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Proliferation: The Case for Export Controls

By Henry D. Sokolski

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With the end of the Cold War and increased public concern that America remain competitive internationally, export controls are increasingly seen as a form of old thinking that must be jettisoned. However effective such controls might have been in keeping the Soviet Union's military from obtaining advanced weapons and technology, they now are seen as an unnecessary impediment to trade not only with Russia, but with China, Central Europe, and the Middle East.

Lost in the enthusiasm to promote U.S. exports is the need to prevent future Iraqs and the increased likelihood that with the relaxation of U.S. and international export controls, nations such as Iran and North Korea will have a far easier time acquiring strategic technology to threaten their neighbors and challenge U.S. influence abroad.

Certainly, these risks along with their military implications need to be identified and assessed at least as much as the dollar value of increased trade that might come with modifying the Export Administration Act (EAA) and the Coordinating Committee (CoCom, the Cold War multilateral export control organization formed to curb strategic trade with the Warsaw Pact). Indeed, to focus on short-term trade benefits and ignore the long-term costs of relaxing export controls is simply bad business, an enterprise that will ultimately cost American lives and treasure as it did in the case of Iran.

To avoid this, U.S. officials need to focus on two key points.

First, proliferation threats we face will no longer be driven simply by rogue states such as Iraq acquiring strategic technology from the West but by the exports and military activities of states already possessing strategic forces, such as China and the former Soviet republics.

Second, export controls are effective when enforced. In this regard, the most significant lever we have on the proliferation behavior of these nations and other Western suppliers is the threat of cutting off access to high technology and the U.S. market. Because relaxing controls increases the scope for uncontrolled activity, moves in this direction should be balanced by upgrading the authority and effectiveness of customs enforcement over both licensed and unlicensed exports and by improving the review of whatever licensed trade remains.

This leads to several recommendations. The most prominent of these is to enhance the U.S. government's power to block objectionable shipments by having U.S. Customs computerize all U.S. exporters' submission shipping export declarations. Once such a system is established, the Customs Service should require exporters to clear all of their declarations in advance of any shipment. This has been done with some success in Australia, for example.

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As for the U.S. export licensing system, more, not less, interagency referral is the way to go both to assure thorough review and to speed up the review process. In fact, for years the Commerce and Energy Departments have been using 17th Century bureaucratic techniques in a counter-productive effort to maintain or increase monopoly control over the licensing process. Congress should put an end to this and demand that 20th Century technology and management skills be employed to establish a single, unified, computerized interagency license referral and review process. Such a system could eliminate time-consuming initial screening of licenses by Energy and Commerce and most of the labor-intensive low-level interagency meetings that follow, while increasing the likelihood that objectionable exports would be spotted.

To prevent such shipments from being made to bad destinations, Congress should avoid reliance on licensing requirements that would be triggered only if an exporter is foolish enough to admit that his goods are going directly to a specific proscribed locale. It makes sense to require the U.S. government to list destinations and projects of concern as much as possible, but export licensing must be triggered by a listing of commodities destined for any locale if the U.S. government wants to avoid the embarrassment of unwittingly endorsing illicit transshipments.

Finally, regarding U.S. policy toward CoCom's successor organization, three issues deserve attention.

First, CoCom's charter needs to recognize that Russia can either retard or drive proliferation trends by how much strategic technology it chooses to sell to Asia and the Middle East and how it chooses to act toward the former Soviet republics and Central Europe. To the extent Russia and other former Soviet republics are allowed to participate in a CoCom successor organization, their continued participation (and, thus, their continued free access to most CoCom-controlled items), then, should be conditioned. This could be done in a neutral fashion by stipulating that violating the organization's guidelines or threatening the security of any other member could serve as grounds for expulsion.

Second, the U.S. should not only insist on the explicit listing of Iran, Iraq, Libya, and North Korea as proscribed destinations for exports of sensitive items, but require the most advanced arms supplying members of the CoCom successor organization to notify all others whenever they intend to ship key items to the Middle East, South Asia, or China.

