

Toward a U.S. Export Control and Technology Transfer System for the 21st Century

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Pierre Chao
Senior Associate

Defense-Industrial Initiatives Group
Center for Strategic and International Studies
202-775-3183
www.diig-csis.org



Background and Environment



National Challenges

- The United States is currently involved in a **wide spectrum of complex national security challenges** around the world. Challenges posed by rising regional powers, global terrorism, and failed states will be long and enduring. These can only be effectively met with the help of our allies and coalition partners.
- Unlike the distinct and isolated blocs of the Cold War, we now exist in a **globalizing world** where information, people, and goods move across national borders with greater speed and ease than at any time in modern history
- A professionalized, well-trained and technologically superior military has been the key to U.S. national security for over fifty years. The **ability to access the world's best technology and use them for the benefit of the U.S. military has been a key** component of this strategy. Maintaining this technology edge has never been more difficult than it is now.
- Similar to President Eisenhower's profound insight that the long struggle with the Soviet Union would require a strong economy as much as a strong military, the **current set of national security problems can only be engaged over the long term with a healthy economy and industrial base.**
- **The regulation of defense exports sits at the intersection of all of these issues**



The Export Control Environment

- The U.S. Export Control system is **under increasing strain** due to the changing nature of the defense export environment
 - High tempo of coalition allied operations in Iraq and Afghanistan **increasing the volume of licenses**
 - Rising scale and scope of current international defense development programs (Joint Strike Fighter, Missile Defense, International Space Station, etc) **increasing the complexity of licenses**
 - **Globalization** of corporate ownership and industry supply chains
 - Increasing use of **commercial technology** for military and dual-use purposes
 - Accelerating pace and geographical **diffusion of technological innovation**
 - Migration of R&D centers to where **collaboration is easiest versus “safest”**
- Evidence of **systemic stress** can be seen in the growing caseload levels for U.S. State and Commerce Department regulators since 2001
 - 50% increase in annual munitions export license applications
 - Doubling of annual demand for dual-use licenses
 - Technical Assistance Agreements and Foreign Manufacturing Licenses now have a total value roughly equal to that of all hardware licenses
 - Annual licensing officer caseloads are up 53% for State and 63% for Commerce



The Export Control Environment (Cont'd)

- The **pace of military operations, international cooperation, and business are accelerating as time becomes a strategic differentiator** - often to a pace that Export Control timelines cannot currently accommodate
 - License processing times at State, Commerce and Defense have shown steady improvement over the past decade but still disconnected from accelerating required response rates
- **Complexities of foreign assistance policies** increase as military systems sometimes outlast allied governments and/or U.S. policies
- **The value of intelligence** and intelligence-sharing continues to increase significantly in this environment as potential adversaries and their support networks diffuse



Another Indicator of Strain Is the Number of Reform Efforts Under Way By A Range of Stakeholders

US Government

- Deemed Export Advisory Committee (Commerce)
- Internal State Department Review (State)
- IPT-DTSA / International Cooperation (Defense)
- Congressional Export Control Working Group (Congress)

Allies

- Defense MOU Attaches Group Exports Project
- Security Defense Agenda in Brussels

Industry

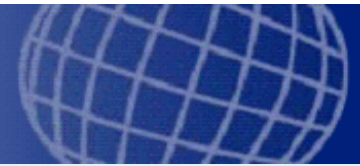
- Coalition for Security and Competitiveness
- AIA
- NATO Industrial Advisory Group

Think Tanks

- Atlantic Council of the United States Export Controls workshops
- CSIS
 - Export Control for the 21st Century
 - US Space Industry Health/Export Control Impacts
 - US-UK Technology Sharing Workshops
- Heritage Foundation Workshops
- Hudson Institute “Obstacles into Opportunities”
- Science, Security and Prosperity in a Changing World (NAS)
- Export Controls and the US Industrial Base (IDA)
- Science and Security in a Post 9/11 World (NAS)
- Rising Above the Gathering Storm (NAS)

Recent Outputs

- US-UK and US-Australia Defense Cooperation Treaties
- White House Directive on U.S. Export Control Reform



