

Challenging Conventional Wisdom



DEBUNKING THE MYTHS AND

EXPOSING THE RISKS OF ARMS EXPORT REFORM

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CHALLENGING CONVENTIONAL WISDOM

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In September 2001, two individuals were sentenced in San Diego for their roles in an international conspiracy to illegally purchase Hawk missile components, fighter jet parts and other military goods for Iran. The 20-month Customs probe disclosed that the individuals were operatives of a London-based firm called Multicore Ltd. that was buying sensitive military items from a multitude of U.S. companies for export to Iran via Singapore.¹

A Canadian company attempted to sell 35 OH-58 U.S.-origin helicopters to undercover agents posing as brokers for the Iraqi government. These helicopters were to be equipped for air-dispensing chemical weapons. They were seized before being exported from Canada. Fifty-eight M-113 armored vehicles originally sold to the Canadian Armed Forces were exported without State Department approval, transferred to Europe, and then to Iran.²

Despite the best efforts of hard-working U.S. Customs agents, the above incidents are not aberrations.³ Even defense items shipped to the closest U.S. allies and their nationals too often end up in the wrong hands, or are used for unauthorized purposes. These examples also show that all U.S. arms exports — from spare parts to fully integrated weapon systems — need to be treated with caution.⁴

Nonetheless, a consensus appears to be forming in Washington in favor of dismantling the U.S. arms export control system — in particular with regard to allies. A number of changes have already been made to the licensing process, and many more have been proposed by government agencies and advisory boards, as well as the defense industry. These so-called “reforms” have generally focused on trade with NATO members and a few other close allies, with whom the Pentagon wants to increase defense cooperation. What this means for the safety and security of U.S. technology and, more importantly, the lives of U.S. military personnel and civilians, has yet to be seen. But as this book demonstrates, there is reason to believe the risks resulting from such policy changes outweigh the benefits.

What explains the U.S. government’s overall support for the idea of relaxing export controls, given the potential security implications? In an examination of arms industry trends, Ann Markusen found in 1999 that “although the United States already appears to be leading an effort to welcome some transnational mergers to preserve competition and rationalize capacity, its actions seem to reflect industry pressure rather than careful foreign, security, military and economic policy

planning.”²⁵ The General Accounting Office (GAO) notes that one major reform initiative in particular, “the Defense Trade Security Initiative (DTSI), was developed in response to industry and foreign government concerns.”²⁶ U.S. Army Major Isaiah Wilson, a military analyst, stated that the move to reform at least the Foreign Military Sales system was “dominated by the short term, commercial interests of the defense firms” and the interests of foreign buyers. According to Wilson, the reforms have “come at the expense of the longer term security interests of both the U.S. armed forces and the United States citizenry.”²⁷

Thus, the reform push appears to be driven more by economic motivation than a desire to enhance national security, although reformers often state that improving national security is their aim. The most widely touted goal of arms export reform is to increase U.S. government and industry cooperation with European defense firms, so U.S. firms will not be shut out of European markets as governments there come under increasing pressure to buy domestically. Moreover, American firms are finding it may be cheaper to produce weapon components in Europe. The defense industry and its allies in the U.S. government allege that trans-Atlantic defense cooperation is hampered by current U.S. export laws and regulations. On a broader level, reformers maintain that the bureaucratic process involved in exporting weapons, which can be slow and opaque, is “broken” and in need of massive repair. This book will challenge these claims.

The History of the Reform Movement

The movement to reform the U.S. arms export control system is not new. For several years, different departments and agencies have chipped away at long-standing provisions of arms export laws and regulations. Evidence of executive branch amenability to the reform movement’s agenda dates back at least to the mid-1990s. In 1995, the administration of President Bill Clinton conducted a review of defense trade policy that culminated in the issuance of Presidential Decision Directive 34. Among the more notable results was the addition of domestic economic factors to the list of criteria U.S. officials must consider when assessing arms export licenses.

The changes can be explained in part by industry’s influence over the policy-making process. Through advisory boards and commissions, industry representatives are able to feed their ideas directly to government officials. Washington’s “revolving door syndrome” — wherein top executives often rotate between government and industry posts — has also encouraged the Defense and State departments to align their interests closely with those of the defense industry. Access can be bought as well, and many export control reform advocates provide millions of dollars a year to campaign coffers.

Understanding the current debate over export reform requires some familiarity with key policy documents and proposed reforms put forward by industry-related groups, as well as recent changes to export controls. A brief summary of several of these instruments, initiatives and entities is provided below.

Defense Science Board

The Defense Science Board (DSB) was a key player in the early stages of the arms export reform movement.⁸ In its December 1999 “Task Force Report on Globalization and Security” — one of the first reports supporting far-reaching changes to the U.S. export control system — the DSB found that economic globalization has made it increasingly difficult to control international access to advanced conventional weapons or commercially available military technology.

The DSB answer to this challenge was, for all intents and purposes, that the United States should give up the battle and drop many unilateral export controls. The board found that when the U.S. government tries to single-handedly limit the spread of weapons, it only hurts the U.S. defense industry and does nothing to stop proliferation. The report states that “clinging to a failing policy of export controls has undesirable consequences beyond self-delusion. It can limit the special influence the U.S. might otherwise accrue as a global provider and supporter of military equipment and services. Equally obvious, shutting U.S. companies out of markets served instead by foreign firms will weaken the U.S. commercial advanced technology and defense sectors upon which U.S. economic security and military-technical advantage depend.”⁹

Alternatively, the board supported “building higher walls around smaller yards,” or decontrolling most defense goods in order to better protect a small number of critical military technologies. The DSB further recommended that DoD should facilitate transnational defense cooperation and integration.¹⁰

DTSI

Some of the DSB recommendations subsequently were translated into a set of policy changes to the licensing process designed to facilitate arms exports and technology transfers, especially to close allies. These changes, known as the Defense Trade Security Initiatives, were adopted by the Clinton administration in May 2000 over the strong objections of the State Department. According to the Defense Department, DTSI will allow U.S. industry to be more competitive abroad and enable companies to break into new markets. At the same time, however, DTSI dismantles many critical checks on arms and technology exports to U.S. allies. To date, few of DTSI’s 17 proposals have been fully implemented.

Underlying the various rationales for DTSI is the common complaint that the State Department’s review of approximately 45,000 export license applications a year is too lengthy and cumbersome. According to advocates of defense export reform, the thousands of commonplace license requests for exports to responsible allies clogs the licensing system, which results in unnecessary export delays and saps the State Department of resources that could otherwise be devoted to preventing the export of militarily critical technologies to problematic recipients. DTSI seeks to relax licensing requirements for exports to the closest U.S. allies: NATO members, Australia, Japan and New Zealand. Implicit in this argument is

the notion that exports to these countries are less likely to be diverted or used for unauthorized purposes.

In addition to relaxing controls on exports to the “NATO + 3” treaty allies, DTSI also allows exporters to circumvent many supposedly superfluous licensing requirements for the export of spare and replacement parts, as well as individual components of the larger, more sophisticated weapon systems. For example, the Global Project License allows exporters to receive a “single, comprehensive export authorization to permit qualified U.S. defense companies to exchange a broad set of technical data necessary for team arrangements, joint ventures, mergers, acquisitions or similar arrangements with qualified foreign firms from NATO, Japan, or Australia.”¹¹ Further, major program licenses are valid for eight years instead of the current four years. Licenses for NATO efforts, including those under the Defense Capabilities Initiative (DCI) designed to beef up allied militaries, are given expedited reviews as well.

Another DTSI provision requires a rotating review, on a four-year basis, of the U.S. Munitions List (USML) — the official government catalogue of what military items require an export license — to determine which weapons and technologies should be removed or added. While close examination of the process reveals that more technologies have been added to the USML than removed, there are consistent attempts to take sophisticated weapons and spare parts off the list. One such example is the campaign waged by Rep. Curt Weldon, R-Pa., and industry to remove the CH-47 Chinook military transport helicopter from the munitions list. Weldon’s interest is politically driven; a dearth of orders for the CH-47 is forcing the Boeing plant located in his district to eliminate at least 1,000 jobs by 2004.¹² If the CH-47 is removed from the USML, Boeing would be allowed to sell the helicopter to China, which has expressed an interest in purchasing the Chinook, but is prohibited from receiving U.S. defense articles due to a U.S. arms embargo imposed after the Tiananmen Square massacre. The Pentagon has also tried to convince the State Department to remove aircraft spare parts from the USML, despite the fact that many trafficking incidents involve spare parts going to prohibited states like Iran and China.¹³

The most significant and controversial change included in DTSI is the possibility to offer certain states exemptions from the International Traffic in Arms Regulations (ITAR), which govern all arms exports. Australia and the United Kingdom, which together account for 25 percent of U.S. weapon export licenses, will be the first two beneficiaries of this new policy once they meet U.S. requirements. When qualified, the two countries would enjoy the same license-free zone as Canada does now, despite the trouble the United States has experienced in ensuring the security of U.S. military technology sent to Canada under its ITAR exemption.¹⁴ In fact, the U.S. government was compelled to suspend ITAR exemptions to Canada in 1999 after investigations revealed that parties in Canada had re-exported U.S. weapons without approval.

In response to problems associated with the Canadian experience, and because this provision was designed to encourage potential beneficiaries to improve their own export controls, the Clinton administration identified specific measures that foreign states would need to adopt to qualify for the exemption. These included the protection of intangible defense technology, improvements in industrial security and agreements on retransfers of U.S. defense items. Congress gave these criteria teeth by requiring that they be legally binding under the domestic laws of any state granted an exemption.¹⁵ While essential from a national security perspective, the ITAR exemption requirements have prolonged negotiations with the United Kingdom and Australia, prompting the State Department to call for significant changes to the legal requirements. One such proposal — which was included in an initial draft of a bill of the 2004-'05 Foreign Operations Authorizations Act — would allow the congressional criteria to be waived when the president determines it is “in the national interest” to do so. If enacted into law, this waiver authority would weaken the exemption requirements and thereby undermine efforts to prevent diversion.

Although the defense industry supports the DTSI provisions, and the U.S. government maintains that it will uphold the strictest controls and restrictions to ensure national security needs are met, the new policies are potentially problematic. For example, the streamlining of the State Department export licensing process cuts down on the review time for licenses, which in turn could reduce oversight and accountability.