Third, the U.S. should ask the successor organization to adopt a no undercut rule on any member nation's denial of listed items to any destination. This would prevent other member nations from undercutting any member's denial of an item by selling it themselves, such as might occur in the future with U.S. sanctioning of high technology to nations such as China.

The Proliferation Threats We Face

Traditionally, U.S. proliferation concerns have focused almost entirely on rogue nations, such as Iraq and Iran, and their attempts to acquire strategic technology from the West. The U.S. approach to these proliferation threats has been to try to deny these nations the weapons capabilities they want. These threats are still among our most urgent concerns.

With the end of the Cold War, however, two new kinds of proliferation threats have emerged. The first of these concerns the former Soviet republics. The second is China and Asia.

After its break with China at the end of the 1950s, the Soviet Union had a relatively conservative policy regarding export of strategic weapons technology. With the possible exception of its

SCUD missile sales, Moscow generally exported little or no missile, nuclear, chemical or biological weapons-related items outside the Warsaw Pact.

With the economic decline of the Soviet Union in the late 1980s and finally its dissolution in 1991, though, Moscow began approving broadened exports in nearly all of these categories including some of the most advanced conventional weapons. Most of these Moscow-approved exports have gone to China. Public reports have indicated that they have included uranium enrichment technology, nuclear triggers, submarine quieting and propulsion technology, submarine ballistic missile technology, solid rocket technology, space launch vehicle engines, long-range air refueling hardware, advanced ground attack planes, and more.

There have also been recent reports of missile-related cooperation with North Korea (where Russia has helped transport North Korean SCUDs to Syria) and India; Russian nuclear, air defense, and submarine sales to Iran; and Russian nuclear sales to Pakistan. Some of these sales have raised concerns among members of the Missile Technology Control Regime (MTCR) and other nonproliferation control organizations and may have been coordinated with other former Soviet republics.

Beyond this hemorrhaging of strategic technology from the former Soviet republics, though, there is also a worry that Russian foreign policy is becoming aggressive towards its central European neighbors and the former Soviet republics that border it. This new, more truculent policy has a direct impact on the prospects for proliferation in the case of Ukraine, which is debating whether to hold on to and improve the strategic nuclear weapons it has.

There have even been suggestions that Ukraine might retain these weapons to create a new central European security system for states neighboring Russia which feel threatened by her. Putting aside the merits of such schemes, it is clear that Russian behavior is likely to be the single most important determinate of such alliance systems, of the denuclearization of the former Soviet republics generally, and of what sort of nuclear-based security guarantees NATO will offer in the decade ahead. The U.S., as the key nuclear guarantor of NATO, can hardly afford to be unconcerned. There are also new long-term proliferation worries in Asia. The problem that North Korea presents is by now a familiar one. Perhaps an even greater threat to the region in the decade ahead is China's strategic build-up and the proliferation it might prompt. What makes China's strategic modernization so worrisome is the active cooperation of China's greatest post-World War II adversary, Russia. As has already been noted, Russia began in the late 1980s helping China in virtually every category of strategic technology. The aim of this cooperation has been to correct China's key weaknesses in strategic submarine, nuclear weapons design and production, ballistic missile and space technology, and conventional force projection capabilities. Much of this Russian technology has been paid for with the proceeds from the Chinese military's weapons sales, including missile and other weapons transactions in the Middle East.

This modernization has upset most of China's neighbors including Taiwan, Australia, and Japan, all close friends of the United States. What makes it doubly troubling, however, is that China no longer feels it needs to array its military forces against Russia and, in fact, has redeployed them from the Sino-Russian border to bases on or closer to its Asian coasts. Finally, the Chinese military have voiced rather offensive aspirations to use their forces in future wars in north and southeast Asia.

For the moment, of course, China's military capabilities are too limited to be much of a worry. The next decade, though, looks to be quite different, at least in the eyes of China's neighbors. They already feel compelled to arm themselves and to do more to keep U.S. forces in the region.

