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The History of United States Weapons Export Control Policy

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All nations regulate Arms sales, but the United States (U.S.) has traditionally gone further than most. After World War I, a conspiracy theory made its way into popular culture that blamed the war, and specifically the U.S. intervention in 1917, on the so called “merchants of death.” Ever since, this has been a powerful and enduring theme in politics and culture throughout the world. Yet, nowhere have the effects of this theory been more enduring than in U.S. policy and law.

At the time, arms sales were seen by European governments as tools of statecraft. Referring to the efforts by Britain and France to sell ships to the Baltic states, one recent study explained:

...winning the orders became important to the economic health of both nations, but they also believed other benefits fell to the power winning the bids. To the British and the French navies, selling warships became a means of propping up their respective naval industries. To the British and French governments, and their naval leaders, sales meant influence. And influence meant control. And control meant more orders. But this assumption proved as wrong as much of British and French thinking between the wars.¹

In contrast, the U.S. refused to sell ships and submarines to these small states both because of a policy of not wanting to sell ships at all and due to

¹Donald Stoker, *Britain, France and the Naval Arms Trade in the Baltic 1919-1939* (Frank Cass, London, UK, 2003).

a fear that they “...might eventually fall into the hands of the Bolsheviks.”² As long as the U.S. stayed more or less isolated from world power politics, its decision on whether or not to export weapons or technology mattered little, except to the foreign states involved and to the U.S. firms that were affected. During the interwar period, when U.S. technology slowly began to overtake that of Europe, especially in the aeronautical field, these decisions became more significant.

Before World War II, export restrictions were often informal, such as the case in 1932 when the Army Air Corps pressured Boeing into refusing to sell their advanced technology Model 247 airliner to Japan. “In confidential correspondence, Boeing officials expressly reassured the Air Corps that none of the company’s advanced airliners would be sold abroad unless the government approved.”³ The Neutrality Acts of the late 1930s were an attempt to prevent the U.S. from getting embroiled in the wars of Europe and Asia due to arms exports. However, due to the depression, few in the U.S. Congress wanted to cut all weapons exports off entirely. So, the U.S. continued to export weapons to a few selected belligerent nations such as Nationalist China, while denying them to others, such as Ethiopia or Spain.

From the beginning of World War II in September 1939 until the Japanese attack on Pearl Harbor in December 1941, the Roosevelt Administration faced numerous legal and political obstacles in its efforts to aid first Great Britain and later the

²Ibid.

³Roger Bilstein, *The Enterprise of Flight: The American Aviation and Aerospace Industry* (Smithsonian Institution Press, Washington DC, 2001).

Union of Soviet Socialist Republics (USSR). Occasionally, the administration flat out broke the law as when it delivered half a million surplus rifles to the British in the early summer of 1940.

Driven by sympathy with China and by Japan's aggressive overall policy, the Roosevelt Administration began to increase pressure on Japan in 1938. While this policy failed to deter Japan from attacking Pearl Harbor, it did serve to weaken the Imperial War machine. The State Department began with what was termed a "Moral Embargo." On July 1, 1938, Charles W. Yost, chief of the Department's Office of Arms and Munitions Control, notified the 148 U.S. aircraft manufactures and exporters who had registered with his office that only with "great regret" would he issue export licenses for warplanes and their munitions without naming Japan specifically.⁴

The policy evolved into full scale economic warfare culminating in the dollar freeze of July 1941, which effectively cut Japan off from purchases of oil and other essential commodities. It is important to note that much of the impetus for this policy came from relatively low level diplomats and military men, such as Assistant Secretary of State Dean Acheson. These men were ready to punish Japan much harder than their superiors wanted to.