License exemptions also reduce the paper trail on arms transfers, making it difficult to track potential unauthorized transfers or retransfers. Exemptions, especially any made under a waiver of the congressional requirements, would make it significantly harder for the Justice Department to identify and prosecute violators of export laws. Indeed, in a letter to John Holum, then senior adviser for arms control and intelligence, the Justice Department warned that granting licensing exemptions to the United Kingdom or Australia “[would] greatly impede the ability of the law enforcement community to detect, prevent and prosecute criminal violations of the [Arms Export Control] Act, and [would] facilitate efforts on the part of countries and factions engaged in international terrorism to illicitly acquire sophisticated U.S. weaponry.”¹⁶

CSIS

Perhaps the most powerful non-governmental, non-profit actor in the reform movement has been the Center for Strategic and International Studies (CSIS). Now headed by John Hamre, former deputy secretary of defense in the Clinton administration, CSIS and a panel of consultants from defense industry and government in May 2001 called for an ambitious overhaul of the export licensing system.

The proposals set out in the CSIS report, “Technology and Security in the Twenty-First Century: U.S. Military Export Control Reform,” would gut the U.S.

export control regime. CSIS justified its proposals by arguing U.S. security would be enhanced by sharply reducing the number of military items requiring an export license and allowing defense companies to self-police compliance with export regulations. CSIS contended that the U.S. licensing regime is burdensome and over-restrictive, thus causing U.S. firms to lose export business. In addition, CSIS stated that U.S. export controls have pushed the European defense industry to consolidate, potentially cutting U.S. arms makers out of the European market or eroding the U.S. edge in technology development. Moreover, CSIS maintained that the current system is undermining the U.S. military's ability to maintain interoperability with allied forces.

CSIS' findings make little sense in today's economic and security environment, however. The U.S. arms industry maintains a large market share in Europe, completing over \$18 billion worth of new government-to-government deals and receiving more than \$80 billion worth of licenses for commercial arms exports in fiscal years (FY) 1996-2001.¹⁷ It is also hard to argue that U.S. technological capabilities are suffering. As evidenced by Operation Iraqi Freedom, U.S. military superiority is undeniable. Furthermore, the technological gulf separating the United States and its European allies is likely to widen in years to come as the United States reaps the benefits of its massive military research and development (R&D) spending, which is three times larger than that of its European counterparts collectively.¹⁸ Furthermore, since DTSI was first implemented in May 2000, efficiency improvements have sharply reduced the average license review time in both the Defense and State departments, and State has doubled the amount of license officers.¹⁹ But industry is still not satisfied.

Aerospace Commission

In its November 2002 final report, the congressionally mandated Commission on the Future of the United States Aerospace Industry, which was formed to study the future of the U.S. aerospace industry in the global economy and its importance to national security,²⁰ focused heavily on the need to reform the U.S. export control system to improve the industry's competitiveness in the global market. Chapter 6 of the report highlights the importance of having open and fair markets within which U.S. defense industry can compete. The report's sixth recommendation reads:

“The commission recommends that U.S. and multilateral regulations and policies be reformed to enable the movement of products and capital across international borders on a fully competitive basis, and establish a level playing field for U.S. industry in the global marketplace. The U.S. export control regulations must be substantially overhauled, evolving from current restrictions on technologies through the review of transactions to controls on key capabilities enforced through process controls. ...”²¹

The commission found that U.S. export controls “are increasingly counterproductive to our national security interests in their current form and under current practices of implementation.” Moreover, the commission stated that “export control reform is crucial to provide better security in the future and to insure the health and vitality of our aerospace industry.”²² The report featured many of the buzzwords in the reform debate, stating that export controls “provide too little security and impose enormous inefficiency.” Its central argument was that the current system of controls hurts interoperability, undermines collaboration, isolates American industry and damages U.S. competitiveness.

Like the CSIS, the commission recommended a shift from transaction-based licensing to process licensing, meaning industry should be granted a license to engage in defense exports and then be trusted to comply with U.S. laws and policy. This would leave it up to industry to police itself and make its own decisions about questionable transfers. Similarly, the commission argued that additional reforms — such as expanding ITAR waivers, reviewing the munitions list, eliminating some extraterritorial retransfer bans, updating country risk surveys on a regular basis and streamlining the administrative processes — would all go far in increasing the safety and security of the United States and its defense industry. But these reforms could also flood unstable regions with weapons, provide weapons to human rights-abusing regimes, and eliminate critical safeguards for the control of U.S. weapons and technology in general.

AIA

The Aerospace Industries Association’s (AIA) mission is to shape “public policy that ensures the U.S. aerospace industry remains pre-eminent and that its members are successful and profitable in a changing global market.”²³ AIA has been vocal in its complaints about the arms licensing process and has regularly provided lists of recommendations for reforming the export system. These proposals have been taken seriously, as AIA’s lobbying power is great. AIA has 77 member companies and 144 associate member companies²⁴ “represent[ing] the nation’s major manufacturers of commercial, military and business aircraft, helicopters, aircraft engines, missiles, spacecraft, materiel and related components and equipment.” As mentioned above, the financial strength of the defense industry helps to ensure its message is heard in Washington. In 2000 alone, the defense sector spent \$60 million on lobbying,²⁵ with the defense aerospace industries spending almost \$28 million of that total.²⁶

AIA argues that “an entirely new export control system is long overdue.”²⁷ In the meantime, however, AIA proposes changes to congressional notifications of arms transfers, rules on third party transfers, the USML, laws governing the export of satellites and components, the licensing process and deemed export rules (a deemed export is one that would result in an item going to a foreign national within the United States).²⁸ For example, in July 2001, AIA advocated “raising (congres-

sional) notification thresholds, eliminating formal (congressional) notification for the NATO + 3 countries, removing non-military unique technology components and subsystems from the USML, and reducing license processing time.”²⁹ Across the board, AIA encourages reducing existing controls and relieving industry of the encumbrances of the licensing process.

Myths Vs. Realities

Though the reforms outlined above are based on the desire to improve U.S. national security and give a boost to the U.S. defense industry, they do not correspond with the realities of the current security and business environments. Moreover, many of the policy proposals are either unnecessary or go far beyond what is required to fix the problems identified by reform advocates.

In order to justify the more radical proposals, those pushing reform have developed a set of assertions that — due to constant repetition — have become conventional wisdom in the arms control world. This book seeks to provide an alternative, independent analysis of the export control system. It critically examines the arguments being put forward by reformers in the hopes of debunking some of the “myths” used to support radical change. Rather than basing their analysis on the financial needs of the defense industry, the authors in this volume assess export control reform in terms of broad national interests, such as the promotion of national security, foreign policy goals and democratic values.

Among the myths examined in this book are:

- The defense industry is in trouble, and needs U.S. government subsidies and a relaxation of export controls to compete internationally;
- Current controls damage U.S. national security by preventing interoperability with foreign forces and stymie the development of “cutting edge” U.S. military technologies;
- Arms exports buy the U.S. government influence over other nations’ domestic and foreign policies; and
- Without radical changes, our allies will start to look elsewhere for arms.

In addition to critiquing these assertions, the authors assess the risks and costs of undertaking the reforms that have been proposed or adopted over the past few years. The purpose is to provoke an in-depth, real debate before more, potentially damaging, changes are presented as *fait accompli*.

The authors, all experts in the field, are not alone in their beliefs. The GAO (a federal watchdog agency), some members of Congress, and the State Department also have a record of skepticism regarding the export reform movement. Following the approval of DTSI in May 2000, the GAO issued a report that found that DoD “largely relied on incomplete data and did not perform the analysis necessary to determine the underlying causes for problems it identified.”³⁰ According to the GAO, the administration was forming policy based largely on “anecdotal evidence,

... newspaper reports, ... and an informal survey of several major defense companies” without verifying the validity of the complaints.³¹ When the GAO conducted its own analysis of 10 commonly cited examples of problems with defense trade controls, it concluded that industry presented only a partial, and sometimes incorrect, portrayal of the facts.

The 2003 war in Iraq also prompted several members of Congress to speak out about the need not to weaken, but to strengthen, export controls to ensure U.S. weapon technologies cannot make their way into the hands of U.S. enemies.

Rep. Duncan Hunter, R-Calif., House Armed Services Committee chairman, advocated in April 2003 for tighter unilateral and multilateral export controls because of the danger of terrorists acquiring U.S. weapon technology.³²

Sens. Jon Kyl, R-Ariz., Richard Shelby, R-Ala., John McCain, R-Ariz., Jeff Sessions, R-Ala., and Russell Feingold, D-Wis., sent a letter to President George W. Bush calling for greater control by the State and Defense departments over the licensing of dual-use equipment exports (goods that can be used for either military or commercial purposes). Their goal is to reduce the current dominance of the Commerce Department in this process because “[t]here is an inherent conflict of interest in resting the protection of our national security in the hands of a department that is charged with the promotion of U.S. business interests.”³³

In a separate press release, Kyl stated, “U.S.-manufactured products — and those of other allied nations — still make their way to Baghdad and other terror capitals through the back door. ... The U.S. and our allies clearly are not doing enough to keep these materials from enemy hands. What is all the more alarming is that so many in the U.S. want to relax even further our government’s controls over such material.” He added, “In the years to come, America and her allies will certainly have to confront other enemies that may strike us. Imagine how it would feel to be injured by weapons stamped ‘Fabriqué en France’ or ‘Made in the USA.’”³⁴

Debunking the Myths and Exposing the Risks

Part 1 of this book (Chapters 2-5) examines the myths perpetuated by export control reformers. Each chapter discusses one critical aspect of the debate: U.S. government support for the defense industry; U.S. competitiveness in the global market and prospects for U.S. military modernization; the best way to achieve interoperability; and the usefulness of military diplomacy based on weapon exports. In each chapter, the authors demonstrate how these myths create a distorted view of the export control system.

In Chapter 2, John Feffer investigates government support for the U.S. defense industry in order to counter one of the reformers’ most salient arguments: that arms manufacturers require additional economic and political aid. The chapter sets the stage for the rest of the book by examining the special relationship between the arms industry and the government — a relationship that helps explain why industry representatives feel entitled to more favorable export policies.

Feffer explains that although arms sales constitute a relatively minor market - only 4.6 percent of U.S. trade volume and about 1 percent of total world trade - the U.S. government has provided subsidies and other forms of direct and indirect support far in excess of the industry's importance to the economy. This largesse has enabled U.S. firms to control half of the roughly \$38 billion global market in arms. The U.S. government spends approximately \$1 in subsidies for every \$2 in exports. Such subsidies include generous procurement policies, R&D funds, tax policy, aggressive overseas marketing and promotion, and military aid and financing for foreign customers.