Japan, in particular, has begun to voice interest in acquiring overt strategic military capabilities that Japanese policy previously prevented any discussion of. The Japanese Self-Defense Agency

recently has evinced an interest in acquiring dedicated military spy satellites, for example. Given Japan's plans to use hundreds of tons of weapons-usable plutonium in its civilian reactor program and its demonstrated long-range rocket capabilities (and in March, the launching of a new rocket, the H-2, with a reentry vehicle), a key concern is whether or not Japan might develop a strategic military capability in response to the Chinese and North Korean threats.

Such a militarization would almost certainly prompt other nations in the region literally to go both nuclear and ballistic. Among the most likely nations to take this course would be South Korea, Taiwan, and, in time, Indonesia. Any of these actions would constitute a major security crisis for the U.S. and the security alliances we have maintained in the region for more than 30 years. National defense spending and the fear of war would increase all along the Pacific rim. This, in turn, would likely prompt economic protectionism to help pay for the military buildup and undermine the kind of Asian market access that the U.S. economy will need in order to grow in the 1990s.

How Export Controls Can Mitigate These Threats

No one would argue that export controls, sanctions, and customs enforcement are the only or even the prime tools for addressing these kinds of threats. Diplomacy, economic and military policy all must play a role. Yet it would be a mistake to dismiss the importance of export controls, sanctions, and customs enforcement in influencing events and buying time for the other elements of our foreign and military policies to work against proliferation.

Perhaps the most important role export controls play in the fight against proliferation is the distinction they make between legitimate and illegitimate trade. This distinction is critical to any legal effort to interdict the activities of exporters who choose to falsify the end users or final destinations of licensed items being exported or who export strategic technology or hardware without licenses.

By this standard, the more export controls there are, the more narrowly confined is the scope for illicit activity and conversely, the fewer controls there are, the broader the scope for such activity.

This may seem to be an academic point; it's not. For many years, the office I directed in the Pentagon worked with other Missile Technology Control Regime (MTCR) nations in Europe to prevent technology and hardware from contributing to a multinational missile project based in Argentina known as the Condor II missile program. The Condor II was a version of the most advanced ballistic missile in the world, the American Pershing II, and was being built for Egyptian and Iraqi customers.

The project attempted to procure technology and hardware from Europe and the U.S. through a complicated procurement scheme that frequently involved the falsification of export licenses both here and in Europe. Because most European nations required missile technology exports and imports between their nations to be licensed, though, it was possible to interdict these shipments whenever the phony end users and destinations were found out. In fact, the licensing process itself became an important ingredient in the intelligence effort directed against the program. Finally, the interdiction effort against Condor II was so successful that it was possible for our diplomats to get Egypt and Argentina to agree to halt the program.

In the future, successes like this may be far more difficult to accomplish. There is talk in the U.S. of making all trade in MTCR items license-free among MTCR nations, of expanding the MTCR's membership, and even of assisting rocket programs so long as they are professed to be "peaceful." Any and all of these "decontrols" would have made termination of Condor II virtually impossible.

Another advantage of export controls and effective customs enforcement is that they can help protect the good reputation of honest firms that have no desire to promote proliferation. Just before Desert Shield there was an example of this. A U.S. manufacturer had one of its exports to Iraq blocked because U.S. intelligence had determined that it would contribute to Iraq's nuclear weapons manufacturing capability. The shipment was held up and never sent.

Several German firms making a similar product were not so lucky. Their government saw nothing wrong in making such sales to Iraq. The firms made the exports, immediately received unfavorable press, and subsequently had to restructure their corporate boards to demonstrate resolve to prevent such shipments in the future. In addition, they were forced to retain expensive legal counsel in the U.S. to explain their actions to Congress and Bush Administration officials who were considering barring them from doing business in the U.S. Given this episode, the German government chose to adopt more extensive export controls in 1991 similar to our own.

This, then, brings us to the utility of sanctions against foreign entities that proliferate. These have rarely been employed—twice against the Chinese, once each against South Africa and Israel, Russia and India. All the sanctions were for missile proliferation-related activities. In fact, when Congress first enacted U.S. missile sanctions legislation in 1990, most State and Commerce Department officials were opposed to it. Yet, less than a year later an Assistant Secretary of State privately told me that for all of its "unilateralism and extra-territoriality," the legislation was a Godsend. As he explained, without the legislation it would be impossible for him to negotiate missile proliferation issues with any real leverage.