During the war, ideas about the role of science both in the war itself and in the post war era were an important part of the intellectual discourse. On the left, it was often assumed that science would automatically make the world a more socialist place. Others such as George Orwell had their doubts. Writing in October 1945, more than a month after the Japanese surrender, he asked:

But is it really true that a scientist,
...is any likelier than other people
to approach nonscientific problems
in an objective way? There is not

⁴Edward Miller, *Bankrupting the Enemy -The US Financial Siege of Japan before Pearl Harbor* (Naval Institute Press, Annapolis, MD, 2007).

much reason for thinking so. Take one simple test, the ability to withstand nationalism. It is often said that science is international, but in practice the scientific workers of all countries tend to line up behind their own governments with fewer scruples than are felt by the writers and artists. The German scientific community, as a whole, made no resistance to Hitler. Hitler may have ruined the long-term prospects of German science, but there were still plenty of gifted men to do the necessary research on such things as synthetic oil, jet planes, rocket projectiles, and the atomic bomb. Without them the German war machine could never have been built up.⁵

After 1945, U.S. leaders were led to assume that it would take the USSR at least ten years or more to develop their first atomic weapon "Truman and his advisors knew that sooner or later the Russians would develop their own bomb, but they were all

*The policy
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surprised at how soon it actually came."⁶ This was the first of many intelligence failures involving nuclear weapons. In fact, the Soviet regime gave the development of these weapons the highest priority, their program also benefited from an excellent espionage network in the U.S., Canada, and the United Kingdom (UK) as well as from several home grown men of genius, notably Andrei Sakharov. The U.S. reaction to the first successful Soviet nuclear weapons test in 1949 and the subsequent war in Korea, where the U.S. was surprised by the

⁵George Orwell, *Orwell in Tribune, As I please and other writings 1943-1947*, Paul Anderson ed. (Politicos, London, UK, 2006).

⁶John Ranelagh, *The Rise and Decline of the CIA* (Simon and Schuster, New York, NY, 1987).

excellent performance of the MIG-15 fighter and its British-designed engine was to try and insure that such leaks did not happen again. Stalin was skeptical that Britain would sell these engines—“What kind of a fool would be willing to sell his secrets!” he had reportedly said.”⁷

The late 1940s and early 1950s were the heydays of large-scale managerial research. Norbert Wiener wrote that “I consider that the leaders of the present trend from individualistic research to controlled industrial research are dominated, or at least seriously touched by, distrust in the individual that amounts to distrust in the human.”⁸ This environment, which engendered more secrecy than the previous generation of academic scientists, became a subject of controversy. Much of this was caused by political, or specifically left wing, concerns rather than any real desire to promote the free circulation of ideas. The battles between Robert Oppenheimer with his conventionally leftist sympathies and Edward Teller whose anti-Communism and unabashed patriotism, based in part on his immigrant experience, was mirrored by debates over how much to trust the Soviet Union. As one protagonist put it:

“As President Reagan never tired of saying, ‘nations do not develop mistrust because of arms. Rather, they develop arms because of mistrust’. Western mistrust has been based on the Soviets’ seventy year record of repression within and aggression beyond its borders”⁹

These debates continued to one degree or another until the end of the Cold War. One example was the 1948 controversy surrounding Edward

Condon who had been director of the National Bureau of Standards and was accused of having ties to the American Soviet Science Society. While the publicly available evidence against Condon was never released, Vannevar Bush made clear that he had showed a “lack of proper care in the types of remarks he has made and the type of associates he has sometimes had.”¹⁰

The U.S. not only lacked the skills needed to effectively locate and neutralize, in a timely fashion, Soviet spy networks, but it was also helpless in the face of a world wide propaganda campaign that was aimed at “McCarthyism.” Of course, there were legal abuses in the 1940s and 1950s, but the Soviet goal was not to protect U.S. Civil Liberties, but to make life as hard as possible for America’s counterintelligence operations. It also became a powerful political issue that helped discredit and drive apart liberals and conservatives.