Feffer further examines how tracking these subsidies has become more of a challenge because of the changing nature of the U.S. military-industrial complex. He explains how governments historically used investments in defense industries to gain exclusively national advantages. Today, however, the globalization of the defense industry, featuring international joint ventures, co-production agreements between countries and multinational defense firms, brings new challenges and priorities. The U.S. government is committed to securing U.S. industry a pre-eminent position in the increasingly globalized defense market to improve national security by boosting U.S. military and economic power. In the end, Feffer concludes that, in reality, subsidizing arms exports does not work economically and does nothing to increase U.S. security.

In Chapter 3, Kevin Speers and retired Rear Adm. Steven H. Baker, challenge assertions that unrestricted access to export markets is central to maintaining the financial health of the U.S. arms industry. The authors dismiss free market justifications for reducing export controls on the grounds that the defense industry is unique and — for national security reasons — not intended to be perfectly competitive. Speers and Baker conclude that the current system has allowed the U.S. defense industry to outperform its competition while satisfying the U.S. military's procurement and modernization needs.

To assess the impact of export controls on the defense industry, the chapter illustrates how U.S. defense firms have maintained dominance in the global market despite shrinking defense budgets around the world. In the end, the authors argue that given the new security framework since Sept. 11, 2001, it is critical that national security needs receive much higher priority than increasing the revenues of the defense industry.

In Chapter 4, retired Army Col. Daniel M. Smith debunks the argument that military interoperability is an essential reason to ease export controls. Smith defines interoperability, and describes what is required (or not) to achieve it. He argues that the misidentification of high-tech weapon systems as the primary source of increased battlefield complexity leads to the mistaken conclusion that solutions to interoperability challenges, such as compatible or interchangeable communications interfaces, can be addressed through weapon sales. These specious arguments overly simplify the problem; interoperability issues go far beyond hardware.

Smith explains that while there are interoperability problems among allied militaries (e.g., how to organize and train forces, and align procedures), these cannot be solved by changing the arms export control system. He argues that today's wars demand an interoperable "mindset" — the ability to quickly integrate and exploit the strengths that less technologically advanced partners can contribute to a coalition. He concludes that developing liaison teams, creating automated equipment interfaces, preparing tiered alliances, and undertaking joint and combined training would truly contribute to more interoperable coalitions.

In **Chapter 5, Cassady Craft** discusses another common justification for the promotion of arms exports: military diplomacy, or the belief that weapons and technology transfers will provide the U.S. government influence over recipients' policies. Craft examines whether traditional U.S. foreign policy goals — such as encouraging respect for human rights and democracy, preventing regional conflict, and achieving foreign assistance in promoting U.S. interests — are actually influenced by weapon transfers.

Craft identifies and analyzes the conditions under which military diplomacy may be effective. He concludes that military diplomacy is truly influential only in situations where:

- The importer relies on foreign suppliers for most of its weaponry;
- The exporter is the sole supplier of specific military items and thus importers have little chance of diversifying supply;
- The exporter seeks influence over the recipient's foreign, not domestic, policy;
- The exporter uses positive incentives rather than sanctions; and
- The recipient governments are liberal democracies.

Craft finds that these conditions do not usually apply to the countries that most often participate in the international weapon trade, especially those that are key U.S. arms trading partners. Craft illustrates the failure of military diplomacy by examining the cases of Israel and Turkey. In those cases, Craft concludes that the impact of military diplomacy is overstated or impossible to verify.

Part 2 of the book (Chapters 6-8) examines the risks of implementing the changes to the arms export control system favored by today's reformers.

In **Chapter 6, Jason Meyers** examines the implications for U.S. national security of several of the proposals under discussion. He concludes that the majority of proposals are overly concerned with the well-being of the defense industry, but insufficiently concerned with U.S. nonproliferation and security policies. Meyers highlights three main reform proposals — extension of ITAR exemptions, acceleration of licensing, and review of the USML — and discusses how each proposal is susceptible to misapplication and faulty administration. For example, Meyers details how the extension of ITAR exemptions could undermine enforcement of U.S. export laws and facilitate the acquisition of U.S. weapons and technology by

unintended end-users. In regard to dual-use controls, he argues that if the Export Administration Act (EAA), which controls the licensing of these types of exports, is renewed, it should be altered to give greater weight to national security.

While advocating caution in reform, Meyers agrees that there are risks associated with the current export system as well. For example, he argues that today's regime does not adequately address a range of humanitarian concerns and could — through massive arms sales to coalition partners — contribute to regional instability. Such actions could create more threats to U.S. forces operating abroad. Meyers concludes that while there are weaknesses in the current system, it does not present a clear and present danger to U.S. security — as some of the proposed reforms indeed might.

In Chapter 7, Joseph Smaldone evaluates arms export reform proposals in view of the foreign policy risks and costs associated with their enactment. He notes that the most prevalent threats to U.S. and international interests reside in troubled states and regions in the Third World, and summarizes empirical research on the relationships between arms transfers and political violence, humanitarian crises and human rights abuses in those areas.

Smaldone assesses six specific export reform proposals and provides recommendations to eliminate or reduce the foreign policy risks associated with each of them. Throughout the chapter, Smaldone endorses reform of the U.S. defense trade control system in theory, as long as any changes preserve and enhance the primary goals and principles of the existing system. Smaldone concludes by accepting many of the reformers' recommendations, endorsing others with caveats or conditions, rejecting a few, and offering additional proposals for consideration.

In Chapter 8, David Fite provides a view from Congress on reform of the U.S. arms and dual-use export control systems, with an eye to the risks to oversight and transparency that might result. The chapter begins with a primer on how Congress oversees the arms export process. Fite then reviews and critiques reform proposals, and makes conclusions and recommendations for the future.

Fite details the role of Congress in the export process, including responsibilities under the Arms Export Control Act (AECA), which controls sales/transfers of military equipment and services, and the EAA. He finds that Congress can exercise real influence through its control of export agencies' budgets, and by actions to raise the political and public costs of pursuing controversial arms sales. Throughout the chapter, Fite examines the varied viewpoints of members of Congress and those who serve on the committees that oversee the export control process. He concludes that committee members and staff are generally skeptical about a major overhaul of the arms export control system, especially any moves that would undermine congressional oversight. He also provides recommendations for reform of the arms export control system that promote efficiency, oversight and security.

Part 3 (Chapters 9-12) examines alternatives for reforming the arms export control process. Among the alternatives considered are the strengthening of multilateral arms export control regimes, and the fortification of U.S. leadership and management of arms export processes.

In Chapter 9, Wade Boese describes the history, successes and failures of the Wassenaar Arrangement (WA), the voluntary export control regime whose 33 members exchange information on their trade with non-member countries in conventional arms and dual-use goods. The aims of the WA are to promote greater responsibility among arms sellers, and to prevent destabilizing accumulations of weapons and technologies that could threaten regional or global security.

Members of the WA are often at odds over its goals and procedures. In particular, Boese discusses the difficulties in developing rules and guidelines on arms exports. For instance, WA members disagree about which countries or regimes should be prohibited from receiving weapons. This has undermined efforts by individual member states to shut off the arms spigot to problematic governments, such as those in Iran, Libya and North Korea. Boese argues that, despite such problems, the WA can transcend its current, limited role as a transparency mechanism and information-sharing body. Reinventing the WA into a multilateral instrument capable of shaping and controlling the global arms trade requires that each member must cede some control over its own exports and forgo some sales, however.

The second international regime analyzed in this volume, the Missile Technology Control Regime (MTCR), is addressed in **Chapter 10 by Theresa Hitchens and Jillian Hayes**. The authors discuss the strengths and shortcomings of the MTCR, the only multilateral arrangement focused exclusively on missile non-proliferation. Hitchens and Hayes argue that the MTCR has been a successful tool in achieving four main goals: slowing and suppressing missile activity and proliferation; delaying, although not preventing, development of missile programs in countries of concern; increasing transparency about members' own missile programs; and acquiring information about which nations continue to pursue missile technologies.

The authors structure their discussion of the regimes' weaknesses by focusing on three areas: the stability of its rules of restraint; the technical coverage of its restrictions; and the continued activities of some missile suppliers. The key finding is that the MTCR's current weaknesses lie less in the technological and process arenas, but rather in the political will of member countries to work together to improve the regime. In conclusion, Hitchens and Hayes discuss a number of initiatives undertaken in order to expand the MTCR's scope and effectiveness.

In light of the failure of existing international regimes to properly curb weapon proliferation, a new concept for controlling the legal arms trade is discussed in **Chapter 11 by Greg Puley and Michael Crowley**. The authors describe an international initiative to create a legally binding set of rules for international arms transfers — the Arms Trade Treaty. The Arms Trade Treaty, which has been developed by international legal experts in coordination with several non-governmental organizations and

18 Nobel Peace Prize winners, would reiterate existing rules on arms transfers found in other texts and codify principles of international law that have not yet been explicitly tied to arms transfers.

The Arms Trade Treaty is based on the assumption that states already have certain responsibilities with regards to arms sales based on their adherence to documents like the Geneva Conventions and the UN Charter. Legal scholars have determined that if a state helps another state to violate these international laws — for example, by providing the weapons used to target civilians in contravention of the laws of war — it shares the responsibility for that violation.³⁵ The convention would therefore ban arms transfers where there is a clear risk they could be used to seriously violate established standards of human rights, humanitarian law and non-aggression. It would also require exporting states to avoid the sale of weapons that could have an adverse impact on sustainable development or political stability.

Finally, in **Chapter 12**, **Tamar Gabelnick and Rachel Stohl** conclude that national security in the post Sept. 11 world demands strengthened, not weakened, U.S. export controls. While not disputing the goals of those advocating reforms, the authors take issue with the means selected to achieve those goals. Many of the reform proposals would “throw the baby out with the bath water,” overreacting to the problems at hand and creating new hazards at the same time. Gabelnick and Stohl encourage U.S. policy-makers to carefully weigh the costs vs. benefits of proposed reforms, recognizing that some costs might be too steep no matter what the possible returns.

The authors further urge the U.S. government to consider a set of alternative measures to meet weaknesses in the current export control system. Their proposals center around improving the efficiency of the system, enhancing transparency on arms transfers, and improving accountability through stronger and clearer norms on eligible states. They also encourage the United States to play a leadership role in international arms control by actively promoting improvements to current regimes and supporting a normative arms trade treaty.

This book is likely to leave the reader with more questions than answers about arms export reform. That is the intention. The goal is to transform what has largely been a one-sided debate into a broader discussion that allows policy makers and the public to engage in meaningful dialogue.

A crucial lesson that emerges is that U.S. security and foreign policy interests should always come before economic concerns. Moreover, the book highlights the fact that oversight, transparency and accountability are key obligations of any arms export system.

Finally, the essays demonstrate that, as the world’s remaining superpower and largest arms exporter, the United States has an undeniable responsibility to ensure that its policies and practices are not only beneficial to the United States, but to the rest of the world as well. Only by maintaining the highest possible export control standards will the U.S. system remain a model for other countries.