And it's worked. In the case of South Africa, sanctions led to the government reconsidering and finally dropping its space launch vehicle program. In the case of Russian cooperation on India's rocket program, sanctions resulted in a termination of the contract and agreement to adhere to the MTCR's guidelines. In the case of China, sanctions have at least joined the issue of Chinese behavior at a higher level than would otherwise be the case. Moreover, it is quite clear that all of the sanctioned nations, including Russia and China, care intensely about getting such sanctions lifted not only because they want continued access to U.S. high technology and markets, but because there is a real stigma associated with them. In fact, as it becomes more and more difficult to totally deny nations access to strategic technology, the importance of being able to leverage their behavior through sanctions and export controls is certain to increase.

These nonproliferation advantages, it should be noted, can be enjoyed even if controls and sanctions are used unilaterally. Certainly, multilateral controls and sanctions are more effective, but that hardly argues against the U.S. imposing them on its own. Indeed, more often than not, maintaining U.S. unilateral controls has been necessary to set examples for other nations to adopt. This was clearly the case with the establishment of the Nuclear Suppliers' Group, which controls so-called dual-use technology and which is based on restrictions the U.S. had established unilaterally during the 1980s.

With no superpower alliance threatening us or our allies with strategic war, though, it is no longer necessary to control as many technologies as tightly as we did before. A good example here is low-powered personal computers and less sophisticated telecommunications equipment, both of which now constitute major U.S. exports and which raise far fewer military concerns than they did in the 1980s. Then, even low-end computers and telecommunications equipment were thought to be close enough to specialized high-end versions to make their export risky. Indeed, many officials worried that exporting these items to potential adversaries might jeopardize America's clear lead in message code breaking and military systems design. Today, however, the difference between low-end computers and telecommunications equipment and the very best is far greater, making decontrol of items at the bottom end less risky.

This is not to argue that we can afford to decontrol these items totally. Far from it. In fact, if we are serious about preventing future Iraqs, these technologies will still need to be generally controlled along with several others.

Among these capabilities are nuclear, chemical, and biological weapons and the missiles to deliver them. Because of the harm these weapons can inflict and our lack of truly effective defenses against them, the U.S. must continue to show leadership in maintaining export controls over these technologies. In specific, the U.S. through its own domestic export controls should set the standards for the Missile Technology Control Regime, the Australia Group (a chemical and biological weapons technology control regime), and the Nuclear Suppliers' Group.

Beyond controls over these items, however, the U.S. also needs to make a special effort to protect key technologies associated with precision guidance, stealth, air defense, and command, control, communications, and intelligence (C^3I). As Secretary of Defense Perry recently explained in a Brookings Institution monograph, America's lead in these technologies was the "decisive factor" in defeating Saddam Hussein and it is critical that the U.S. maintain its lead.[1] Yet, it is just as clear that this same decisive factor could be used against U.S. and allied forces.[2]

To prevent this, the U.S. must delay potential adversaries' access to these technologies and stay ahead in the military deployment of newer, more effective versions.

What Changes in U.S. Export Controls Does This Recommend?

The Clinton Administration would like to tilt U.S. policy and export control laws towards 1) levels shared multilaterally, 2) the creation of "license-free" zones, and 3) minimizing the requirements for individual licenses in favor of general distribution licensing. This "export bias" rather than "control bias" naturally expands the scope for illicit transshipment and diversions of strategic weapons technology executed outside of any licensing system.

These tendencies, unfortunately, are perpetuated in the Administration's latest draft of the Export Administration Act submitted to Congress in February 1994.[3] The proposal, in fact (at Section 5(f)(4)(A)), encourages the Secretary of Commerce to propose license-free exports among members of existing, nonproliferation regimes such as the Missile Technology Control Regime and Nuclear Suppliers Group. At the same time (at Section 12A(c)(A)), it eliminates current requirements that the President impose stiff sanctions against foreign entities that sell large missile systems in violation of the Missile Technology Control Regime's guidelines.

