



Executive Memorandum

No. 770

September 4, 2001

IMPROVING THE EXPORT ADMINISTRATION ACT TO ADVANCE TRADE AND PROTECT NATIONAL SECURITY

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The U.S. Senate will soon debate the Export Administration Act (S. 149). The purpose of the EAA is to establish specific guidelines for the export of dual-use technology, items with both military and civilian applications. The fact that the international market for such items is highly lucrative and competitive increases the temptation for the U.S. to expedite the export licensing process, sacrificing national security safeguards to increase profit margins.

The United States should not overlook the dangers posed by rogue or potentially hostile nations struggling to obtain American technology to improve their development of weapons of mass destruction. Congress must ensure that sensitive technology is not carelessly exported to countries that could use it against the United States or its forward-deployed forces. Congress should seriously consider several amendments to the EAA to strengthen the checks and balances and restore the primacy of national security while empowering the President to make timely decisions that support America's trade interests.

The EAA's basic purpose—to protect the most sensitive American technology with military application from the hands to countries that would use it against the United States, its friends, or its allies—is sound. However the speed with which technology has advanced and spread throughout the world

requires that it be brought in line with the realities of today's high technology and information technology base. Although American companies should not be unduly impeded from competing in the international marketplace by regulations that try to protect technology that is generally available, the United States possesses unique manufacturing processes and technologies that are not available anywhere else and that therefore require protection. What, then, should be done?

Establish a blue ribbon commission for national security. Congress should establish a commission specifically to examine the issues surrounding existing export control processes and their impact on national security. Its conclusions and recommendations should be reported to Congress to improve future legislation.

Consult with national security experts. The EEA requires the Secretary of Commerce to consult

Produced by the
Asian Studies Center

Published by
The Heritage Foundation
214 Massachusetts Ave., NE
Washington, D.C.
20002-4999
(202) 546-4400
<http://www.heritage.org>



This paper, in its entirety, can be
found at: [www.heritage.org/library/
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with labor, trade, and business groups when considering issues regarding export control policy, foreign availability, and the mass market of controlled items. Congress should also require the Secretary of Commerce to consult with national security and non-proliferation experts to ensure that security concerns are given equal weight.

Strengthen commodity classification requirements. The Department of Commerce maintains a Control List of sensitive items subject to licensing or authorization requirements. In accordance with the 1999 Cox Committee recommendations, the addition of an item to the Control List should require the unanimous approval of the Departments of Commerce, State, and Defense. Any disagreements on commodity classification should be forwarded up the chain of command. Under the currently proposed interagency dispute resolution process, strenuous objections by individual departments are superseded by a majority vote.

Require consultation with necessary departments. Any regulations necessary to carry out Title II or Title III of the EAA, which govern national security and foreign policy export controls, should be carried out by the Department of Commerce in consultation with the Departments of State, Defense, and Energy. The EAA currently does not require the Secretary of Commerce to submit these regulations to relevant agencies for review.

License products that contain sensitive U.S. components. The U.S. should require licenses for the export or re-export of products made abroad that contain U.S.-origin controlled items. S. 149 does not require licenses on exports of such items. Furthermore, items re-exported to terrorist states require licenses only if the value of the U.S.-made component exceeds 10 percent of the final product—a loophole that can easily be exploited.

Deny licenses to countries that refuse post-shipment verification. The Secretary of Commerce should have the authority to deny licenses to countries that do not allow post-shipment verification of controlled items. As the United States has learned from the inadvertent sharing of sensitive technology between U.S. companies and China, the transfer of technology can occur after the initial sale.

Provide realistic license review periods. As the 1999 Cox Committee report suggests, the existing 30-day limit for departmental license reviews may

be inadequate for complex requests that may have a lasting national security impact. S. 149 allows for extensions only on a limited basis. Congress should extend the review period or relax requirements for extensions.

Give the President export control authority. As a final safeguard, the President should have the authority to place controls on any item for national security reasons. This includes “incorporated” parts and components as well as “after-market” service and replacement parts. The President should also be able to add items to the National Security Control List and to delegate his authority.

Notify Congress about export control violations. Under S. 149, countries are divided into tiers depending on the level of risk that a country will misuse or divert items on the National Security Control List. Congress should be notified whenever the Department of Commerce changes the country tiers or when violations of the EAA occur.

Report to Congress all exports to key proliferators. In his semi-annual report to Congress, the Director of Central Intelligence should include a list of all items transferred to countries that have been identified as recipients or sources of weapons of mass destruction and ballistic missile technologies. A cumulative effects analysis of the transfers should also be presented to Congress annually.

Conclusion. In crafting the Export Administration Act, Congress has the responsibility of weighing America’s commercial interests against its national security concerns. It is easy to assume the importance of the former over the latter, given the preponderance of international trade and the absence of a clear security threat.

Although export controls should not be tools to inhibit trade, America cannot risk the tragedy of U.S.-made products being used against American soldiers. If expediting the export licensing process entails weakening the necessary safeguards that preserve national security in the long term, it is not worth the risk. Congress should improve the export control regime, starting with the Export Administration Act, to restore the primacy of national security by establishing the necessary checks and balances.

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