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CONCLUSION

Developing Sound Export Control Reforms for Today's Security Environment

Tamar Gabelnick and Rachel Stohl

The paradigm shift in U.S. foreign policy created by the terrorist attacks of Sept. 11, 2001 means that most matters of foreign affairs are now defined in terms of the war on terrorism and continued threats to U.S. security. As a result, arms export control “reformers,” or proponents of sometimes far-reaching changes to the arms export system, are gaining greater resonance for their views by asserting that current restrictions on arms and weapon technology transfers are endangering U.S. national security. The essence of the export reformers’ argument is that the U.S. ability to defend itself unilaterally or in coalition with allies depends on a healthy American defense industry, which in turn relies on large quantities of hassle-free exports.

But there is a paradox in the reformers’ message that is rarely acknowledged: Even if arms exports do achieve some national security objectives in the near term, they can simultaneously decrease U.S. security by contributing to the proliferation of U.S. weapons and technology. This contradiction holds true for a wide variety of clients and the entire spectrum of weapons, from close European allies (because of the risk of diversion) to new allies in the war on terrorism; and from high-tech goods (both military and dual-use) to low-tech arms or spare parts.¹

The tenuous linkage of national security and export control reforms is just one example of the way the public debate on arms exports has been manipulated by the weapon industry, conservative think tanks, and some senior officials in the Defense and State departments. With the exception of a few specialists in Congress and the General Accounting Office (GAO), most policy-makers seem to have accepted the assessment of the reformers that the export control system is broken and in urgent need of repair. No one is questioning whether the defense industry is presenting an accurate picture of export controls and their impact on international trade; whether the U.S. government should be linking its interests so closely with those of the defense industry; or whether the policy proscriptions being put forward would be harmful to U.S. national interests.

This book was designed to redress the one-sidedness of the debate by questioning the conventional wisdom about defense export reforms. We have examined in close detail the oft-repeated, but seldom analyzed, “myths” surrounding arms export controls. Whether or not one agrees with the conclusions of the chapters, it is essential that the content be discussed to form solid and safe policy. This book also adds to the debate by laying out some of the risks associated with recent or proposed policy changes. Moreover, rather than just criticizing the current pro-

posals, the book proposes ways to strengthen the current system to make it more reflective of today's global security environment.

We believe that in order to develop sound export control policies, government officials need to seriously evaluate what the problems are with the current system and whether these deficiencies truly impact U.S. national interests, or simply inconvenience the arms industry. If serious weaknesses in the system are identified, then policy-makers should find remedies compatible with the magnitude of the problems. In other words, those seeking to remedy any shortcomings of the arms export system should not throw the baby out with the bath water.

Export Control Myths

This book lays out three main arguments that have been put forward by proponents of arms export reforms, repeated by the media, and taken at face value by policy-makers. First, reform advocates contend that the health of the defense industry relies on unimpeded access to foreign markets. A corollary to this belief is that the modernization of U.S. military equipment depends on reduced restrictions on arms and technology transfers because this will stimulate technological innovations and lower costs through economies of scale. Second, reformers, especially in the Pentagon, state that arms exports are the best way to achieve interoperability with allied forces, and therefore placing unnecessary hurdles on exports will impede the U.S. military's ability to work effectively with coalition partners. Third, State Department and other government officials allege that transferring arms to other governments is an effective way to win influence over their policies. In addition to these myths, conventional wisdom also suggests that even in our free market economy, government support of the defense trade is justified because of the arms industry's special relationship with the Pentagon.

Support for the Arms Industry

For a country that does not value government intervention in the marketplace, the American armament industry receives a considerable amount of financial and political aid. In Chapter 2, John Feffer describes this trend. He finds that weapon makers annually receive about \$30 billion in research and development funds and approximately \$7 billion in subsidies for exports. The State Department gives many countries annual grants or loans to pay for U.S. weapons. U.S. tax dollars pay for U.S. personnel to market weapons to foreign governments, including U.S. military participation in international air shows. Foreign customers benefit from U.S. research and development funding in the form of lower costs, and the government often waives the fees meant to reimburse the U.S. treasury for this investment. While the U.S. government does provide subsidies to farmers and other industries, the level of general support for weapon exports is unparalleled.

The rationalization for this anomaly in U.S. economic policy goes hand-in-hand with the arguments put forward for export reforms, namely that the U.S. military

depends on having a healthy and cost-efficient arms industry, which in turn depends on high volumes of arms exports. The special relationship between the Pentagon and the arms industry makes sense given that the Pentagon relies on the private sector as an integral part of its weapon development and acquisition process. But the military has taken this logic a step further, arguing that without a certain level of arms *exports*, it will not be able to keep its weapon procurements up to a high standard.

This line of reasoning came about at the end of the Cold War, when U.S. procurement funds dropped in response to a reduced perception of threat.² Partly out of an unwillingness to promote the type of difficult, potentially risky, conversion that would have preserved jobs but reduced arms-building capacity, the U.S. government decided that arms exports would be the best way to make up for reductions in U.S. demand. Missing from this calculation is the notion that weapons are dangerous commodities, and that increasing their export poses risks to both Americans and to international peace and security.

Health of the Defense Industry and Modernization

Perhaps the most common argument put forward by the defense industry is that its health and the preservation of U.S. jobs relies on reductions in “barriers” to arms trade, as represented by the Arms Export Control Act (AECA), the International Trade in Arms Regulations (ITAR) and the bureaucracy involved in their implementation. As the final report of the congressionally mandated Commission on the Future of the United States Aerospace Industry (hereafter “Aerospace Commission”) states, “One of the primary obstacles to the health and competitiveness of the U.S. aerospace industry is our own export control regime... In our judgment, export control reform is crucial to provide better security in the future and to insure the health and vitality of our aerospace industry.”³

But the facts belie this claim, and in Chapter 3 Kevin Speers and retired Rear Adm. Steven H. Baker explain why. U.S. weapon makers have dominated the international arms market since the end of the Cold War, making 40 percent to 50 percent of the global arms deliveries from 1994–2001.⁴ The Aerospace Commission does not dispute this, stating, “We remain strongest in military aircraft markets. U.S.-origin aircraft dominate existing international fleets of military transports, tankers and helicopters... U.S. market share is set to grow with the introduction of the Joint Strike Fighter and procurements of F-22 fighters.”⁵

Clearly, if export controls were a serious impediment to international business, U.S. firms would not have performed so well on a consistent basis. Indeed, it is unclear whether export controls actually have a significant effect on the decisions of foreign purchasers. Despite the bureaucratic hoops foreign governments need to jump through to purchase U.S. weaponry, they have continued to buy American for political reasons (in an attempt to curry favor with the United States) and because of the superiority of U.S. products. On the other hand, a relaxation of con-

trols is not likely to significantly decrease U.S. exports, especially among states with their own defense industries, which face enormous pressure to buy domestic products.⁶ There is probably an upper limit to how much even non-producers will purchase from the United States, which will not be affected by export control changes. Many states seek to diversify their suppliers to protect against possible restrictions on what they can purchase, as well as to maintain good relations with other key supplier states.

Industry advocates and Pentagon officials contend that at the very least, U.S. controls may lead foreign buyers to “design out” American components because of the difficulty in acquiring them in a timely manner and in gaining permission to re-export weapons with U.S. parts. They point to an October 1999 letter from DaimlerChrysler Aerospace (DASA) to Jacques Gansler, then U.S. undersecretary of defense, threatening to look elsewhere for weapon components because of licenses being “mired” in the State Department. But there was suspicion at the time that the Pentagon actually encouraged DASA to write that letter to support a case for export reforms.⁷ This would be in line with other efforts of the Clinton administration to solicit industry’s vocal support for major export reforms.⁸

Reformers also argue that relaxed export controls would help increase trans-Atlantic defense cooperation, which is deemed critical for U.S. modernization efforts. The Pentagon’s Defense Science Board argues that if U.S. and European firms keep their industries separate and competitive — what they call menacingly “Fortress Europe” and “Fortress America” — the United States could fall behind technologically or will lack the pressure to innovate and keep the U.S. military as advanced as possible.⁹ Still, it is unclear why the U.S. government claims that European militaries are falling dangerously behind technologically, but that U.S. modernization depends on cooperation with the same backward industries. Moreover, innovation can arise just as often, if not more frequently, from competition between independent firms as it does in cases of industry collaboration or consolidation.

Keeping “Fortress Europe” open to U.S. sales or investment is also important for economic reasons.¹⁰ In addition to trying to maintain current levels of sales, large U.S. companies may be seeking to lower costs by increasing cooperation with European firms that can produce components for less than their American counterparts. For large ticket items like the F-35 Joint Strike Fighter, the goal is also to create sufficient economies of scale in production to make the equipment affordable for the U.S. military. Ironically, the European defense companies, with their small domestic markets, are most keen on increasing sales in the large U.S. market, which has been mostly closed to foreign producers or investors.¹¹

It is also unclear whether reduced export controls would increase international defense cooperation, or whether this would be well received by U.S. workers. The GAO reported that U.S. firms are not as enthusiastic about joint projects with Europeans as the Pentagon makes it seem.¹² For example, the GAO found that U.S. companies prefer teaming up for specific projects, but European governments

prefer joint ventures. Thus, some of the explanation for the current low levels of trans-Atlantic defense cooperation may lie in these preferences, not in the nature of export controls. In addition, some analysts have found that joint ventures are not necessarily the most efficient since participating states usually want local production — eliminating potential economies of scale in manufacturing — and sometimes require different specifications on items like radar and avionics — reducing potential interoperability gains.¹³

One can also question whether a reduction in export restrictions is likely to preserve U.S. jobs. With offsets involving foreign co-production or subcontracts a key element of many large export contracts, the jobs being created may very well be overseas. According to R. Thomas Buffenbarger, president of the International Association of Machinists & Aerospace Workers and a commissioner on the Aerospace Commission, the industrial policy being advocated by the commission is “geared toward benefiting the investment community and the exporters, and does very little to address concerns of people like me.” The commission “wants to protect everything except the jobs,”¹⁴ he added. In a dissenting opinion to the commission’s Final Report, he wrote, “Provisions that encourage the U.S. aerospace industry to transfer work and/or technology to other countries and to utilize foreign sourcing through a variety of means ... are shortsighted.... While the “globalization” of the aerospace industry is a reality, the impact of globalization on U.S. jobs and our security must be taken seriously.”¹⁵

Indeed, both Boeing and Lockheed Martin have shown an increase in revenue since the end of the Cold War that is not paralleled by a similar increase in jobs. Between 1990 and 2002, Boeing doubled its income, whereas employment numbers remained essentially static. Lockheed Martin tripled its income, but only doubled employment.¹⁶ The rise in income in both cases was due in part to the acquisition of other defense firms. But while employment figures initially rose after the acquisitions, they have been falling off steadily since then.

