

**Submitted Testimony of
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**‘No Way to Run an Export Control Policy:
Addressing the Wassenaar Arrangement and Other
Debacles’**

**SENATE COMMITTEE ON
GOVERNMENTAL AFFAIRS**

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Mr. Chairman, I want first of all to commend you and Sen. Cochran for the considerable personal attention and political capital you have invested in the export control issue in recent years. I believe that it is no exaggeration to say the Senate has not seen the kind of robust scrutiny that you have applied to this strategically important subject since my former boss, the late Senator Henry M. “Scoop” Jackson, made it a priority when he served with distinction as the Chairman of this Committee’s Permanent Subcommittee on Investigations.

Permit me also to take this opportunity to thank you, on behalf of all of us who are concerned about our Nation’s security, for your leadership -- together with Senators Kyl, Helms, Inhofe, Warner and Shelby, among others -- in resisting efforts to push through the Senate a reauthorization of the Export Administration Act (EAA) that would, in my judgment, *compound* the mistakes made by the Clinton-Gore Administration in this area.

In a moment, I will discuss what I consider to be some of the more serious defects that this new EAA (S.1712) proposes to codify. Suffice it to say at this juncture that I very much agree that the Senate’s on-going deliberations on S.1712 add urgency to

this Committee's efforts to ensure the right lessons are learned, and applied from past, often costly experience. Specifically, we must take stock of the damage done by the Administration's deliberate "take-down" of COCOM (the Coordinating Committee on Export Controls) -- and the belated introduction in its place of a Potemkin arrangement known as the Wassenaar Agreement.

A Case Study of Policy Malfeasance

I regard this two-step action as an appalling, yet highly revealing, microcosm of the Clinton-Gore Administration's dismal stewardship of the larger security policy portfolio. Consider the following themes underpinning the decisions that destroyed COCOM and the birth of the mechanism established at Wassenaar to contribute, in the words of its charter, "to regional and international security and stability, by promoting transparency and a greater responsibility in transfers of conventional arms and dual-use goods and technologies":

- **"The Cold War is over"** and **"It's the economy stupid"**: These cliches have been the leitmotifs of what might loosely be described as the Clinton-Gore Administration's guiding philosophy. By the first, the President and his subordinates sought to justify their disdain for and disregard of virtually every traditional instrument and practice of U.S. security. With the fervor of the counterculture activists many of them were at formative stages of their lives, these officials have inflicted grievous harm on the armed forces, the intelligence community, law enforcement, even the rule of law itself.

Arguably none of these instruments was wielded with greater effect during the Cold War -- nor suffered more at the hands of the Clinton team -- than the multilateral, voluntary organization called COCOM and the U.S. government mechanisms that supported national security-minded export controls. People entrusted with top policy-making responsibilities in this area were appointed by President Clinton despite, *if not because of*, their records of

hostility to such controls and the institutions that promoted and policed them. Not surprisingly, the wrecking operation was most evident at the Defense Department where the senior leadership and Defense Technology Security Administration once represented formidable impediments to ill-advised technology transfers.

The application of the principle that there is no longer any appreciable threat to American security -- and its corollary that economic interests should supercede all others -- has greatly exacerbated the government's mistakes.

Effectively encouraged to "see-no-evil" in a world in which it still abounds, corporate leaders have responded by focusing narrowly and parochially on shareholder concerns about the quarterly bottom line. The business community has become a powerful advocate for the further evisceration of what few export controls have survived the Clinton liberalization campaign. I need not tell members of this Committee of the efforts being launched right now to back up industry's desires in this regard with campaign contributions. In short, in this instance as in so many others, the Clinton-Gore Administration has managed to "do well" by "doing bad."

- **Sacrificing U.S. sovereignty and its ability, where necessary, to exercise influence through unilateral action.** The Clinton-Gore Administration has seemed to share the hostility others around the world have felt towards American power. Instruments of that power -- like COCOM, which once enabled this country effectively to block its allies' ability to export dual-use technologies -- were especially resented. In the absence of leadership in Washington determined to adapt but *preserve* this vital mechanism, its fate was sealed.

Two years after COCOM was formally interred in 1994, the Clinton-Gore Administration finally cobbled together a very

different sort of “arrangement.” Under Wassenaar, “the decision to transfer or deny transfer of any item will be the *sole responsibility* of each Participating State.” Now, if we are lucky, we may be forewarned that a “participating state” is going to effect technology transfers we considered to be unwise. But we have lost, for the moment at least, the ability to interpose definitive objections.

- **“The Russians are our strategic partners.”** The same is often said of China as well, by those who fail to appreciate that neither the Kremlin of Vladimir Putin nor the Forbidden City of Jiang Zemin can be counted upon to see their interests as coincident with ours. To the contrary, the available evidence suggests that they perceive a shared interest in acting as *each others’* strategic partners, at the expense of this country.