In the same period, the U.S. was providing Europe with reconstruction aid under the Marshall Plan and with military aid as well. At the same time, European states did not want to give up their trade relations with the states on the other side of the Iron Curtain. The danger for them was that Americans, who were engaged in a global cold war and had little patience with those who accepted U.S. aid and protection while flirting with the enemy, would react in a negative fashion.

Europeans and Americans needed a way to make certain that U.S. political support for the Marshall Plan and for Europe’s security remained intact. “The conservatives claimed that Marshall Aid, taken together with other commitments, exceeded the limits of American resources and discouraged Europeans from putting their own house in order.”¹¹ The Coordinating Committee for

⁷David Holloway, *Stalin and the Bomb* (Yale University Press, New Haven, CT, 1994).

⁸Norbert Weiner, *Invention, The care and feeding of ideas* (MIT Press, Cambridge, MA, 1993).

⁹Kenneth Adelman, *The Great Universal Embrace Arms Summitry, A Skeptics Account* (Simon and Schuster, New York, NY, 1989).

¹⁰ G. Pascal Zachary, *Endless Frontier Vannevar Bush, Engineer of the American Century* (Free Press, New York, NY, 1997).

¹¹Michael Hogan, *The Marshall Plan America, Britain and the reconstruction of Western Europe*

Multilateral Export Controls (CoCom) was established in 1949; the U.S., UK, and France and the Benelux states were the first members. Norway, Denmark, Canada, and West Germany joined in 1950, with Portugal and Japan joining in 1953, and Australia in 1989. CoCom was never a formal organization. It is often described as nothing more than a Gentleman's Agreement, yet it was one of the most effective tools of U.S. economic diplomacy throughout the Cold War. "Confidentiality was a necessary part of the early Cold War compromise that created CoCom; for several west European states, participation in a system of economic discrimination targeted against communist states was of dubious legality and potentially explosive politically."¹² Europe and Japan were concerned about the restrictions that CoCom put on their trade, and the U.S., while often inconsistent and arbitrary, kept up the pressure for more and more restrictions.

It was the Soviet system itself that failed to keep up with its foes

the effort, but the economic warfare never fully stopped and was ready to be activated when political circumstances changed. One key turning point was the Soviet invasion of Afghanistan in December 1979. The economic pressure put on the USSR in the 1980s by the Reagan Administration was not simply confined to export controls, but included a wide variety of actions, including urging the Saudis to ramp up oil production to drive down the price. This savaged the Soviet's main source of hard currency income and pushed the price of their operations in Africa, Latin America, and Asia up to unsustainable

U.S. economic warfare against the USSR and vice-versa was a fact of the Cold War. At some times, U.S.-USSR politics, such as détente, placed inhibitions on

levels. In his memoirs, Reagan wrote that in the early days of his Administration "It seemed clear to me that in time Communism would collapse of its own weight, and I wondered how we as a nation could use these cracks in the Soviet system to accelerate the process of collapse."¹³

Export controls, even though they were a source of U.S.-European friction, made life extremely difficult for the Soviets. The U.S. effort changed the trading environment, and instead of being offered credits at below market rates and price discounts on their purchases, the Soviets had to pay premiums to middlemen working through intelligence organizations to buy essential modern industrial equipment. A 1982 U.S. government report said that: "The overwhelming majority of what the United States considers militarily significant technology acquired by and for the Soviets was obtained by the Soviet intelligence services and the East European intelligence services."¹⁴

Having to work through intelligence services not only made the technology acquisition process expensive and vulnerable, but it also slowed it down at the very moment when computer technology development was accelerating in the West, particularly in America. It was the Soviet system itself that failed to keep up with its foes. One former senior U.S. intelligence officer expressed that:

...the computer's power is useless unless the data it processes is accurate. And this means that any political or economic system which wishes to stay abreast of the surge in technology must give millions of people access to a broad range of accurate data. Any system based heavily on state control of

1947-1952 (Cambridge University Press, Cambridge, MA, 1989).

¹²Michael Mastanduno, *Economic Containment, CoCom and the Politics of East West Trade* (Cornell University Press, Ithaca NY, 1992).