Finally, it appears that for now, defense spending cuts are a thing of the past. The wars in Afghanistan and Iraq have boosted purchases of weaponry for use in combat and to fill depleted stockpiles. And with the war on terrorism here for the long run, the arms industry is likely to have plenty of business at home for the foreseeable future. For example, in the first quarter of 2003, General Dynamics reported a 42 percent increase in sales in its combat systems group, and a 67 percent increase in profits.¹⁷ Boeing also reported “unusually strong” military sales in the first quarter of 2003, with business for its Integrated Defense Systems unit up 49 percent.¹⁸ Overall, orders for large manufactured items rose sharply in March 2003 because of continued high demand for military goods.¹⁹

If, despite the above analysis, U.S. leaders still find current production and investment levels not sufficiently high for the health of the defense industry and U.S. modernization efforts, it needs to look into more creative solutions than simply exporting more weapons. Incorporating more commercial goods, encouraging

cooperation among defense firms within the United States or among commercial and military firms, and increasing U.S. research activities could be part of a more constructive response.

Interoperability

The second myth behind the defense export reform movement is that reducing controls on arms exports is critical to achieving interoperability with allies, which, in turn, is essential for conducting overseas military operations. The first question, again, is whether this is really a problem. Achieving the ability to communicate or operate in conjunction with allies the U.S. military is currently or could fight alongside is certainly critical. But how many countries is the United States really fighting alongside? In what types of operations? Do current export controls actually prevent those countries from buying the necessary equipment? Are arms exports the only or best way of achieving interoperability? Retired Army Col. Daniel M. Smith examines these questions in Chapter 4.

Overall, it seems that the need for equipment-based interoperability may not be as great as the Pentagon describes because of the limited amount of combat the U.S. military is undertaking in coalition with other states. In peacemaking operations (under Chapter VII of the United Nations Charter or otherwise, such as in Afghanistan or Iraq), the U.S. military usually acts alone, or with one or two other nations, such as the United Kingdom. In these situations, other nationalities generally come into the theater only afterward, when U.S. troops are on their way out.

The military often speaks of the need to increase interoperability with developing nations, especially for peacekeeping operations. This was a large part of the rationale for the recent sale of F-16s to Chile. But U.S. armed forces rarely participate in peacekeeping operations, and when they do, it is not with fighter jets. U.S. troops on the ground in Bosnia, for example, may require the ability to communicate with other nations, but this involves low-tech equipment that rarely gets held up in the export control process.

When the U.S. military does conduct multinational military operations, the State Department has set up an expedited licensing system for coalition partners. The State Department pledged to process licenses for Operation Iraqi Freedom and Operation Enduring Freedom in Afghanistan in less than 48 hours.²⁰ There is an oft-repeated story about problems allies had in acquiring U.S. equipment for use in the Kosovo conflict, but a GAO report clarified that the parties involved did not indicate the weapons were for use in the ongoing fighting.²¹ Moreover, the military's Kosovo after-action report did not cite export controls as an impediment to interoperability.²²

If the U.S. military insists that a failure to achieve adequate interoperability with allies is hampering its operational abilities, then its proposed solution should not focus exclusively on exports. It simply will not be possible to obtain universal use of U.S. equipment, even with close allies.²³ The U.S. military, therefore, needs to

work more closely with allies on developing standards that can be used by all systems, no matter where they are developed or produced.²⁴ Additionally, joint exercises and training with close allies will likely help as much, if not more, in achieving interoperability with allies than an equipment-based strategy.

Arms Buy Influence

The third myth cited by advocates of increased arms exports, especially those in the State Department, is that arms transfers buy the U.S. government influence over other nations' actions. Many foreign governments have come to see decisions on arms sales or military aid as a central element of their relationship with the United States. Because of the diplomatic weight these transfers supposedly carry, the U.S. government believes that recipient states will act in accordance with American values, refraining from engaging in repressive internal policies or aggressive actions against neighboring states. Thus, the argument goes, too many restrictions on arms exports will hamper the U.S. government's ability to use this critical foreign policy tool.

But do arms transfers actually buy influence? Are recipient states using U.S. weapons responsibly, and do importing militaries take into account U.S. principles when forming their policies? Cassady Craft examines these issues in Chapter 5, and judging from the behavior of key recipients such as Saudi Arabia, Turkey, Indonesia and Colombia, finds that this does not appear to be the case. In Indonesia, for example, decades of U.S. arms transfers have been accompanied by high levels of repression. If the U.S. government truly had influence over the Indonesian military, surely it would have been able to prevent or stop the massacres in East Timor during the 1999 independence referendum. Turkey represents an even more thorough case study of non-influence. From its terrible human rights record to its aggressive behavior toward fellow NATO-ally Greece to its damaging refusal to allow the U.S. military use of bases for a northern attack on Iraq in March 2003, Turkey has consistently thumbed its nose at U.S. foreign policy and national security goals despite large volumes of arms sales and military aid over the past decades.

If the U.S. government truly wants to influence other nations' policies, it might fare better if it set out specific limits on acceptable behavior by recipient states, and stuck by these conditions. A firm set of export controls, especially normative rules, would help boost U.S. credibility. A state that strongly desires U.S. arms and aid might think twice if it knows its actions are unquestionably connected to future transfers. Even if the government chooses to forgo U.S. weapons in favor of continuing condemned behavior, at least the U.S. government would not share in the responsibility for the misuse of its weapons.²⁵ Instead, the U.S. government is relying on a blind faith — not borne out to date — that the very act of transferring weapons will curry enough favor with the importing state to prevent unwanted behavior.

Risks Associated with Decontrol

Not only has the export control debate lacked sufficient analysis of the alleged problems being addressed, but it has also failed to include much assessment of the risks posed by current and proposed policy changes. Reformers pay lip service to the relationship between export controls and national security, but do not adequately lay out a picture of how a relaxation of export controls could affect U.S. security. And they have virtually ignored how loosening controls could affect foreign policy goals, such as the promotion of human rights, democracy and regional stability. In addition, it is not surprising that the potential damage to congressional and public oversight is being left out of the debate largely dominated by the executive branch and industry.

National Security

One of the great marketing strategies of the export reform movement has been to claim that current levels of export controls are actually *damaging* national security, rather than protecting it.²⁶ But, as Jason Meyers argues in Chapter 6, such proclamations can be disputed. Reformers claim that unimpeded access to foreign markets would help the U.S. military to develop top-of-the-line equipment at lower costs and to work better with foreign militaries. But whether or not one agrees with the potential benefits to national security from increased exports, one must also look at possible drawbacks. One might even argue that when it comes to national security, a significant amount of cost — no matter what the corresponding level of benefits — is too risky a proposition to make policy changes worthwhile.

Advocates of export control reforms argue that because their policy proposals focus on facilitating arms and technology transfers to NATO members and other close allies, there are minimal security risks involved in the changes. Unfortunately, however, even close allies have experienced problems ensuring the security of defense equipment and technology under their control. Indeed, in its fiscal year 2002 End Use Monitoring Report the State Department found that the involvement of “Western-European based intermediaries in suspicious activities continues to be notable.” Over a quarter of the “unfavorable” end-use checks involved possible transshipment through Western European states, mostly of aircraft spare parts possibly destined for embargoed countries such as China, Iran or Iraq.²⁷ After the war in Iraq, Sen. Jon Kyl (R-Ariz.) noted that dual-use items smuggled from France and Germany helped build Iraq’s weapons of mass destruction capability. Referring to these cases, he stated, “These are all examples of providing aid and comfort to the enemy, in most cases, unintentionally. But the safety of our nation is more important than making a few more dollars or placating a small number of self-interested allies. Controls over sensitive exports need strengthening, not weakening. This will not be accomplished unless the United States takes the lead, and urges our allies to join us.”²⁸

Even in Canada, one of the United States’ most trusted trading partners, several cases involving the illegal diversion of U.S. weapons and technology to China,

Iran and Pakistan forced the State Department to temporarily suspend its license-free trading privileges in 1999.²⁹ This led the GAO to recommend that the Canadian exemption should not serve as a model for other states unless the policy was clarified and controls strengthened: “Extending exemptions to other countries may aggravate problems if the U.S. government does not learn from its experiences.”³⁰ On the contrary, the U.S. government is well known to have the tightest export control system in the world, from its controls on intangibles to the regulation of data transfers to non-nationals within the United States to a ban on retransfers of defense goods without prior U.S. consent. Therefore once U.S. military items leave U.S. control they are almost certainly going to a place where the risk of retransfers or diversion is higher.

Trade with the Europeans may actually pose greater threats than with some other countries because a key goal is to increase data and technology transfers for the purpose of joint weapon development and production. As one analyst remarked, “International arms collaboration, involving as it does the permanent share-out of resources, skills and technology that underlie armaments production, is potentially more destabilizing than outright arms sales. These capabilities, once transferred, cannot be cut off or recovered.”³¹ Moreover, the Defense Department states that it is most critical to protect not the weapons or components themselves, but the systems integration needed to put them together.³² But co-production agreements threaten to weaken the U.S. monopoly on that capability since they often require U.S. firms to instruct foreign companies on how to assemble high-tech weapons.

Increased levels of joint development or the economic pressure to market new weapons to foreign buyers may also limit the ability of the U.S. military to decide the characteristics of new weapon systems or whether they are developed at all, thus moving the balance of power in procurement decisions from the government to private industry.³³ The resulting limits on the U.S. military’s freedom of action could impact national security. As military analyst Major Isaiah Wilson notes, “The services are to a large degree limited in their choices of current and future systems by what the foreign buyer is interested in and willing to purchase.”³⁴ He believes that the U.S. Army will be hamstrung in its ability to move beyond its heavy-armor legacy force because the M1 main battle tank is central to the land forces of major importers like Egypt and Turkey. “If these countries will not, financially cannot, and/or strategically should not ‘leap-frog’ with the United States to the Army-After Next programs, then what might that say about the Army’s ability to leap-ahead at all?”³⁵

The current national security environment seems to warrant an *increase* rather than a reduction in controls over sensitive military equipment. Although it may be tempting to increase military aid to allies in the war on terrorism for short-term political gain, history shows that these types of “marriages of convenience” can often present long-term risks. For example, the United States paid for billions of dollars of military equipment and training for the mujaheddin in Afghanistan in

the 1980s for their battle against the Soviet Union. Some of these soldiers, now part of the Taliban or *al Qaeda*, used American arms and training against the United States during military operations in Afghanistan after the Sept. 11 terrorist attacks. High-tech weapon sales to the Shah of Iran in the 1970s also ended up in enemy hands when that regime was overthrown. Even though the equipment is aging, several recent incidents of spare-parts smuggling to Iran shows that Tehran is still trying to keep the weapons in service.