Moreover, the draft proposal (at Sections 5(b) and (k)) discourages the Secretary of Commerce from extending U.S. export controls or even maintaining existing multilateral controls. It does this, first, by requiring that a series of demanding presidential criteria first be met and by providing private parties legal standing to sue the U.S. government if they believe the U.S. has placed them at a "competitive disadvantage vis-a-vis its commercial competitors because of (U.S.) export controls." Second, the bill allows any U.S. exporter to ask the Secretary of Commerce to grant relief from either unilateral or multilateral controls merely upon a showing that other countries' "policies and procedures" are sufficiently different regarding controls to place the exporter at a "near-term commercial disadvantage."

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1 Ashton B. Carter, William J. Perry, and John D. Steinbrunner, *A New Concept of Cooperative Security* (Washington, D.C.: The Brookings Institution, 1992), pp. 29-30.

2 See, e.g., Henry Sokolski, "Nonapocalyptic Proliferation: A New Strategic Threat?" *Washington Quarterly*, Spring 1994, pp. 115-127.

3 The White House, *The Export Administration Act of 1994, Administration Proposal*, February 24, 1994.

Indeed, the very premise of the Administration's draft bill (see Section 2) is that the problem is not the threat lax export controls might pose to national security, but rather that the "vibrancy" of the nation's economy might be undermined by export controls that are "overly restrictive." In essence, the Administration sees export controls, not the premature spread of strategic technology, as the problem.

A truly balanced view would encourage officials to assess the possible costs export controls pose on both sides of the equation—not just of trade gained or lost, but in terms of strategic weapons technology diversions stemmed or gone unstopped. Just as the most interested and informed parties—the exporting community and the Commerce Department—are required in the Administration's bill to assess the trade side of the equation, so too should the most knowledgeable and involved parties—U.S. Customs, the Intelligence Community, and the Defense Department—be asked to assess the military and enforcement costs of proposed export control (or relaxations thereof) and to indicate what measures might reduce these costs. Unfortunately, there is no such requirement called for in the Administration proposal.[4]

Even without such an analysis, though, it's fairly clear that as the scope for diversions and the abuse of U.S. export controls increases, law enforcement's authority needs to be strengthened proportionately. Pre-existing enforcement loopholes that diverters have been using or might take greater advantage of should be closed. One such loophole involves the U.S. mails. Diverters of smaller high-technology items increasingly are using the U.S. postal system to evade U.S. Customs, which is not allowed to inspect the mails. This should be corrected.

Another enforcement reform opportunity may be found in exporters' filing of their shipper export declarations with U.S. Customs. Currently every export shipment, whether licensed or not, requires a shipper's export declaration to be filed with U.S. Customs. This declaration indicates what is being shipped (at least in general terms) and to whom. This information, if received in a timely fashion, can help U.S. Customs officials block illicit exports, since they have good intelligence on bad foreign end users and brokers.

But these declarations are sent to Customs manually and generally are received after the shipment has been made. This paper process, moreover, is highly inaccurate. Customs officials believe as much as seven percent of U.S. exports (up to $40 billion in commerce) simply goes unreported with this system.[5]

The Customs Service wants to correct this by computerizing the declaration process under a new program, the Automatic Export System. Instead of sending paper after the fact, exporters would file their shipper export declarations electronically by computer and seek export clearance from Customs in advance of any shipment. This is not a blue sky proposal: Australia has been using an identical system for years now, and it works. If enough countries followed in Australia's footsteps, computerized intelligence sharing on proliferation-related shipments would be possible. Establishing such a system could also be a step in the direction of one-stop licensing for U.S. exporters—something they have all said they want.[6]

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4 As of mid-May 1994, both the House and Senate staff versions of the Export Administration Act shared this and most of the other key difficulties associated with the Administration's proposal as presented here.