¹³Ronald Reagan, *An American Life* (Simon and Schuster, New York, NY, 1990).

¹⁴Douglas McDaniel, *United States Technology Export Control, An Assessment* (Praeger, Westport, CT, 1993).

information or that permits its bureaucracy to provide skewed data must reform itself or slip backwards technologically and economically.¹⁵

The more difficult the U.S. and its allies made it for the USSR to buy technology in the West, the more they had to depend on their own flawed system. This led to such things as the well known “exploding television” phenomena and often to integrated weapon systems that failed to defeat Western ones. This was particularly evident during the Arab-Israeli wars of 1967, 1973, and 1982. For example, Syria’s Russian-supplied air defense system, and a good part of its air force, was wiped out by Israel during the 1982 Israeli war in Lebanon.

On June 9th, during a major attack on the SA-6 batteries, the technological competition between East and West, in a clash of investments valued at billions of dollars, ended with a conclusive victory by the West. At least twenty-two Soviet MIGs, of both models, were shot down, (in addition to seven others that had been downed since that morning), constituting between one-quarter and one-third of the Syrian force. Not a single Israeli aircraft was downed.¹⁶

For the U.S., the interest to open new markets in the late 1980s and early 1990s was strong. The U.S. trade deficit was always a problem, but it was the politics of the time that ended up determining the fate of U.S. export controls. At the time, the center-left opposition in America was, naturally, looking for themes that could be used to discredit the Reagan and Bush Administrations. The trade deficit was a good one, combined with the ease with which they could generate a fear that the world was going to be

taken over by export oriented “neo-mercantilist” powers such as Japan and West Germany.

This theme, reiterated in articles, studies with titles like “Japan as Number One”, and novels and movies, led to a mild form of paranoia vis-à-vis Japan and a feeling that America’s computer industry needed to be supported the same way that Japan or other Asian nations supported theirs. “At the growth rate of 1963-73, Japan would overtake the United States in real per capita income by 1985, and total Japanese output would exceed that of the United States by 1998.”¹⁷ This fear combined with the cultural affinity that many industry leaders had with leading Democrats made the whole question of export controls an important issue in the 1992 election.

When it comes to strategic sales, politics is never far away. In 1975, there were the Lockheed bribery scandals coming on top of Watergate. This was followed by the congressional investigations into the Central Intelligence Agency (CIA). It was then revealed that contracts to some foreign countries were designed to have, as a part of their price, a series of payments to consultants who had helped to facilitate the deal. These consultants, in turn, allegedly paid bribes to people in positions of responsibility. Among the more notorious of those who were alleged to have received the bribes were Japan’s Yoshio Kodama and Prince Bernhard of the Netherlands.¹⁸

These revelations led to the enactment of the Foreign Corrupt Practices Act (FCPA), which put the U.S. in the forefront of the international struggle against corruption, even though this was to handicap the U.S. economically over the years. “As a practical matter, the U.S. remains virtually the only country that vigorously prosecutes its

¹⁵Daniel O. Graham, *Confessions of a Cold Warrior* (Preview Press, Fairfax VA, 1995).

¹⁶Eliezer Cohen, *Israel’s Best Defense, The First Full Story of the Israeli Air Force* (Orion Books, New York, NY, 1993).

¹⁷Paul Krugman, *Pop Internationalism* (MIT Press, Cambridge MA, 1997).

¹⁸Walter Boyne, *Beyond the Horizons, The Lockheed Story* (St. Martins Press, New York, NY, 1998).

companies for bribing foreign officials.”¹⁹ Nevertheless, this law has become in part, the model for international anti-corruption legislation. American pressure on its trading partners was partly responsible for this as was pressure from international civil society including non-governmental organizations and the media.