The Philosophical Debate Under Way

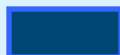
- Virtually all current reform efforts start with the premise that this is a national security issue – versus primarily an economic problem
- However there are two major philosophical camps (often speaking past each other)
 - **The “It’s the Resources and Processes” Camp**
 - Generally believe the structure of the underlying laws and statutes are robust and flexible enough to achieve the intended strategic goals
 - The key issue is adequately resourcing licensing and enforcement
 - Furthermore, particular attention should be focused on management and efficiency reforms
 - If licensing times dropped, complaints would stop
 - The current system is time-tested but needs to be more user-responsive
 - **The Structural Reform Camp**
 - Believe the system will never receive the sufficient resources required nor will adequate business processes be implemented
 - Therefore a fundamental redesign is required, want to rewrite AECA and EAA statutes
 - Focus on:
 - Reducing the volume of licenses by “triage” – create decision models that generate default answers, focus on the exceptions
 - ‘Higher barriers around fewer things’ approach



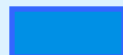
Findings of Concurrent Studies

Current Reform/Study Efforts	Common Themes in Findings					
	International Cooperation Limited/ Difficult	Exist Controls Limit Innovation	System Not Adapted to Globalization	Existing Controls Hurt U.S. Competitive	Licensing Process Under Strain	Laws/Regs Misunderstood by Users
Commerce Deemed Exports						
Defense IPT-DTSA						
GAO						
Defense MOU Attaches Group						
Security and Defense Agenda						
US-UK and US-Australia Treaties						
White House Exp. Cont. Direct						
Congress - Def. Trade Imp. Act						
Coal. for Security and Compet.						
CSIS Treaty and Space Reports						
Hudson Report						
IDA Report						
NAS Reports						

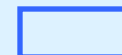
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Strong Findings



Partial Findings



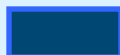
Weak/No Findings



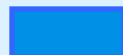
Recommendations of Concurrent Studies

Current Reform/Study Efforts	Common Recommendation Themes						
	Increase Licenseing Efficiency/ Transparency	Clean-Up Control Lists	Improve Interagency Coordination	Improve Exporter Interface	Limit Scope of Tech Controls	Strength International Agreements	Apply Sub-National Focus
Commerce Deemed Exports							
Defense IPT-DTSA							
GAO							
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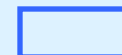
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Strong Recommend



Partial Recommend



Weak/No Recommend



Problem Summary

- The U.S. export control system, as currently structured, is unable to respond as fast as the evolving security environment is changing, resulting in severe strains on the system itself and on its stakeholders
- The friction caused by the system is unintentionally impacting the broader national security goal of maintaining U.S. technology edge
- Globalization and commercialization have reduced the U.S. government's ability to control many defense-relevant technologies
- The current export control licensing process, though continuously improved, still does not meet the pace of international allied operations or business timetables

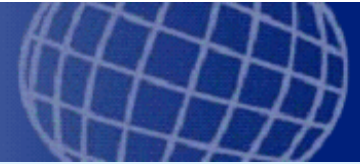


Key Findings of CSIS Process and Recommendations



1) *Who* is becoming more important than *what*

- Many of the export control reform efforts over the past 20 years have focused on the “what should be controlled” as basis for reform
 - Incessant calls for reviews of the export control lists
 - The basis of the “the higher walls around fewer things” argument
 - Made sense when the “who” was well defined – Soviets and the Warsaw Pact
- However, in the current environment the “who” question is becoming the primary one:
 - As ad-hoc coalitions are created to address particular national security issues, changing the calculus of “what” is shared
 - As economic relationships deepen with potential political adversaries
 - As the realities of globalization blur the distinction of national identity (what is an American company? One based in the US? Owned by Americans? Headquartered in America?), forcing analysis to go below the national level
- The “what” question is ultimately often answered by asking “for whom?”



1) *Who* is becoming more important than *what* (cont.)

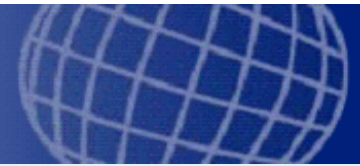
- Some of the major initiatives that have been recently launched are grounded in the question of “who”
 - The Validated End-User program is based on verifying “who”, and determining whether they are a trusted entity
 - The US-UK and US-Australia Defense Trade Cooperation Treaties is also focused on “who”
 - Established notion of “trusted communities”
 - Not national exemptions but is explicit about lower walls around “trusted entities”
 - Expedited processes for coalition partners in Iraq and Afghanistan
- A shift in emphasis to “who” places a greater burden on the front end of the process (intelligence) and on the back end (enforcement)



1) *Who* is becoming more important than *what* (cont.)

