

Export Controls, WMD Proliferation, and Terrorism

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Export Controls and WMD Proliferation Threats

New Opportunities for Reform

Prompted by the Gulf War, in the early 1990s the United States and its partners strengthened the system of multilateral export control arrangements related to Weapons of Mass Destruction (WMD) and their means of delivery. In recent years, however, the impetus to adapt export controls continuously to the emerging challenges of the post-Cold War world dissipated. Consequently, the four major export control arrangements entered into an era of stagnation without their members having resolved several critical deficiencies in the multilateral system.[\[1\]](#)

The tragic events of the past two months not only emphasize the need to reform the multilateral system, they have shaken the international community enough that reform initiatives may succeed. In particular, the attacks on September 11 scuttled any doubts that some terrorists have the will to use WMD if they have the capability to do so. The importance of limiting WMD capabilities of terrorists and states that support terrorists never has been more clear to the international community.

Squandering this opportunity will have severe consequences. The world of WMD export controls has two fundamental principles:

If your system is not getting better, it is getting worse. No system is perfect and those that seek to acquire WMD always will find ways to exploit existing vulnerabilities; and, Export controls can not prevent WMD proliferation, they only buy time for other policies to work. A good export control system will make WMD acquisition more difficult, more expensive, and more time-consuming. In some cases these factors will dissuade WMD acquisition, but not all.

Failure to strengthen the multilateral export control arrangements and the larger nonproliferation regimes now will increase the likelihood that terrorists or states that support terrorism will obtain new or increase existing WMD capabilities.

Multilateral Coordination of WMD Export Controls

The international community witnessed several important advances regarding WMD export controls, particularly in the early 1990s. These achievements included:
Developing new guidelines to control nuclear, chemical, biological, and missile weapons;
Developing new control lists for nuclear, chemical, biological, and missile weapons;
A sharp increase in the number of governments adhering to supplier group guidelines and control lists, including several countries of proliferation concern; and,
Increased harmonization of national export control licensing systems.

Nonetheless, several recent projects have portrayed a spate of problems with current multilateral efforts to coordinate WMD export controls.[\[2\]](#) In summary, these reports identify several broad classes of problems:

Infrastructure weaknesses, especially limited sharing of licensing, enforcement, and intelligence information;

Inadequate and irregular threat assessments for list reviews, especially regarding general purpose dual-use goods;

Inadequate harmonization of national export control systems overall, especially in enforcement;

Lack of consensus regarding end-user controls, especially regarding China and, to a lesser extent, Iran; and,

Inadequate recognition of the impact of new global models of research, commerce, and industry.

A paucity of systematic evidence on the export control policies and practices of key US allies, much less other critical suppliers, moreover, has made efforts to assess these issues very problematic.[\[3\]](#)

In no small measure, the United States bears considerable responsibility for both the successes and failures of multilateral export controls. Above all, the inability of the US government to design new WMD export control policies --- exemplified by repeated reverses in developing a new Export Administration Act (EAA) --- has undermined US efforts to provide international leadership. Almost by default, the policies of the European Union now appear to have greater influence on international export control standards than those of the United States.

Coordinating Multilateral WMD and Anti-Terrorism Export Controls

These same problems endanger prospective efforts to coordinate WMD and anti-terrorism export controls. Before September 11, the multilateral export control arrangements did not serve as centers for discussion and information exchange regarding transnational terrorist WMD threats (indirectly, some terrorist issues could be addressed in discussing some state projects of proliferation concern, such as those in North Korea, Iran, and Libya). In addition, no comprehensive study of the anti-terrorist export control policies of key US allies or the emerging anti-terrorist coalition exists. Although it seems certain that terrorist WMD threats will reach the agenda of the Wassenaar Arrangement

and perhaps the other supplier groups in the coming months, without fixing several fundamental problems the members of the arrangement will end up with no more than a primitive attempt to coordinate disparate national policies unlikely to have much impact on WMD terrorism. Using the problems of multilateral coordination mentioned above, for example, one should expect to see at least five difficulties in efforts to improve WMD anti-terrorism export control coordination, including:

A weak infrastructure for coordinating anti-terrorism WMD.

