and also agreed to consultative arrangements.

Despite the very substantial progress, there are a number of outstanding issues. For one, how far will our European allies and Russia go in joining with us to keep dangerous technologies away from dangerous states?

Second, will the new regime have real teeth—particularly when it comes to conventional weapons? We have proposed a regime which involves a serious information exchange and the scope for consultation and concerted action where the risks are acute.

There is also the further issue of Russia's acceptance of the obligations entailed by membership in the new arrangement—in particular, its commitment to a responsible export control policy—a question we are continuing to discuss carefully and in detail with Russian authorities.

With regard to these outstanding issues, we will continue to press vigorously for a credible regime that will advance our mutual security interests as well as the interests of regional peace and security.

With the phasing out of COCOM, we will be putting in place guidance for American exporters concerning areas in which there will be liberalized treatment and other areas which, because of their military sensitivity, will continue to be subject to careful national control. As part of the phasing out of COCOM, we also are negotiating common understandings with our partners about those areas which should continue to be treated with extreme vigilance.

LIBERALIZATION OF CONTROLS AND THE NEW EXPORT ADMINISTRATION ACT

The Clinton Administration is committed to providing economic security for all Americans—a goal that requires us to support expanded trade and opening markets, as well as revisions in export controls. In light of the dramatic changes that have taken place in the world, we will focus our export controls on those items which lead to the development of weapons of mass destruction, missiles, and dangerous conventional arms.

By raising the control threshold for the export of computers and supercomputers, the Administration has decontrolled several billion dollars' worth of exports. This will enhance our competitiveness and expand American trade. We have revised the control lists for multilateral regimes to focus on those items and technologies that actually pose a serious threat.

In parallel, we have developed the Administration's proposed Export Administration Act to streamline the export control licensing process, enhance its responsiveness to U.S. exporters, and discipline our use of all export controls—unilateral as well as multilateral.

Let me set our efforts to streamline the system in context. Today's dual-use export control system is quite different from the system as it functioned only a few short years ago. In the mid-1980s, during the height of the Cold War, the United States Government reviewed about 120,000 dual-use licenses per year. Last year, only 27,000 licenses required review, and this year, due to liberalized controls on computers and telecommunication equipment, only about 16,000 dual-use licenses will be reviewed. The relative impact of U.S. export controls on both government and industry has diminished considerably, but licensed exports still remain important to some of our technologically advanced industries competing globally.

As for the U.S. export control process, it must be understood that the vast majority of dual-use license cases—approximately 97%—are processed within statutory timelines. Further, of the 27,000 dual-use licenses that were reviewed last year, only 145 cases required interagency review at the Assistant Secretary (ACEP) level. Fifty-six of these were computer cases which would no longer be captured under the new control policies. Although there are difficult licenses that take extensive time to process, overall the system does, in fact, work.

Our bill will streamline the export control system by reducing substantially the time allotted for license processing and by speeding the process of interagency review, thus forcing decisions to be made in a more timely manner. Further, to provide increased guidance to exporters and the public about our policy and goals, a high level policy committee will be created. Comprehensive annual reports on how the system works will provide guidance to licensing officials as well as exporters.

We also propose to harmonize the various sanctions laws that exist for missiles and chemical and biological weapons. By so doing, we hope to make our sanctions laws more coherent, more predictable, and, hence, more effective. This approach also endorses the proposals sponsored by Senator Glenn which deal with nuclear-related sanctions.

I should also mention that we are working with other agencies to eliminate unintended overlap between the U.S. Munitions List (USML) and the Commerce Control List (CCL). Following on the Trade Promotion Coordinating Committee (TPCC) report, we have also introduced a number of changes in the Department's munitions licensing process—more than 100 companies are submitting licenses electronically. At the State Department, we have consolidated most of our export control functions into one bureau, which also has responsibility for nonproliferation. This will ensure a more coordinated approach to export control policy.

DISCIPLINES ON UNILATERAL CONTROLS

The Administration's bill will enhance our ability to achieve important nonproliferation and foreign policy goals by placing an emphasis on multilateralism, while maintaining the prerogative to use unilateral controls when absolutely necessary. We will do so in a disciplined way to deal with objectionable Non-proliferation behavior—such as support for terrorist activities or violations of human rights. By implementing all the above-stated reforms, we believe that we will create an export control process that addresses all our national security, non-proliferation, and foreign policy concerns—including our economic interests—while imposing the minimum burden necessary on U.S. exporters. We are engaged in a process to create the framework for an export control policy for a new era. We strongly believe that we must not and cannot fall back from our responsibility to carry out an effective non-proliferation policy and support our foreign policy interests. We do believe that unilateral controls are not the controls of choice and that they should be used sparingly. On the other hand, we also believe that the President must have the authority to control exports to countries engaged in terrorist acts or egregious human rights abuses, for example. Iran is a case in point, and the lessons we all learned from the Iraq experience compel us to hold firm to these principles.

The bill provides for greater discipline in our use of export controls by subjecting all controls—unilateral as well as multilateral—to tougher criteria and greater transparency. Prior to the imposition, extension, or expansion of any control, the President must determine that the control is, in fact, essential to the advancement of our national security, non-proliferation, or foreign policy objectives. For unilateral controls, we have not only maintained the current tough criteria, but also we have provided for the identification of all unilateral controls by regulation.

As recommended by the Trade Promotion Coordinating Committee report of September 30, we also are working with other agencies to eliminate unilateral controls where this can be done without undermining our foreign policy goals or jeopardizing the viability of the non-proliferation regimes.

To ensure that the system responds to the problems that exporters encounter, our bill expands the grounds on which exporters can seek relief from export controls as well as the scope of items subject to such relief provisions. In addition to a foreign-availability provision, the bill provides exporters an opportunity to seek relief on two other grounds: when our own domestic controls are believed to be ineffective, or when a U.S. company believes itself to be at a competitive disadvantage vis-a-vis its foreign competitors.

CONCLUSION

Mr. Chairman, I must be honest with you and say that none of these efforts are easy. These are tough issues that deserve high-priority attention. We are committed to doing that. We look forward to working with your committee to redesign our export control system in the months ahead. We need to work together to build a system that has the flexibility needed to deal with the new, serious non-proliferation and foreign policy threats we face, while supporting legitimate exports.