

Creating a New Multilateral Export Control Regime

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The current set of multilateral export control regimes, including the Nuclear Suppliers Group, the Wassenaar Arrangement, the Missile Technology Control Regime, and the Australia Group are in need of an overhaul. They have been relatively successful, but the globalized nature of technology trade and the changing nature of the proliferation threat require a new approach. In essence, the work of export controls is never done, "if export controls are not getting better, they are getting worse." They cannot just stay the same and now is the time for some repairs.

Because export controls are poorly understood and are often overlooked as a nonproliferation tool, I feel that it is necessary to remind people in the nonproliferation community that almost every country that has acquired weapons of mass destruction has done so by purchasing the components needed to build those weapons. Iraq, never stole anything to our knowledge. North Korea did not steal. Iran is not stealing. Why steal what you can buy, especially when most of the components that are needed are dual-use in nature? This is not to say that physical protection measures are not important. It is simply to say that I regard the probability of a country or even a sub-state group stealing weapons as less probable than acquiring technologies and materials by purchasing them, most often through commercial channels.

Although export controls are important, they are not a panacea. They are important tools for slowing proliferation and limiting access to WMD-related technologies, military goods, and munitions. They can help make WMD programs more expensive, both financially and diplomatically. They can also make a region less deadly by preventing arms build ups. Export controls, however, must be supported by other nonproliferation measures --- confidence building measures, sanctions, incentives, arms control agreements and then if all else fails - perhaps even counter-proliferation measures.

It is also not enough for one country to implement effective export controls. To be effective, export controls must be harmonized by major supplier states. It is here where there are serious problems. The current set of multilateral export control regimes, including the Nuclear Suppliers Group, the Wassenaar Arrangement, the Missile Technology Control Regime, and the Australia Group are in need of an overhaul. They have been relatively successful, but the globalized nature of technology trade and the changing nature of the proliferation threat require a new approach. In essence, the work of export controls is never done, "if export controls are not getting better, they are getting worse." They cannot just stay the same and now is the time for some repairs.

There are several problems that are facing each of the export control regimes and their members efforts to coordinate export controls:

- Growing number of members. This would seem to be a positive development. However, member countries do not always agree on the nature of the threat. Moreover, all of these regimes take decisions on the basis of consensus. When there were 7 members of the MTCR, it was relatively easy to reach a consensus. However, when there are more than thirty members consensus becomes difficult to obtain. Simply put, the growth of the regimes was not well thought out and needs to be revisited. There are even organizational problems associated with membership growth - finding space large enough to host a plenary of say the NSG.
- With growth in membership - consensus decision making needs to give way to new more democratic decision rules. For years, Russia stalled efforts within the Wassenaar to control MANPADS. Russia is continuing to block efforts to control small arms and light weapons within Wassenaar. It is not really acceptable for one nation, whether it is the U.S., Russia, or Slovenia or Poland to block the emergence of new international norms.
- While growth in membership is a problem - the lack of participation in multilateral control efforts by major supplier and weapons states like India, Pakistan, and China poses a serious

problem. What obligations do these countries have, if any, to control dual-use items? This inability to guarantee responsible behavior on the part of countries not party to these regimes, is in part, an explanation for the rise of a counterproliferation regime as witnessed with the Proliferation Security Initiative.

- Another problem stems from the inadequate level of information sharing within the regimes. Although some regimes have agreed to share information on denials, not all member countries willingly share that information. The GAO in the United States reported that the United States did not report any of 27 Australia Group-related denials between 1996-2001. Some countries argue that they do not issue denials, but instead inform exporters that they are unlikely to get a license if they apply. These “de-facto” denials never enter the system. Further efforts to share information on export approvals - which is essential for determining technology transfer trends of concerns, or violations of the no-undercut provisions embodied in the regimes have not gone forward.

- Finally, some countries are very slow to implement decisions reached within the regimes into national legislation. Others don't implement decisions at all. Because decisions are implemented on the basis of national-discretion, there are no real consequences for governments that fail to implement agreed upon controls.

- In addition to internal problems - there are external problems as well. The increased pace of global trade. Controlling exports of emerging dual-use technologies today requires foresight and the ability to juggle competing demands. Officials must keep pace not only with technologies that pose a threat today, but also with technological innovations that might be militarily-relevant tomorrow.

- Terrorism. Export Control authorities must give more attention to transfers to failed states, and not just rogue states. 911 originated in Afghanistan, not in Iraq or Iran. We need to be concerned about failed states and gray zones, because these are breeding grounds for terrorism, and such governments cannot be trusted to control dangerous technology.

Solutions:

Our Center at the University of Georgia has proposed a staged effort to negotiate a new multilateral export control regime. We believe that governments that are party to one or more of the regimes should come together to discuss cross-cutting issues (enforcement, etc.) and to negotiate a new more centralized regime, perhaps in Vienna where the Wassenaar Secretariat is located. A first step is to hold plenaries in one place and at the same time. This would promote inter-regime dialogue on cross-cutting issues. I have met enforcement officials from the U.S. and other countries who have been flying around the world to regime plenaries to meet the same set of people and to discuss the same issue of “best practices for enforcement.” Second, it would save money. Too much of what occurs at regime meetings appears to me as diplomatic tourism. Co-locating the work of the regimes would also help to build a more professional staff and some semi-permanent expertise. There is entirely too much turnover in the area of export controls. Centralization of the regimes would also invite higher level policy attention to issues of export control.

Co-location would be a first step towards a more formal, regime that combines the functions of the existing four regimes and includes the following principles:

1. New democratic decision-making procedures to replace consensus, at least on some issues. Weighted voting might also be necessary, with major supplier countries having more of a vote.
2. Require implementation of regime decisions, with few exceptions based on national discretion.
3. A dispute resolution mechanism.
4. A tiered list of end-users. Tier 1 - A denied parties list. Tier 2 Sensitive Parties List, Tier 3 - watch list.

5. Establish an Executive Committee permanently based at a Secretariat to review proposed transfers to entities on Tier 2, and to share information on end-users of concern, and to establish best practices.
6. Create an international team to do outreach. The U.S. is about the only country assisting others in building export control systems.
7. Strengthen information sharing requirements to include license approvals.
8. Develop new technologies that make it easier to track the movement of sensitive items.

Certainly, there will be opposition. For every push to centralize, there will be a counter-effort. There are economic interests that come into play, as well. However, I think that public organizations will eventually become involved in this area and the emergence of more rational and binding international regulations in the area of export control are likely.