In keeping with the Clinton-Gore Administration’s potentially fatal conceit about the nature of today’s world, the Wassenaar Arrangement includes Russia and two other, smaller-scale but problematic nations, Ukraine and the Slovak Republic. Having as members countries that regard as *clients* those we call “rogue states” assures that this “Arrangement” will be as ineffectual in the future as it has been to date in slowing the hemorrhage of strategic technologies to the cabal of bad actors former Under Secretary of State William Schneider has dubbed “Club Mad.”

- **Potemkin security mechanisms are better than none.** In the area of export controls, as elsewhere, the Clinton-Gore Administration has tried to obscure a dangerous policy failure with a multilateral fig leaf. Unfortunately, as in the case of Wassenaar and various unverifiable arms control agreements it has promoted to “prohibit” chemical and biological and nuclear weapons tests, these Potemkin exercises can induce a false sense of security. The soporific

effect of such an illusion will surely be to compound the damage done when a relatively effective multinational endeavor like COCOM is replaced with a regimen that was *designed to fail*.

What Do We Do Now?

I believe that the purposeful evisceration of the domestic multilateral export control regimes will be among the most lasting and expensive of the Clinton-Gore team's legacies. As a practical matter, like Humpty-Dumpty, the destruction of COCOM ensures that there will be no putting something like it back together anytime soon. There are, nonetheless, a number of steps that would, I believe, help to mitigate some (if by no means *all*) the dangers associated with an "anything goes" approach to technology transfers:

- First, **do no harm**. It would be a grave mistake to adopt legislation like S.1712 that would confirm in law the Clinton-Gore practice of precluding executive branch agencies responsible for national security from exercising real influence over the export control process. This bill would grant the Commerce Department, for all intents and purposes, sole authority over which technologies are subjected to tech transfer restrictions. The bill would also confer on the Banking Committee exclusive jurisdiction for areas clearly within the purview of other Senate committees charged with oversight of the defense, foreign policy and intelligence portfolios.

The bill unduly restricts the circumstances under which export controls can be imposed. This is done to such an extent that the next President may be hamstrung should he believe, unlike the incumbent, that the transfer of certain dual-use U.S. technology should be blocked from going to undesirable end-users.

It would, for example, be illegal to do so if would-be exporters claim that foreign competitors can offer a comparable product. Another loophole would be created if the product is not available overseas but is widely available domestically. No data base exists, nor is any provided for by S.1712, to support such evaluations. If the new EAA were in force, the President would be prohibited from blocking the export unless he could establish both that U.S. security would be harmed and that foreign availability can be eliminated via multilateral controls in under 18 months -- neither of which are likely to be demonstrable in advance.

In its latest iteration, S.1712 would create a new National Security Control List (NSCL). Every item currently found on the Commerce Control List (CCL) of restricted dual-use items would have to be approved by the Commerce Department before it could appear on the NSCL. In other words, Commerce could, at its sole discretion, veto any proposal to control existing, let alone new technologies.

Two other sections of S.1712 create worrisome loopholes: 1) Section 204 allows the re-export of any product if the controlled U.S. content amounts to 25% or less of the *value* (not the strategic significance) of the product. Even worse from a non-proliferation point of view, is Section 301(c) which prohibits the control of U.S. parts or components if the item is assembled overseas. And 2) S. 1712 does not take into account the U.S. practice of recognizing that Israel is an adherent to the Missile Technology Control Regime (MTCR), even if Israel is not an MTCR member.

- **Restore appropriate balance between commercial and national security interests in the U.S. export control process.** For this to occur, several changes will have to be made to reestablish the authority, expertise and effective

involvement of the Defense and State Departments and the intelligence community. These would include the following:

**** Restoring a focus for the export control effort.**

Russia and China must be understood to be *part of the problem*, not -- for the time being, at least -- part of the solution. Equipping them with militarily relevant technologies is a strategic mistake in its own right. Thinking that either Moscow or Beijing, to say nothing of *both*, will help us prevent such technologies from reaching rogue states is recklessly irresponsible.

**** Reconstituting the Pentagon's ability to play its proper role:**

It is not enough to give the Defense Department a voice in export control matters. The Department must be staffed and represented in interagency forums in such a way that that voice constitutes a real national security-minded check on the rest of the process. During the Clinton years, this has not been the case as political appointees and their career subordinates at DoD have become among the most forward-leaning of any agency when it comes to approving the transfer of strategic technologies. The Joint Chiefs of Staff organization has all but ceased to perform needed analyses of the military impact of licensing decisions.

Matters have been made vastly worse by an internal reorganization of the Department that has resulted in subordinating the Defense Technology Security Agency (DTSA) to additional layers of bureaucracy, the vesting of relevant responsibilities in the Pentagon's exporter-friendly Acquisition organization and the physical relocation of DTSA to the functional equivalent of Siberia.

I would recommend that the Congress look hard at ways of reversing these undesirable developments. All appointees for senior Defense Department positions office bearing responsibility for export controls should be subject to

confirmation and vetted for their commitment to err on the side of caution when it comes to decision-making on licensing decisions.

** To aid in that effort, **legislation should be considered that would require a “Qualitative Edge Impact Statement”** be completed before decisions on releasing sensitive technologies are reached. Such a QEIS would evaluate the likely impact on the vital technological advantage upon which the U.S. military has traditionally depended to ensure its success on the battlefield despite inferior numbers and with minimal casualties.

