

PANEL II: MULTILATERAL EXPORT CONTROL REGIMES

Michael Beck, *Executive Director of the Center for International Trade and Security, University of Georgia, USA*

International norms and rules to govern dual-use WMD trade are too weak for today's threats. The multilateral export control regimes need to be restructured. The MTCR, the Wassenaar Agreement, Nuclear Suppliers Group and Australia Group are too weak and informal.

Why do we need a new export control regime? First the threat is shifting from rogue states to substate actors and the regime is ill-equipped to deal with this. Second, failed states present problems of regulation and control and harboring substate groups.

Internal factors included decision-making, which is on the basis of consensus. When these regimes were established, there were small numbers of members, but as the number of members has grown, consensus is very difficult. Many of these regimes have failed to advance good proposals because of this consensus requirement, which is really not appropriate for today's threats.

The lack of participation of key supplier states, such as Pakistan, Israel and India, is also a major problem. There is no mechanism by which export controls have been engaging these countries, or smaller transit countries. One option involves creating an official "inherent status" for such states, without full membership.

There is also a problem of information sharing in order to report export control denials, or export control items that have got through. Further, some countries are very slow to implement the required national legislation. There is really no way to talk about compliance because these agreements are informal, and not legally binding.

Solutions:

Colocate plenary meetings and use the venue for negotiating new multilateral export controls that are more formal and binding. Vienna could be such a location to address cross-cutting issues in one location. Brokering, intangibles and enforcement, for example, cut across the board, and are not technology specific.

A new system of export-controls should include:

1. New democratic procedures to replace the consensus method - perhaps weighted voting.
2. An implementation requirement for regime proposals.
3. A dispute settlement mechanism
4. Levels of end-users that includes a sensitive party list and a watch list
5. An executive committee (a permanent secretariat), which would address weaknesses
6. Information sharing that includes license approvals and industry compliance consolidation to improve regime standards.

Shaukat Umer, *Permanent Representative of Pakistan to the United Nations in Geneva*

These regimes are not global. They are seen as discriminatory and the Nuclear Suppliers Groups is removed from reality because it still operates on the assumption that there are only five nuclear powers. This is incorrect. Pakistan stays away from these regimes and is a victim of these regimes.

The NSG has not been consistent. Pakistan has been denied access to safety-related items, for example. In Pakistan the nuclear sector is a public sector. Adoption of lists and guidelines would be superfluous. Pakistan is now considering overarching export control legislation, and it is a party to

the IAEA Convention on nuclear safety and protection, and to the CWC and the BWC. The country has been obliged to acquire nuclear weapons because of its strategic compulsion..

The Shortcomings of these Regimes:

Neither the NSG nor the MTCR list disarmament as a goal. None express the need for the elimination of nuclear weapons. According to the EU's Basic Principles, countries that feel more secure are more likely to abandon such WMD programs, and, therefore, it is important to address security concerns. Regional security arrangements are vital.

Homeland defense, pursuit of perpetrators and frontline defense are being addressed, but not enough is done to deal with the political and social issues that generate grievances. In the absence of this, the fight against terror cannot be won. Furthermore, a renewed effort should be made to optimally implement existing treaties.

Adam Scheinman, *Director of the Office of Export Control Policy and Cooperation in the Department of Energy's National Nuclear Security Administration, USA*

These remarks are personal and do not reflect the position of the U.S. government.

Threats involve the regional proliferation dynamic: Northeast Asia, the Middle East (North Korea and Iran), concerns about Libya and Syria and South Asia, which is not going to get better in the near term. While the threat of WMD and terrorism is in vogue, it is not fully understood. However, we can assume that terrorist organizations will pursue these dangerous weapons. Still, we do not understand the complex of procurement, and state relationship, etc. Furthermore, proliferation supply concerns are worsening. Transshipment trading has grown dramatically, and some new transshipment states have weak or liberal export controls.

Response of this U.S. Administration:

- Fixated on export controls and has, to its credit, elevated export controls
- The Proliferation Security Initiative (which is a manifestation of above)
- Heavy focus on enforcement. PSI is designed to help interdict trade in WMD items and technology.

The NSG has actually been quite successful. Its flexibility as an informal arrangement is beneficial. For example, within a year of 9/11, the NSG agreed to amend its guidelines to take account of the risk of nuclear terrorism. It has paid very close attention to North Korea and Iran. The United States developed a procurement watch list, which falls below the control requirements, but may be helpful in WMD programs. Now the NSG is looking at introducing "catch-all" controls and expanding information sharing and looking at the additional protocol as a condition to supply.

Looking ahead: For export controls to be effective, they have to apply globally. It does not include China or Malaysia or Singapore (major transshipment states).

It's important to do better at coordinating international export control assistance and give export control a higher profile at the IAEA. Further, within the NSG, it is necessary to do more to manage "bad behavior" and perhaps reach an agreement that a break in safeguards should equal a brake in supply.

Dingli Shen, *Director of Office of International Programs, Fudan University, China*

Last year China had neither published its export control list nor had it made a major effort to catch up with international export control standards. But today, China is observing the Zangger Committee commitments and, on biological and chemical weapons control, China observes the Australia Group, although it is not a member. On missile export controls, its actions are very similar

to the requirements of the MTCR, even though they are not the same as MTCR requirements. China has established domestic export controls system at the Headquarters in the Ministry of Commerce. It is rigorously asking for certificates of export application, i.e the buyer/end-user certification on intent to buy. China even has articles of “catch-all” lists, and will deny supply if the end-use is suspect.

A difference of opinion exists, however, between the United States and China over China’s implementation of export controls. The country’s implementation and punishment of domestic violators is at issue. After 9/11 the importance of strengthening export control has been heightened. The U.S has launched the proliferation security initiative, and Shanghai and Taiwan have participated. U.S. customs live there and inspect containers randomly. China is watching this PSI activity cautiously. It will not join because North Korea is the target, and China is cautious about its relationship with North Korea. If PSI does not break existing international law of the sea, it might be acceptable, but there is still the question of who judges which ship is to be checked.