5 This is between three and thirty times more than the amount of money that has been estimated that the U.S. economy loses due to existing export controls and the lost export opportunities they generate. For these estimates see Glennon J. Harrison, "Export Controls: Background and Issues," *Congressional Research Service Report for Congress* (Washington, D.C.: U.S. Congressional Research Service, 12 January 1993, 94-30 ECN), p. CRS-10.

6 The likelihood of Customs establishing such a system, though, is unclear. The Commerce Department has

The current U.S. export licensing process, unfortunately, is quite far from being anything like one-stop shopping. It isn't for any lack of trying on the part of industry. The problem, however, is that the exporting community wants to create such a system, in part, to prevent or restrict the referral of their licenses to agencies outside of the Commerce Department. They figure that the fewer the referrals are, the greater and quicker approvals will be.

This is the wrong approach, particularly as proliferators rely increasingly on sophisticated transshipment schemes for dual-use items. To deal with this challenge, more, not less referral of export licenses to other agencies to check for possible military end use is desirable. As for industry's fears that this would only further delay decisions on their licenses, these concerns can be addressed by creating a single, unified computer license entry system.

Under such a system, all interested agencies could review licenses without waiting upon the Commerce Department or the Energy Department to screen them and distribute copies of the licenses they think deserve referral and review.

Nor would the current time-consuming, low-level interagency license review meetings be as necessary. In fact, automatic, comprehensive, computerized license referrals should make it possible to shorten the existing deadlines for license review.

Again, this is not a pipe dream. In fact, attempts have been made to devise such a system in the past. One such program was High Track 90, an expedited interagency referral process. Despite its success, it was viewed with suspicion by the Commerce Department and was eliminated in budget cuts. Instead of cutting such programs, Congress should fund them and authorize universal, automatic, comprehensive referral of all export licenses to the agencies authorized to review licenses that the Commerce and Energy Departments currently screen for their consideration.

Some, of course, would argue that this is unnecessary, that all we need to worry about is strategic technology being shipped to bad destinations. Only these licenses, they argue, should be referred to other agencies for review. Yet, if Congress is serious about preventing strategic technology from going to bad end users, as it should be, it must understand that destination-driven controls are woefully inadequate to this task. The key reason why is the increasing number of diverters or transshippers who get licenses to export strategic technology to legitimate destinations only to have these exports reshipped again to other destinations until they make their way to forbidden locales.

We may think we are doing enough by telling exporters not to directly ship anything to proscribed destinations, but indirect shipment increasingly is the problem. Without clear requirements for U.S. consent prior to reshipment of U.S.-controlled items, U.S. Customs and Justice Department officials are without the legal tools either to investigate or to prosecute foreign diversions of U.S. goods.

This recommends requiring a license for any item no matter where it is being shipped if it is one we do not want a bad destination or project to receive. It also recommends maintaining and expanding as much as possible the current requirements that the importer secure U.S. consent before he retransfers the item to another end user. Although onerous, maintaining these

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opposed Customs creating the Automatic Export System and under the Administration's proposed draft Export Administration Act (at Section 10 (a) (1)), Customs would be explicitly subordinated to the policy guidance of the Secretary of Commerce.

requirements will keep us honest about what we truly want to control and what a serious control effort actually requires.

Finally, more, not less attention needs to be paid to U.S. sanctions for export control violations. One sensible way this can be done is by sanctioning foreign entities that choose to undermine unilateral U.S. export controls. The logic behind such sanctions is simple: If U.S. export controls deprive U.S. firms of trade that foreign firms exploit, these foreign firms should have to pay a price as well.

One suggestion receiving Congressional consideration is to give U.S. firms legal standing to demand that the U.S. government cut off access to the U.S. market to any foreign firm undermining unilateral export controls.[7] The advantage of this approach is that it encourages private industry to make sure that any unilateral U.S. controls have an effect not just on U.S. firms, but on foreign ones as well.[8]

Of course there are many proliferating nations, such as North Korea, Russia, Iran, and Iraq, that would hardly be hurt by being cut off from access to the U.S. market. And as noted before, China is a special case where cutting off trade might hurt us nearly as much as them. For these cases, threatening to cut off access to high technology from the U.S. and other Western nations would be much more pertinent.