Even sales to close allies deserve closer scrutiny in this day and age. Is it really the time to allow weapons and components to be sent without a license to the United Kingdom, France or Germany, which have had nationals involved in illegal weapon diversions to Iran and Iraq? The Justice Department and Customs Service have both affirmed that exempting states or specific munitions from licensing requirements (both being proposed by reformers) makes it much more difficult for them to investigate and indict suspected violators of U.S. export laws. In a letter from Justice to the State Department in 2000, the deputy assistant attorney general stated, "We are concerned that the exemption will prompt foreign terrorist groups and other potential adversaries to set up store fronts in England and Australia in order to take advantage of the relaxed export control requirements. We have seen this happen in Canada, a country already exempt from most U.S. export license requirements."³⁶ As U.S. soldiers found in Iraq, risking the proliferation of even low-tech items like small arms or night vision goggles can have deadly consequences for U.S. soldiers.

Foreign Policy

The impact of arms export reform on U.S. foreign policy goals seems to have been completely left out the debate. The AECA gives the secretary of state responsibility for supervising and making decisions on arms exports in order to ensure they support U.S. foreign policy.³⁷ Among the goals listed in the AECA and in previous administrations' policy statements are the promotion of regional peace and stability, human rights, democracy, and economic development.³⁸ Scholars and policy analysts have noted a clear connection between the availability of weapons and the incidence of conflict and human rights abuses. Clearly, large quantities of arms purchases will have a negative impact on the financial situation of the importing state, especially if it is a developing country or is experiencing internal conflict. As Joseph P. Smaldone argues in Chapter 7, the best way to keep weapon export policy consistent with foreign policy goals is to keep tight controls over all weapon and technology exports, and to ensure that sufficient time and energy is spent assessing the eligibility of potential importers and the risks of possible diversion to undesirable end-users.

When export reformers do acknowledge the importance of export controls for enhancing national security, they usually limit their discussion to how controls can protect immediate and obvious national security goals. What they fail to appreciate

is that ensuring longer term security and stability for the United States and the international community relies on preventing arms sales to abusive regimes or regions of conflict. For example, many reformers have called for taking low-tech items off the U.S. Munitions List because they are not seen as posing an immediate risk to U.S. security.³⁹ Following this logic, there would be no objections to supplying military trucks or even assault rifles to conflict-torn areas of Africa. But selling arms of any type to places like Central Africa sends a message to those militaries that the U.S. government supports its activities. Even the transfer of a military truck will enhance the capacity of the recipient state to engage in combat or to move troops to an area where they may engage in human rights abuses.

Likewise, sales to the Middle East might not seem particularly problematic because U.S. clients in the region currently are close allies. But the United States has a long-term interest in preventing local populations from associating the United States with the repressive policies of their governments, especially in some of the more unstable states. Increasing fundamentalist activities in now-allied Islamic states may lead to Iran-type revolutions, placing U.S.-origin arms into new, potentially hostile, hands. Thus, proposals that would reduce the amount of weapons being controlled, force the administration to evaluate licenses in a short period of time, or reduce the amount of control over U.S. equipment do not make sense from a foreign policy perspective.

Weakening Congressional and Public Oversight

Congress also has a key role in the formulation of arms transfers policy, a fact that arms export reformers would like to change. It is natural for defense industry officials to try to reduce the amount of time it takes to secure an export license. They see the time it takes to consult with Congress as an unnecessary delay for their business deals. But, as David Fite argues in Chapter 8, cutting Congress — and therefore the broader public — out of the arms export licensing process would violate the letter and intent of current law. Not only do the foreign policy committees have general oversight responsibility for the State Department, and therefore its arms export licensing activities, but the AECA requires the executive branch to consult with Congress on pending arms transfers and to report to it on planned and past sales. In part, these laws are simply the result of the U.S. government's system of checks and balances. But they also affirm that members of Congress and their staff have a level of expertise they can and should bring to bear on arms export policy and transfer decisions.

Moreover, as members of Congress are more directly responsible to the public for their actions than the civil servants of the administration, congressional oversight of arms transfers necessitates public oversight, to the extent permissible for national security and commercial reasons. The public — especially in the form of public interest groups — can in turn help both Congress and the State Department make educated decisions about arms transfers because they have a lot more time and

energy to devote to investigating a potential importer's political or military situation. Members of Congress, congressional staff, public interest groups or individual researchers can often provide insight on the nature of recipient governments, the strategic balance in a region, or on past and potential problems with diversion. Of course, the executive branch has primary responsibility for assessing these risks, but outside support can reinforce the efforts of overworked civil servants.

Recommendations

Advocates for changes to the defense export control system label their proposals “reforms,” as if they were minor, but necessary, improvements to a flawed system. There are certainly some changes that could be made to the bureaucratic process — some of which, such as electronic license applications, are already being undertaken — that might make the system more efficient, and thus, effective. The problem with many of the proposals being put forward by the “reform” community, however, is that they tend to go far beyond the problem at hand. For example, since the process within the State Department is seen as being overly bureaucratic and slow, some reformers want to eliminate the State Department from the licensing process or allow industry to regulate its own exports.⁴⁰ Indeed, the myths reviewed in this book may have been constructed in order to justify policy solutions that largely surpass the actual problems being experienced by industry. Our first and most important recommendation, therefore, is for policy-makers to carefully analyze the defense industry's criticisms of the export control system to see if they truly impinge on U.S. national interests, and then to evaluate whether the policy proposals are appropriate for those problems.

But policy-makers should go further than just maintaining current controls. “Reforming” the export control process should also mean *strengthening* the current U.S. system and pursuing better multilateral controls. Especially in this time of heightened security risks, the question the U.S. government should be asking is whether current controls will keep arms, technology and weapon components out of the hands of terrorists and away from unstable regimes. This means not only improving controls over U.S. equipment, but ensuring that recipients of U.S. defense goods and services share U.S. values and protect sensitive U.S. equipment. It means creating a truly transparent system so the public can provide essential commentary on arms transfers. And it means working with other nations to establish international arms control regimes of the highest quality.

Efficiency

It is true that the licensing teams at the State and Defense departments, just like at any large institutions, could improve upon the way they perform their tasks. Reforms of the export licensing process should aim to reduce any unnecessary bureaucratic burdens on licensing officers and enable all parties in the licensing system to perform their jobs at the highest possible standards. Senior State Depart-

ment officials appear to agree, having told arms control groups that their goal is not to give short shrift to the foreign policy component of the licensing process, but simply to free up licensing officers to do their jobs properly.

But *efficiency*, not expediency, is key. Procedural reforms that make the bureaucracy run more smoothly will likely result in shortened licensing time. Indeed, both the State and Defense departments have found ways to cut down on average license processing times. But reforms that focus first and foremost on reducing licensing time may adversely affect the decision-making ability of those involved in the licensing process. There is a certain amount of investigation that must be done on even the most routine licenses — from verifying the end user to looking at recent transfers to identify destabilizing or suspicious large exports. Some decisions need even longer because there are legitimate foreign policy or national security questions to consider. Forced deadlines could — if designed in a way that led licensing or desk officers to make decisions before they are ready — lead to unsound decisions. Indeed, licensing times have already been cut to such an extent (the State Department is down to an average of eight days for internal reviews) that any further reductions would almost certainly hamper licensing officers' ability to perform their jobs well.

In addition, industry needs to give credit where it is due regarding progress that has already been made. As noted above, license review times already are down in both the Defense and State departments. Although complaints against the Commerce Department are rare, the State and Commerce departments' license review times are similar, though State reviews far more licenses with much less staff than Commerce.⁴¹ What industry may really be complaining about is not the level of restrictions, or the time it takes to process a license, but the fact that sometimes they will receive a negative response for security or foreign policy reasons.⁴²

The following recommendations could help improve the effectiveness of the licensing process while leaving the integrity of the system intact:

- ***Implement an electronic licensing system quickly:*** The State Department is developing an electronic licensing system that would reduce paperwork, enable licensing officers to better track the movement of licenses through the State or Defense departments, and assist the government in keeping industry informed about the status of licenses. This project should receive high priority, and once it is fully operational, companies should be required to use it.
- ***Finish the Automated Export System and Link to Licensing System:*** The long-delayed Automated Export System should be quickly finished and tied by a license identification number to the State Department's electronic licensing system. This linkage would help State track which licenses were acted upon and what was actually shipped. This information is now unreliable because of the manner in which Customs records and communicates the information.

- ***Educate license reviewers about their responsibilities:*** The GAO found that licensing officers at State did not have clear criteria for when to refer licenses to outside offices.⁴³ It also found that desk officers in the State and Defense departments receiving these licenses often did not understand the urgency and importance of their role in the decision-making process. Clear guidelines need to be given to both licensing officers and desk officers about when licenses should be referred, and about the role of the reviewing officers.

Transparency

As noted above, congressional and public oversight is a critical element of the arms export control system. But constructive oversight depends on having up-to-date, complete information on pending and actual arms transfers. Industry would also benefit from having as complete a picture as possible of arms transfers to help analyze market trends. The U.S. government claims to have the most transparent system in the world. But the information it provides to the public is still sorely lacking, not because the laws are unsatisfactory, but because the executive branch is not fully implementing them. In order to be truly transparent, the administration should do the following:

- ***Provide a complete, timely report on FMS agreements, DCS licenses, and deliveries of both:*** Section 655 of the Foreign Assistance Act (FAA) requires a report by Feb. 1 of every year on the authorization and delivery of exported arms, services and training, and whether such exports were funded with U.S. aid. To date, the “655 report” only includes Direct Commercial Sales (DCS) licenses and Foreign Military Sales (FMS) deliveries, and does not state whether U.S. funds helped pay for the transfers. To be fully transparent, the U.S. government should provide all data on authorizations and deliveries for both weapon programs. This information is especially critical for DCS because currently, the public (or even the government, for that matter) does not know how much of the nearly \$50 billion in annual licenses are transformed into actual contracts and deliveries. The administration also needs to keep to the Feb. 1 deadline. Currently, it has been letting the deadline slip, sending the report to Congress only in the summer or fall.
- ***Create an online database with the contents of the 655 report:*** In order to make the 655 report as useful as possible for members of Congress and the public, we recommend that it be placed on the Internet (as required by law) in the form of a fully searchable database, to which data is added every year. Clearly, the State and Defense departments already organize their data in a database. Transforming it into an online database would be a relatively simple way to turn a large, unwieldy volume into a user-friendly instrument, helping both private and public groups assess aggregate data and sales trends.