In 1992, the CPRA was perceived as a U.S. government obstacle to America’s need to export. The idea that the U.S. should suppress imports by means of taxes on consumers and should promote its exports “by any means necessary” gained ground. What was odd about this was that those who promoted this in the name of “industrial policy” saw it as aimed against military allies, in particular against Germany and Japan, and they saw America’s foes such as the USSR as being nothing more than targets for a new export drive.

Between 1989 and 1993, much of the focus of U.S. economic sanctions activity had switched from the Soviet Union, which ceased to exist in December 1991, to China, whose 1989 Tiananmen Square “crackdown” caused the U.S. and other Western nations to cut-off weapons exports and to restrict China’s access to sensitive technology. China, however, was not the USSR, the economic reforms of the Deng era had profoundly changed its economy, which became in many ways a conventionally mercantilist one on the Asian model, while still remaining politically a one-party Communist state. From a U.S. standpoint, China does not believe in supporting a universal Communist revolution and has pursued a strategy that is closer to that of pre-1914 Germany than to anything that ever came out of the Soviet politburo.

...China tried hard to develop a privileged position for itself

Complicating relations was the heritage of the U.S. quasi-alliance with China aimed at the USSR. American support for China in the 1970s and 1980, had rarely involved arms sales, a few helicopters and other items. The U.S. had encouraged others, notably in Europe and in Israel, to help to update the People’s Liberation Army (PLA), whose forces had not received any serious injections of new technology since the Sino-Soviet split in the early 1960s.

In his memoir, President Reagan’s Secretary of the Navy, John Lehman, wrote that “the most functionally important was the fourth and final agreement to undertake a program to modernize Chinese destroyers and frigates with modern technology, enabling them to carry out effective antisubmarine warfare.”²⁰ While the U.S. had to be careful not to overtly state that the relationship was aimed at the USSR, this was in fact the case. There was also the pull of the Chinese market; American businessmen have been trying to develop a Chinese customer base since the late 18th century. China meanwhile has centuries of experience in exploiting foreigners for their own purposes. The Chinese from necessity had made manipulation of the strong by the weak into a fine art.”²¹

It should be recognized that neither Americans nor Chinese have a very good record of being able to achieve their national goals through trade. In the 1960s, China tried hard to develop a privileged position for itself in the newly independent states of Africa through a combination of trade, aid, and military assistance. For the most part, this failed since most African states preferred to trade with the West and to obtain their weapons from the USSR. China’s relatively successful mercantilist export policy combined with its technological espionage effort, gives it advantages that the USSR never had.

¹⁹Michael Marinelli, “Policy perspectives: is U.S. business hampered by foreign corrupt practices ban?” *World Trade Magazine*, 1 September 2007.

²⁰John Lehman, *Command of the Seas* (Scribners, New York, NY, 1988).

²¹Barbara Tuchman, *Stilwell and The American Experience in China* (Grove Press, New York, NY, 1971).

These include: unimpeded access to the capitalist world's banking system; and to the higher education establishments of the U.S. and to a lesser extent, Europe.

For the U.S., trying to contain China's military growth and at the same time to integrate it into the world community is a tough balancing act. Unfortunately, politics tends to undermine any attempt to build a sensible and balanced long term strategy. This problem has lead directly to the current situation. America's current export control system is the direct result of politics. The Clinton Administration abolished the CoCom in late 1993 as a relic of the Cold War.²² Concomitantly, many of the export control functions that had been handled by the State Department and by the Department of Defense (DOD) were transferred to the Commerce Department. Commerce strived for mercantilist trade promotion, limited only by the Constitution and by the structure of the American economy. This policy led to high-technology trade with China that involved the launching of U.S. commercial satellites on the Chinese Long March rocket.

The Chinese Long March failures between 1992 and 1996 and the U.S. made communications satellite they were carrying were compromised. Loral and Hughes assisted with the accident investigations and in the process leaked valuable technological information that supposedly helped China to improve the performance of its ballistic missiles.²³ A Pentagon report quoted by one critic of the U.S. trade policy towards China said:

²²Under CoCom rules, the West experienced the greatest period of prosperity and economic growth in the history of the human race. The new set of international export rules that replaced CoCom, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, is more loosely organized with more limited institutional structures.