** At a minimum, a QEIS would be helpful in identifying areas where **an intensified research and development effort will be required to restore and/or to enhance our qualitative edge**. We stand to suffer even more grievous harm to the extent that our military is subjected to the combined effect of continued, sharp decline in Pentagon investment in R&D and further sharp increases in potential adversaries’ offensive capabilities thanks to access to Western dual-use technology.

** One other idea worth exploring would be to ensure that **companies interested in exporting technologies that will adversely affect our military’s qualitative edge work with the Department of Defense** to find ways to mitigate the damage that will otherwise be done to U.S. security.

- Other efforts clearly will be needed to address the loss of export controls and/or the United States’ inability effectively to enforce them. This includes enhancing U.S. intelligence collection and analytical activities with a view to gaining early warning about sensitive technology transfers and the uses to which they might be put.

We must, in particular, resist the temptation to rely upon ineffectual arms control agreements to prevent such transfers. In the future, the United States will have to increase its ability -- whether overt or covert -- to intervene so as to prevent particularly sensitive dual-use technologies from reaching their intended destinations.

- A new, more effective multilateral effort needs to be mounted since unilateral export controls will, in most cases, be of limited value. (It needs to be said, however, that there are some areas in which the United States should not compete, even if other countries' companies are prepared to make sales. The willingness of Germany's chemical industry, for example, to sell Libya and Iran plants that could be used to mass produce nerve gas is a case in point.)

Such a new organization needs to differentiate -- as COCOM did, but as Wassenaar does not -- between "good guys" and "bad guys." Russia, China should therefore be outside of the decision-making body, enabling it to pursue policies that might necessarily impinge upon trade with them, as well as their clients. This organization might be modeled after the Australia Group, which was created by the Western powers and their allies in the 1980s to slow the proliferation of chemical weapons-relevant technology.

While America's leverage is much diminished from what it once was, I believe that the United States can still catalyze cooperation in this regard by offering recalcitrant companies a choice: They can sell sensitive technologies to countries we believe will misapply them, or sell them to third parties who will surely do so. Or they can sell to the *American market*. The issue of extraterritoriality is moot; we are simply exercising our right to protect our security against those who would, intentionally or otherwise, do us harm.

- The United States must also recognize that access to technology is not the only impetus to proliferation. Chances that strategic technologies will be purchased and diverted to undesirable purposes increase markedly if would-be proliferators have ready access to hard currency.

In this connection, Mr. Chairman, I would like once again to salute you for the concern you have expressed about a worrisome trend: Global bad actors are increasingly seeking to penetrate the U.S. capital markets in search of millions, if not actually *billions*, of dollars in undisciplined funds -- at least some of which may wind up underwriting proliferation, terrorism, genocide, etc.

The Initial Public Offering issued on the New York Stock Exchange last week by PetroChina, a subsidiary of the PRC's largest oil company, China National Petroleum Company (CNPC), is an object example. CNPC owns a 40% share in the government of Sudan's oil consortium; proceeds from this consortium's development and exploitation activities in southern Sudan are being used by the radical Islamic regime in Khartoum to underwrite its genocidal civil war and slave-trading in that region, as well as its support for terrorism and the proliferation of weapons of mass destruction.

With respect to the last of these, *New York Times* columnist William Safire recently reported that the U.S. intelligence suspected Iraq was bankrolling a joint venture between Sudan and North Korea to produce long-range missiles in a factory now under construction near Khartoum. Unfortunately, another possibility is that American investors' funds may, unbeknownst to them, wind up making this dangerous endeavor possible via the purchase of PetroChina shares that translate into part of the up to \$5 billion CNPC reportedly plans to invest in Sudan's oil consortium and, in turn, into ready cash for the ruthless Sudanese regime.

I urge members of this Committee, and the Congress more generally, to join the broad-based coalition spearheaded by my colleague, Roger W. Robinson, Jr., the chairman of our Center's William J. Casey Institute, that has so usefully raised an alarm about the PetroChina IPO -- and the *hundreds more* that other global bad actors have waiting in the wings. The effect of their efforts have been palpable: Conservatively, some \$15 billion to have been raised by Chinese state-owned enterprises between now and the end of June have been averted, for the time being at least, from falling into the hands of these worrisome Chinese companies (i.e. PetroChina, Sinopec and Baoshan Iron and Steel). We are confident that, with the requisite involvement by the executive and legislative branches, preventing such penetration of our debt and equity markets in the future can be done without capital controls by affording U.S. investors the fullest possible transparency concerning the true nature and actual end-uses of foreign offerings.

Conclusion

In summary, I want to thank you, Mr. Chairman, and all of your colleagues who appreciate just how much is at stake with respect to the control of dual-use technologies. With a few exceptions -- notably, the Cox Committee report, studies performed by the House Armed Services Committee and your Committee's excellent *Proliferation Primer* -- the direct relationship between greatly increased access to advanced dual-use technology and diminished national security has gone unaddressed by the Congress. I hope that my remarks today contribute to your efforts to take corrective action.