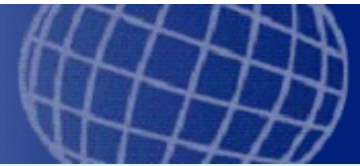
- **Recommendations:**

- **Identify areas for expansion of the “trusted community” idea**, communities where waivers from licensing of particular items can be established or one time master licenses can be established (the UK and Australian “trusted communities” represent the high end of the spectrum)
 - International cooperative programs
 - Coalition partners
 - Training & exercises partners
 - Treaty allies
 - Verified end user programs
- Establish threshold levels for membership in the “trusted community” and identify “what” will be exempt from licensing (but may require notification)
 - Example: Spares and consumables for training & exercise partners
 - Example: Permit the license-free transfer of common equipment between treaty allies (NATO operators of F-16s or Apache helicopters), license required if transferred outside “trusted treaty community”



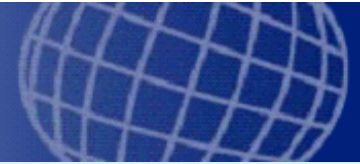
2) Focus on *how* to undertake Control List reviews

- Common theme amongst the export control reform studies is frustration with the control lists
 - Deemed to be out of date
 - Slow to capture new, emerging technologies
 - Slow to reflect changing landscape in terms of global availability and state-of-the-art
- List reviews are time and resource consuming and not the primary responsibility of any one entity
 - Deep technical expertise exists within USG, however that expertise is being tapped for multiple purposes
- Given that it is accepted wisdom that the control lists need review and updating, the focus of reform efforts should be on *how* to achieve this goal



2) Focus on *how* to undertake Control List reviews (cont.)

- **Recommendations**
 - **Establish a National Technology Assessment Group that can be a shared resource for the USG**
- Supports existing USG resources within Department of Defense, State and Commerce
- Serves as an un-biased USG source for data about new and evolving technology developments, particularly important with the convergence of defense, commercial and international technology
- A technical, not a policy, resource
- Housed within a neutral body such as National Academies or other suitable USG-affiliated entity
- Would pull from Academia and Industry as well as USG - limited, highly-qualified staffs
 - **A National Technical Assessment Group could be a resource for other communities – industrial policy, intelligence, etc. - with similar needs**



3) Reduce friction in the system through *cohabitation*

- The focus of many export control reform studies currently under way is on the symptoms:
 - Timeliness
 - Apparent lack of transparency
 - Apparent lack of consistency
 - Jurisdictional battles
- There are three legitimate points of view – national security, foreign policy and economic security. The presence of three key actors – Defense, State and Commerce – is required to represent the multiple points of view. The side effect of the multiple points of view and the presence of two governing laws (Arms Export Control Act and the Export Administration Act) is the “friction” in the system
 - Some of the reform efforts call for the creation of single entity/agency in order to reduce the friction, however this destroys the benefit of the multiple points of view
- Goal should be to derive the benefits of the multiple points of view while minimizing the friction of the system



3) Reduce friction in the system through *cohabitation* (cont.)

- **Recommendations:**

- **“Cohabitate” the primary export licensing functions of State, Commerce and Defense**
 - Leverage a best business practice – integrated teams
 - Leave policy functions at existing parent departments and leave “ownership” of resources/people with existing parent departments (NOT an argument for single agency)
 - “Cohabitation” can be virtual
 - Leverage 21st century technology - robust datalinks (“fat pipes”), common IT systems, desktop video teleconferencing, etc.
 - Or, if virtual does not generate desired effect, then physical cohabitation
- Interdepartmental coordination should be significantly enhanced by cohabitation and the resulting more frequent interaction among staffs and managers. Friction should be reduced through greater understanding at the licensing officer/staff levels of other departmental concerns and capabilities



4) A new international export control regulatory regime is required to adapt to the globalized and commercialized technology and industrial base

- Ultimately, any export control regime will have to have a functioning international component in order to be successful.
 - Strong US controls alone cannot keep dangerous technologies away from adversaries
- It will require US leadership and have the support of the major exporting nations of the world
- A key component of the “trusted community” concept is a strong set of national laws that can establish who is within the trusted community and sufficiently punish violators
- **Recommendations:**
 - **Develop bilateral and regional export control regimes to enable “trusted community” structures**
 - **Initiate process to strengthen and update multilateral regimes (Wassenaar)**



Appendix



Appendix A: Study Approach

- Review of relevant literature and past USG initiatives
- Interviews with 102 individuals representing key stakeholder groups
- Quantitative data analysis
- Analysis of findings and synthesis of key themes
- Compare parallel efforts at reform
- Convening four rounds of working group sessions to vet and socialize findings and proposed recommendations
- Roll-out report in concluding conference



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