- ***Make the “Javits” report available to the public:*** Section 25(a) of the AECA requires the administration to include in its annual security assistance budget justification materials on major sales under active consideration for the following year and the impact of the planned sales on U.S. and international security (known as the “Javits report”). The law also requires information on the status of outstanding loans related to security assistance. While Sec. 25(c) encourages the president to make the entire report unclassified, these two components — most critical for public oversight — remain classified.⁴⁴ They should be unclassified and placed on the web. Currently, the only other prior notice the public receives about pending sales is through congressional notifications, which are published in the Federal Register much too late for public input.

Accountability

The U.S. government needs to be held more accountable for the use of the weapons it exports, whether by the original recipient or the ultimate — legal or illegal — end-user. By providing instruments of war, or the technology to build them, to foreign militaries, the U.S. government has a special responsibility to ensure that they are not used to harm civilians, threaten regional stability or endanger U.S. national security. The “Millennium Challenge” program established by the Bush administration in 2003 is predicated on the notion that economic aid recipients need to prove that they will use U.S. funds responsibly. This philosophy is all the more important for military aid and arms recipients, where the stakes are higher in cases of misuse.

Planned changes to the export control process also pose many problems for effective end-use monitoring (EUM). The goal of EUM programs is to ensure that the recipients of U.S. defense articles and services use such items in accordance with U.S. laws and the conditions of the transfer. Today, EUM is centered on an initial license application review, which ensures that U.S. weapons are exported to certified end-users, but does not place a similar emphasis on what happens to those exports once they are shipped. Speeding the licensing process, or eliminating licenses altogether, hinders the ability to conduct pre-license verifications. Moreover, Directorate of Defense Trade Controls’ investigations have found that legal exports to many of the NATO allies set to benefit from reforms are being illegally diverted to countries that would not have access to these items directly from the United States.⁴⁵

- ***Establish a set of firm, permanent eligibility criteria for U.S. arms and aid:*** Firm eligibility criteria for arms transfers is an essential, if currently weak, component of the U.S. export control system. At present, export decisions are guided by policy statements issued by successive administrations and a collection of vague, usually unheeded exhortations in the AECA and

FAA. If the U.S. government is committed to preventing its weapons from being used in a manner inconsistent with U.S. values and interests, it needs to have firm, permanent eligibility criteria. Anything less sends a signal to recipient states that their behavior is ultimately irrelevant when it comes to arms export decisions.

Specifically, Section 502 of the FAA and Section 4 of the AECA, which set out purposes for which U.S. defense articles and services may be used, should also state how they may *not* be used, i.e., in violation of international human rights and humanitarian law or in contravention of the UN Charter. Additionally, Section 505 of the FAA and Section 3 of the AECA, which set out eligibility criteria for military aid and arms transfers, should include normative provisions as well as the current requirements to keep U.S. military goods and technology secure. For example, to be eligible to receive U.S. military items, a state must not receive a “poor” rating by the State Department in its annual human rights report; must not be involved in a major conflict (defined as more than 1,000 war-related casualties a year); and must not experience more than five incidents of diversion per year, as determined by the State or Defense departments’ end-use monitoring reports or investigations of the Customs Service. Other restrictions currently sprinkled throughout the FAA and AECA - such as a ban on security assistance to governments that assist terrorist organizations, are involved in the proliferation of weapons of mass destruction, or have experienced a military coup - should be moved to these sections to create a single, coherent statement of policy.

- ***Include in annual human rights report incidents of U.S. arms being used in abuses:*** The State Department’s annual Country Report on Human Rights, required by Sections 116(d) and 502B(b) of the Foreign Assistance Act, is supposed to include information on the commission of war crimes, crimes against humanity, genocide or general coercion of the population. It is logical to include in these assessments whether U.S. weapons were used to conduct the abuses or in any way enabled the government to carry them out. This is especially urgent now that the U.S. government is providing military aid to many more governments accused of gross human rights violations as part of the war on terrorism.
- ***Extend Leahy Law to all weapon transfers and make it permanent law:*** Since 1997, the Foreign Operations Appropriations Act prevents U.S. military aid from going to foreign military units where there is credible evidence that they are engaged in human rights abuses. The law is intended to prevent those specifically accused of abuses from benefiting from U.S. security assistance. But the law would be more effective if it prevented all military equipment — no matter who paid for it — from going to such units. It should

also be made part of permanent law instead of needing to be approved on an annual basis.

- ***Conduct a thorough evaluation of allies' export controls and the impact of reforms on national security:*** Many of the policy changes being proposed by export reformers are intended for NATO members or other close allies, as if facilitating weapon and technology transfers to these countries posed little or no security risks for the United States. Yet the State Department has documented numerous incidents of illegal diversion of U.S. defense goods and technology, sometimes to U.S. adversaries. Before any more changes are made to liberalize controls to these states, the administration should perform a thorough review of allies' export controls, including their ability to guarantee the security of U.S. products and technology and their past cooperation with U.S. criminal investigations for AECA violations.
- ***Strengthen End-Use Monitoring:*** End-use monitoring would be improved by increasing dedicated staffing and resources, enhancing communication between responsible departments, and providing detailed reporting of existing end-use checks. Congress should also develop specific requirements for end-use monitoring of those weapons or dual-use goods that pose the greatest risk for national security, are most susceptible to diversion or are repeatedly associated with human rights violations. The prioritization of EUM checks should take into account those weapons, states or parties that have been involved in numerous attempted or actual export violations.⁴⁶

International Controls

The recommendations outlined above are largely unilateral actions because it is often necessary for the United States to lead by example or simply go it alone when it comes to arms control. But the effectiveness of U.S. export controls does rely in part on the willingness of other countries to follow similar rules. In Chapters 9 and 10, authors Wade Boese, Jillian Hayes and Theresa Hitchens develop useful recommendations on how to improve the Wassenaar Arrangement and Missile Technology Control Regime. While these instruments largely focus on procedural controls, there is also a need for normative multilateral agreements on arms transfers. Therefore, we also recommend:

- ***Follow through on the International Code of Conduct Act of 1999:*** The FY2000-01 State Department Authorization Act directed the State Department to pursue a multilateral agreement on arms transfers. The agreement was supposed to prevent arms from going to states that do not respect human rights, are engaged in acts of armed aggression, or support terrorism or the proliferation of weapons of mass destruction. Under the Clinton ad-

ministration, the State Department began informal discussions with European exporters on such an agreement. But beyond a U.S.-EU Declaration on Responsibility in Arms Exports issued at the December 2000 U.S.-EU Summit, no real progress has been made, and the code appears to have been put on the back burner. The State Department should recommence talks with other major arms exporters on international normative controls, perhaps beginning with a formal commitment to use the criteria set out in the European Union's Code of Conduct.

- ***Develop an international arms trade treaty:*** While the International Code can be a politically binding agreement, the United States should also endorse the idea of a legally binding treaty on the arms trade. Arms control and human rights groups have already developed a draft treaty (see Chapter 11) that would prohibit arms transfers where there is a high risk of weapons being used to violate international human rights or humanitarian law, or in contravention of the UN Charter's rules on nonaggression and non-use of force. This draft treaty sets out minimum core standards designed to prevent the most egregious arms transfers. It is based on the international legal principle that a state aiding another state in the violation of international law (in this case through the transfer of weapons used in the violation) shares in the responsibility for the illegal act.⁴⁷

Conclusion

The intention of this book is not to argue that expediting arms transfers will never lead to more interoperability, a healthier defense industry or closer ties with foreign militaries, or that these are not worthy goals. We simply maintain that there are different means to achieve these same ends, and that using relaxed export controls to advance these goals may create other, potentially more costly, problems. Therefore, the U.S. government should think more carefully about the real need for structural changes to the export licensing process, the potential ramifications of such projects and possibilities for alternative approaches.

When conducting such analysis, U.S. policy-makers need to recognize that it is simply not feasible to rely on increased arms exports to achieve certain foreign policy or national security goals. For example, one of the Pentagon's top priorities in reforming the export control system is to enable European allies to work more closely with American forces. But if the Pentagon truly wants to work with those countries on interoperability, it must acknowledge that many of them have weapon industries that they need to support. No amount of reduction in export control "barriers" will convince European states to buy only American, or even much more than they already are acquiring. The same may also be said about other importers, which for political or economic reasons may choose to go with other suppliers at times. The gap in defense capabilities with Europe is also linked to much lower

European defense spending and investment rather than the limited constraints faced in buying U.S. machinery.

Instead of focusing intensively on getting countries to purchase U.S. weaponry, the U.S. government needs to examine other ways to meet policy goals, such as interoperability, a healthy defense industry, protecting national security and enhancing its diplomatic strength. For example, interoperability can be improved through joint exercises and training, as well as through cooperation with allies on setting and respecting standards for interoperable equipment. The current high levels of defense spending in the United States would likely provide enough procurement and research and development funds to keep open lines of production and maintain skilled labor in the field. (The arms industry does not appear to be having any trouble meeting the recent rise in U.S. procurement demand, which is one pretext for keeping open lines of production.) The way to make friends with both the governments *and* the peoples of foreign states is not through military aid, but with economic aid and a commitment to fair trade that would benefit the general population.

When it comes to promoting national security, the U.S. government should be looking at ways to strengthen, not weaken, export controls, especially in these dangerous times. There have been several recent cases of individuals trying to smuggle spare parts to countries like Iran and companies providing critical technologies to China.⁴⁸ Any time a regulation is relaxed, or a weapon system decontrolled, the U.S. government is forfeiting its ability to control who receives U.S. arms and weapon technology or how it is ultimately used. As Sen. Tim Johnson, D-S.D., noted, “The lesson should be clear — to the extent that the U.S. arms the world, it undertakes a risk that those weapons could be used against our own citizens.”⁴⁹

Cynics argue that globalization makes the spread of weapons and technology inevitable, and that U.S. firms will miss out on valuable sales opportunities if the U.S. government tries to unilaterally promote restraint. Rather than trying to reinforce multilateral arrangements, reformers seem to be asking the U.S. government to give up the nonproliferation battle altogether. In other words, “If you can’t fight ‘em, join ‘em.” But arms control is too critical to take such a blasé attitude. There is also a vicious circle at play here: The easier it is to export arms and technology, the harder it will be to control their diffusion, and the more advocates for reform will say there is no point in having unilateral controls.