What Our Policy Should be Towards CoCom's Successor

No discussion of U.S. export control policy would be complete without some preliminary consideration as to what CoCom's successor organization should be. Here several issues deserve attention. First, CoCom's successor should not attempt to reinvent or overtake the activities of the Missile Technology Control Regime, the Australia Group (which controls chemical and biological weapons-related materials and technology), or the Nuclear Suppliers' Group. There may be overlap between the CoCom successor organization and these groups as far as what items are controlled, but the key purpose of CoCom's successor should be different. Where nonproliferation control regimes focus on curbing trade in weapons of mass destruction and the means for their delivery, CoCom's successor should be concerned, as CoCom was, with controlling a much broader list of military-related items and technologies.

One of the key reasons why the organization should have this broader objective is so it might serve as an agent for arms control in the Middle East and as potential lever against the bad behavior not only of rogue states such as Iran and Iraq, but of the former Soviet republics and China. It is becoming increasingly clear that both China and Russia are quite anxious about maintaining access to U.S. and Western high technology to modernize their nations' economies.

On the other hand, U.S. threats to cut off trade with Russia or China are far less of a worry for either nation. In the case of Russia, there is not that much trade to begin with and what trade there is is mostly one-way from the West to Russia. In the case of China, the trade imbalance is so unfavorably in her favor, cutting off trade would harm the U.S. more than China. Threatening

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7 See Ramon P. Marks, Testimony Before the House Foreign Affairs Subcommittee on International Security, International Organizations and Human Rights, September 14, 1993.

8 There is legal precedent for the U.S. affording such standing. In 1986 the Comprehensive Anti-Apartheid Act against South Africa was passed into law. Section 403 of that act afforded U.S. persons the right to sue "for damages against any person. . . that takes commercial advantage of any sanction or prohibition against any national of the United States imposed by or under this Act."

to cut off or curtail these nations' access to Western high technology, on the other hand, has already been imposed on several occasions and is something both China and Russia worry about.

Keeping in mind the long-term proliferation threats noted above and China and Russia's key role in determining their likelihood, the CoCom successor organization should be modeled in such a way that it can be used, if necessary, to leverage both these nations' behavior. To the extent Russia and other former Soviet republics are allowed to participate in a CoCom successor organization, their continued participation (and, thus, their continued free access to most controlled items) should be conditioned. This could be done by stipulating that violating the organization's guidelines or threatening the security of any other member could serve as grounds for expulsion.

Beyond this, the CoCom successor organization needs to be effective in controlling military commerce with rogue nations. In this regard, the U.S. should not only insist on the explicit listing of Iran, Iraq, Libya, and North Korea as proscribed destinations for exports of controlled items, but require the most advanced arms supplying members of the CoCom successor organization to notify all others whenever they intend to ship key sensitive items to the Middle East, South Asia, or China.

Finally, the U.S. should ask the successor organization to adopt a no undercut rule on any member nation's denial of listed items to any destination. This would prevent other member nations from undercutting any member's denial of an item by selling it themselves, such as might occur in the future with U.S. sanctioning of high technology to nations such as China.

Much more specific restrictions, of course, should also be agreed to. Certainly, before Congress passes anything close to the Administration's draft Export Administration Act, CoCom's successor should be up and operating first. The reason why is simple: The Administration's draft refers to the desirability of multilateral controls over 40 times and implicitly presumes that the relaxation of U.S. unilateral controls should proceed given increased reliance on multilateral controls. Congress, though, still doesn't know what these multilateral controls are going to be. Before it writes the executive branch a blank check of export control authority, Congress should get the answers.

Some argue that it is unnecessary to worry this much about export controls. The Cold War, after all, is over. We won Desert Storm. To those who would make this case, though, it is important to emphasize our experience with Iraq and the problems it and nations like it are likely to present in the near future. Indeed, despite what anyone might argue today, Desert Storm was no picnic and letting a future Iraq—or Iran, or North Korea—acquire advanced technology for war is something well worth the effort to avoid and something we are sure to be tested on sooner rather than later.