²³Eligar Sadeh, "Bureaucratic Politics Run Amok: The United States and Satellite Export Controls," in this issue of the journal.

The provision of technical assistance in connection with the failure investigation to the Chinese by Hughes in the design, engineering, and operation of the Chinese launch vehicle and the Hughes satellite constitutes a "defense service" within the meaning of the State Department's International Traffic in Arms Regulations (ITAR) under the Arms Export Control Act (AECA).²⁴

Combined with revelation of Chinese espionage aimed at U.S. nuclear weapons labs this set off a political firestorm. In March 1999, a congressional investigative panel was about to announce China's theft of information on nearly every U.S. nuclear weapons design, due in part to the incompetence of the Clinton administration Justice Department.²⁵

In the end, the Congressional investigation was inconclusive. Congress did, however, find evidence of a very large Chinese espionage program aimed at U.S. military and technological secrets.²⁶ In order to counter this program, they recommended strengthening the U.S. export control regime. "In addition the panel called for stricter Defense Department controls on satellite

²⁴Bill Getz, *Betrayal, How the Clinton Administration Undermined American Security* (Regnery, Washington, DC, 1999).

²⁵Dan Stober and Ian Hoffman, *A Convenient Spy, Wen Ho Lee and the Politics of Nuclear Espionage* (Simon and Schuster, New York, NY, 2001).

²⁶Any improvement in the ability of a state, such as China, to land thermonuclear weapons onto American cities is something that no politician can afford to ignore. No matter how ambiguous the intelligence information the merest hint that such an improvement in the nuclear weapons that could be aimed at the U.S. homeland required some sort of response from the U.S. Congress.

launches in China.”²⁷ In a divided government, there are limits on what the legislative branch can do to force a President of a different party to do its will. In the absence of any possible effective cooperation from the Administration, the Republican majority in Congress ordered in 1999 that communications satellites and all their components be placed on the munitions control list and thus, fall under ITAR regulations. This was a blow to U.S. policy that sought to promote U.S. exports with fewer national security limitations. The Commerce Department would no longer be able to issue export licenses for commercial satellites and their components. The impact of this change was both far reaching and unexpected.

Over the last eight years, the ITAR regulations have done serious damage not only to U.S. efforts to sell commercial satellites, but also to NASA’s science and human spaceflight programs. “They have also proven a wonderful stimulator of international cooperation without U.S. participation.”²⁸ This damage is due to the way the U.S. government works. The State Department’s enforcement of ITAR regulations is a good example. The delays in processing space-related ITAR paperwork was due to a lack of trained personnel, and the people needed to deal with the paperwork were not engineers or people with a military background who could recognize when a certain bit of technology was dangerous and when it could be exported. These were lawyers who, by the nature of their training, would impartially and blindly enforce the law, no matter how much damage they were doing to the nation. “Scott Pace noted that U.S. ITAR regulations were an inartful response to globalization that created the risk of losing satellite manufacturing capability and influence.”²⁹

ITAR, as currently practiced, is a form of economic warfare practiced by the U.S. to try and achieve broad national security interests. “Evidence is beginning to emerge that it harms the sector and undercuts and erodes our economic competitiveness and forces international partners to go it alone.”³⁰ Even though the domestic satellite industry and its component suppliers have been hurt, the U.S. will not give up the use of sanctions and other forms of economic pressure. They are an essential part of American statecraft, even if they are often used in crude ways and lead to outcomes that are increasingly counterproductive.

²⁷Bill Getz, *Betrayal, How the Clinton Administration Undermined American Security* (Regnery, Washington, DC, 1999).

²⁸*The Space Report* (The Space Foundation, Colorado Springs, 2006).

²⁹Ibid.

³⁰Ibid.