In addition, reformers fail to understand or admit that the symbolism of a U.S. sales denial can be extremely important, regardless of whether the country in question is ultimately able to procure a similar weapon. The U.S. government cannot be a self-proclaimed leader of democracy and human rights while at the same time arming governments that repress their own citizens. Nor can it effectively ask other exporting states to refrain from sales that threaten U.S. interests (such as the alleged Russian sales of GPS jamming equipment to Iraq or Israeli AWACs to China), if it is simultaneously reducing its export controls or increasing sales that pose a

risk to regional security. After the first Persian Gulf War, there was an international call for conventional arms control because of the damage to international security done by the 1980s arms build-up in the region. Perhaps the 2003 war in Iraq will also convince major arms exporters that careless exports can be exploited by certain states, leading to a severe threat to international security.

The value of arms export controls — be they unilateral or multilateral — is clear and compelling. The U.S. government must stand behind the rules and laws it has carefully crafted over the past few decades. Though they could use some strengthening — especially on the normative side — they have served U.S. interests well. It is hard to know whether controls will be missed until after they have gone. But when it comes to the international arms trade, the consequences of finding out may be too great to bear.

ENDNOTES

- 1 Army analyst Maj. Isaiah Wilson also notes the inherent conflict between the reformers' claim to be enhancing national security and the actual impact of such reforms: "While the stated (formal) reformed policy speaks of security and anti-proliferation as the prime motive, the implementation of the policy has privileged the interests of the foreign customer and the transnationalized defense firm over the general public interest in non-proliferation for security sake and the military services' requirement to continue in its ability to acquire high-tech weapons at lowest possible cost for sake of providing for the common defense." He also notes how the armed forces have been drawn into this process. "Perhaps the most tragic figures of all in this play are the US military services — forced to promote arms exports today out of economic necessity in hopes of acquiring the high-tech weapons systems they will need in the future to effectively secure and defend." Major Isaiah Wilson III, USA, Ph.D., "Today's Profits, Tomorrow's Losses: The Commercialization of US Arms Export Reform and its Implications on National & Regional Security," August 17, 2002, p. 3.
- 2 Though Ann Markusen argues that despite declining defense budgets, arms procurement sums have remained steady in the United States Ann Markusen, "The Rise of World Weapons," *Foreign Policy*, spring 1999, p. 42.
- 3 "Final Report of the Commission on the Future of the United States Aerospace Industry," November 2002, p. 6-8.
- 4 Richard Grimmett, <http://www.fas.org/asmp/resources/govern/crs-r131529.pdf> \t "_blank" Conventional Arms Transfers to Developing Nations, 1994-2001" Congressional Research Service, Aug. 6, 2002, p. 78.
- 5 "Final Report of the Commission on the Future of the United States Aerospace Industry," p. 4-6.
- 6 Markusen, p. 42
- 7 Based on author's conversations with senior State Department officials and questions for then House International Relations Committee Chair Benjamin Gilman to ask John Holum, then deputy secretary of state in 2000.
- 8 For example, in mid-April 2000, David Oliver, principal deputy undersecretary of defense, sent a letter to members of the Aerospace Industries Association asking them to write to White House Chief of Staff John Podesta, Secretary of State Madeleine Albright and Defense Secretary William Cohen in support of extending Canadian-style license exemptions to other countries.
- 9 "Final Report of the Defense Science Board Task Force on Globalization and Security," Office of the Under Secretary of Defense for Acquisition and Technology, December 1999.
- 10 Richard A. Bitzinger, "The Globalization of the Arms Industry: The Next Proliferation Challenge," *International Security*, Fall 1994, p. 190. Bitzinger notes that while in the past the U.S. government was primarily motivated by the need to help allies build capacity and improve interoperability, "More recently, the U.S. government has seen globalization as a means whereby it could help preserve and strengthen the U.S. defense industrial base, by gaining access to foreign markets and innovative foreign technologies."
- 11 This discrepancy in interests may explain why the Defense Trade Security Initiative, which was designed to get European countries to tighten their export controls by offering them easier access to U.S. weapons, has not produced the desired results.
- 12 GAO, "Defense Trade: Contractors Engage in Varied International Alliances" (NSIAD-00-213), Sept. 7, 2000.

- 13 Bitzinger, p. 180.
- 14 Gopal Ratnam, "Panel: U.S. Aerospace Needs Government Boost," DefenseNews.com, Nov. 18, 2002.
- 15 R. T. Buffenbarger "Commissioner R. T. Buffenbarger – Dissenting Views," in "Final Report of the Commission on the Future of the United States Aerospace Industry," p. V-3.
- 16 Data comes from company 10-K reports and annual reports to stockholders filed with the Securities and Exchange Commission.
- 17 The Associated Press State & Local Wire, "Earnings Down at General Dynamics, But Beats Expectations," April 16, 2003.
- 18 Peter Pae, "Boeing 1st-Quarter Loss Narrows; Aircraft maker's defense unit helps offset a steep charge and makes up more than half of total revenue as deliveries to the military climb," *Los Angeles Times*, April 24, 2003.
- 19 Martin Crutsinger, "Durable goods orders jump 2 percent in March," The Associated Press, April 24, 2003.
- 20 Department of State, "Department of State to Expedite Export Licenses for Iraq Coalition Partners," Media Note, March 26, 2003.
- 21 GAO, "Defense Trade: Analysis of Support for Recent Initiatives," p. 24.
- 22 Department of Defense, "Kosovo/Operation Allied Force After Action Report," Jan. 31, 2000. See also, GAO, "Defense Trade: Analysis of Support for Recent Initiatives," p. 4.
- 23 The Aerospace Commission notes, "We actively try to get allies to buy American military equipment to improve our ability to fight as an alliance, yet we bog down that process through nettlesome export controls." "Final Report of the Commission on the Future of the United States Aerospace Industry," p. 6-10.
- 24 For a more detailed discussion of transatlantic interoperability and recommendations for improvement see Jacqueline Grapin, Ed., "Transatlantic Interoperability in Defense Industries: How the US and Europe Could Better Cooperate in Coalition Military Operations," The European Institute, Washington, DC, 2002.
- 25 International legal experts assert that a state that helps another violate international law – e.g., using arms against civilians – shares the responsibility for that act. See the International Law Commission's Draft Articles on State Responsibility, Draft Article 16, adopted in August 2000.
- 26 "Final Report of the Defense Science Board Task Force on Globalization and Security." See also, John Hamre et. al., "Technology and Security in the Twenty-First Century: U.S. Military Export Control Reform," Center for Strategic and International Studies, May 2001.
- 27 Department of State, "End Use Monitoring of Defense Articles and Defense Services Commercial Exports" for FY 2002. Available at http://www.pmdtc.org/docs/End_Use_FY2002.pdf.
- 28 Sen. Kyl, "Arming the Enemy," Press Release, April 4, 2003.
- 29 GAO, "Defense Trade: Lessons to Be Learned from the Country Export Exemption," (GAO-02-63) March 29, 2002, p.4.
- 30 *Ibid*, p. 14.
- 31 Bitzinger, p. 190. These risks are even higher when technology is transferred to developing states. "Globalization also has the potential to undermine Western, and especially U.S., military-technological advantages ... As the leading suppliers of military technology and arms-producing capabilities to the developing world, the Western industrialized countries must at the very least be cognizant of the long-term implications of their actions and the possible adverse effects of such transfers on their own national security." Bitzinger, p. 171-2.
- 32 "Final Report of the Defense Science Board Task Force on Globalization and Security," p. 36.
- 33 "Under these circumstances (increased exports and transnationalized production) no government will be completely free to develop weapons tailored to specific security needs, enjoy clear technological superiority, or control the diffusion of technology beyond its borders." Markusen, p. 47.
- 34 Wilson, "Today's Profits, Tomorrow's Losses: The Commercialization of U.S. Arms Export Reform and its Implications on National & Regional Security," p. 26.
- 35 Wilson, "Today's Profits, Tomorrow's Losses: The Commercialization of U.S. Arms Export Reform and its Implications on National & Regional Security," p. 27.
- 36 Letter from Bruce C. Swartz, deputy assistant attorney general to John D. Holum, senior adviser for arms control and intelligence, Department of State, April 2000. (<http://www.csis.org/export/ltrholum.htm>)
- 37 Arms Export Control Act, Section 2(b).
- 38 As of this writing, the Bush administration had not yet articulated its own conventional arms transfers policy.

- 39 “We do think it is important to regulate the sale of stealth technology, for example, but see little reason to block the sale of five-ton trucks.” “Final Report of the Commission on the Future of the United States Aerospace Industry,” p. 6-10.
- 40 The first rumored proposal seemed to be put aside in favor of a reorganization of DTC at State. The second proposal, by the Center for Strategic and International Studies in “Technology and Security in the Twenty-First Century: U.S. Military Export Control Reform,” has not been rejected out of hand by administration officials.
- 41 GAO, “Export Controls: State and Commerce Department Licensing Review Times are Similar” (GAO-01-528) June 1, 2001, p. 2.
- 42 GAO, “Defense Trade: Analysis of Support for Recent Initiatives,” p. 10.
- 43 GAO, “Export Controls: Reengineering Business Processes Can Improve Efficiency of State Department License Reviews,” (GAO-02-203), Dec. 31, 2001, p. 1-2.
- 44 The law also requires other information, such as yearly totals of past and projected sales and military aid per country, which is already made public.
- 45 For a larger discussion of end-use monitoring, see Fleur A. Burke, “How Little Is Enough?: U.S. End-Use Monitoring and Oversight of the Weapons Trade,” Center for Defense Information, January 2002.
- 46 *Ibid*, p. 135-137.
- 47 International Law Commission’s Draft Articles on State Responsibility, Draft Article 16, adopted in August 2000.
- 48 “In September 2001, two individuals were sentenced in San Diego for their roles in an international conspiracy to illegally purchase Hawk missile components, fighter jet parts, and other military goods for Iran. In February 1999, Customs agents arrested two individuals for attempting to illegally export to China fiber-optic gyroscopes purchased from a U.S. firm. These gyroscopes are critical in guidance and navigational systems for ballistic missiles and “smart” bombs. They are also used to stabilize weapons platforms.” U.S. Customs Service, “Snapshot of U.S. Customs Strategic Investigations,” Dec. 10, 2001, available at <http://www.customs.ustreas.gov/hot-new/pressrel/2001/1210-02.htm>. In March 2003, Hughes and Boeing paid a \$32 million fine for the illegal transfer of satellite technology to China. State Department, “U.S. Department of State Reaches Settlement with Boeing and Hughes,” March 5, 2003.
- 49 “Congressional Record” Jan. 30, 2003, p. S1767-S1770.



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