While the events of September 11 appear to have brought down many of the barriers between national law enforcement and intelligence agencies, sharing of critical information within and between supplier groups is not always timely, adequately distributed, or sufficiently substantive. Establishing a new arrangement for anti-terrorism export controls will only make information sharing that much more complex. Creating working groups on WMD terrorism in each of the supplier groups also will make information sharing more complex, unless nascent attempts to coordinate the activities within and between the existing supplier arrangements become much more active. In addition, the various supplier groups do not include key parties to the emerging anti-terrorism coalition.

A list of sensitive items based mainly on delaying state-sponsored WMD proliferation.

Pursuant to the Commerce Control List (CCL), for example, the United States controls a few dual-use items only for anti-terrorist purposes, such as some vaccines, explosive detection devices, and oil well perforators. The vast majority of items it controls for anti-terrorism purposes, it also controls for national security, nuclear nonproliferation, missile proliferation, and chemical or biological proliferation purposes. Terrorists operating without the support of state sponsors will almost certainly adopt WMD acquisition, production, and dispersal methods different than those used by states, and an appropriate control list should reflect these differences.

Divergent national anti-terrorism WMD export control systems.

As noted earlier, no comprehensive, open source study of foreign anti-terrorism export controls exists. Starting as early as January 1995, the United States has developed a mix of anti-terrorist export control regulations, which it does not coordinate multilaterally.^[4] The US Commerce Department, for example, administers anti-terrorism export controls on Iran, Syria, and Sudan unilaterally, in addition to the broad, sometimes unilateral, trade embargoes the United States maintains against the seven governments identified as supporting international terrorism (the United States also has had special controls on exports to the Taliban controlled regions of Afghanistan since 1999).^[5] Regarding dual-use items, the Commerce Department, with a presumption of denial, requires a license for the export or re-export of any item on the CCL to individuals on the Specially Designated

Terrorist (SDT) or the Foreign Terrorist Organization (FTO) lists, a requirement no licensing exemption overrides. In addition, no US person may export or re-export any item subject to the Export Administration Regulations (EAR), whether it appears on the CCL or not, to such individuals or entities without a license.^[6] For defense articles (i.e., items on the United States Munitions List (USML) under the International Traffic in Arms Regulations (ITAR), the State Department has a policy of license denial for exports destined or bound for countries designated as supporting international terrorism. For violation of these and other anti-terrorist regulatory provisions, the United States maintains a range of criminal and civil sanctions. Given that many governments define and implement their WMD export control policies on dual-use and defense items somewhat (and at times very) differently from the United States, and that the existing supplier regimes operate on the basis of national discretion, harmonizing anti-terrorist export controls will take considerable effort.

At the same time, the success of persistent US efforts to promote “catch-all” controls will have at least an indirect impact on WMD anti-terrorist controls. Most members of the four supplier arrangements control the export of items on the international control lists going to any WMD program, conceivably including projects undertaken by terrorists as well as government authorities (or both). Through catch-all controls, many states also can restrict a broad range sensitive items, whether they appear on the control lists or not, going to any WMD program. This may provide the framework for coordinating WMD anti-terrorist export controls.

Divergent views on the targets of anti-terrorist WMD export controls.

President Bush has indicated that the administration seeks to bring international terrorists to justice. Once past the Al Qaeda network and the Taliban, however, it remains uncertain that the United States can create international agreement on the individuals, entities, and governments appearing on its roster of SDTs, FTOs, and Terrorism List Governments. Disagreements about WMD export controls on trade with China, Iran, and India, for example, already plague the supplier groups. Even where they agree on which groups are international terrorists, it seems likely that countries will disagree on which terrorists constitute WMD threats. Given the imprecision and politicization involved in defining terrorism, much less on which entities pose a threat to use WMD, considerable disagreement will emerge outside of several clear-cut cases.

Divergent approaches to industry – government cooperation.

Although the United States and several other governments have strong sets of outreach programs to inform industry about WMD export controls, evidence suggests that industry compliance remains haphazard in the United States, even among the biggest high-tech exporters.^[7] Several countries, such as Denmark and Japan, already rely more extensively on corporate compliance programs to implement export control policy than

does the United States.^[8] Arguably, the most effective actions the United States might take in developing better WMD and anti-terrorism export controls would be to create and certify minimum standards for industry internal compliance programs and export control administrators (some companies already do the later). These will be particularly important for those companies that operate most of the functions at the US national laboratories.

Conclusion

Unfortunately, the international nonproliferation export control community appears much better at reacting to catastrophic events than undertaking proactive reforms. The 1974 Indian nuclear test, the use of chemical weapons by Iraq in the 1980s, and the exposure of the extensive Iraqi WMD programs after the Gulf War, among other events, all prompted long-needed reforms in multilateral coordination of export control policies. The tragic events of the last two months appear to offer another opportunity to make the international system more effective. The fundamental weaknesses of the existing multilateral system, however, will hamper coordination on WMD anti-terrorism export controls if left untreated. Let me suggest a few immediate steps to address these concerns:

Develop working groups in each supplier arrangement to address anti-terrorism, but coordinate their work with a small international anti-terrorism export control working group.

Identify anti-terrorism export control policies of other countries, especially those related to WMD, starting with the G-8 and other key members of the supplier groups.

Develop a list of items to control that are of greatest concern related to WMD anti-terrorism as a basis for international negotiations on anti-terrorism export controls.

Develop a list of terrorists and terrorist organizations that pose the greatest WMD threat as a basis for international negotiations on anti-terrorism export controls.

Be willing to provide funding, technical assistance, and critical information to help US partners implement and coordinate WMD anti-terrorist export control intelligence, licensing, and enforcement policies.

Create new standards for industry compliance programs that make it more likely that companies, research institutions, and especially the national laboratories of greatest WMD concern do not inadvertently export items that enhance the threat of WMD terrorism.

Export controls alone can not prevent WMD terrorism. Nonetheless, they will play an important role in the anti-terrorism campaign. Without appropriate export controls, those groups already willing to use WMD could more easily obtain WMD capability.

As important, without improving existing export controls, sufficient weaknesses in the multilateral export control system may be exposed so that terrorists now dissuaded by the difficulties in obtaining WMD will recalculate the costs and benefits of using WMD that

will lead to more terrorists seeking and acquiring WMD. Making it harder for terrorists to acquire WMD capabilities through export controls, without unnecessarily impeding legitimate commercial and scientific exchange, is an important preventative step in that direction.

[1] The four major export control arrangements are the Australia Group (for chemical and biological items), the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG), and the Wassenaar Arrangement (for advanced conventional weapons).

[2] See, for example, the Study Group on Enhancing Multilateral Export Controls for US National Security, *Final Report*, Washington, DC: The Henry L. Stimson Center, April 2001; and CSIS Commission on Technology Security in the Twenty-First Century, *Computer Exports and National Security in a Global Era*, Washington, DC: CSIS, May 2001.

[3] The National Export Control Evaluation Project of the Center for International Trade and Security of the University of Georgia (CITS/UGA) is one effort to address this problem, at <http://www.uga.edu/cits>. See, for example, CITS/UGA, *Nonproliferation Export Controls: A Global Evaluation 2001*, Athens, GA: CITS/UGA, June 2001. Also see Stockholm Peace Research Institute (SIPRI) Export Control Project, available at <http://projects.sipri.se/expcon/expcon.htm>.

[4] The Office of Foreign Assets Control (OFAC) of the Treasury Department, for example, implements the Terrorism Sanction Regulations (TSR), the Terrorism List governments sanctions Regulations (TLR), and the Foreign Terrorist Organizations Sanctions Regulations (FTOR), while the Commerce and State Department have additional anti-terrorist export controls..

[5] The seven include Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

[6] Although the export of virtually all goods, technologies, and services are subject to the EAR, some critical exceptions, such as products classified as fundamental research or subject to the exclusive jurisdiction of another agency, exist.

[7] See Richard T. Cupitt, "Survey on US Industry Compliance and Export Controls: Findings," available on line at http://www.uga.edu/cits/news/news_us_indi_full.htm.

[8] See, for example, Center for Information on Strategic Technology Controls (CISTEC), *Export Control System in Japan*, Tokyo: CISTEC, February 2001; or Danish Agency for Trade and Industry, *On the Way to a New Export Control System*, Copenhagen: Ministry of Trade and Industry, September 2000, also available in Danish at www.efs.dk.