Control Freaks: The Case for Relaxing China Export Controls

By Vance Trefethen

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Control Freaks: The Case for Relaxing Export Controls

The Cold War is long since over, but some of its relics linger on in US foreign policy. Please join my partner and me as we bring a 50-year old US export control policy into the 21st century by affirming that: The United States Federal Government should substantially reform its policies toward the People’s Republic of China

OBSERVATION 1. DEFINITIONS

Substantial:

“large in amount, size, or number” (*Merriam Webster Online Dict. 2016* <http://www.merriam-webster.com/dictionary/substantial)>

Reform:

“to improve (someone or something) by removing or correcting faults, problems, etc.” (*Merriam Webster Online Dict. 2016* [*http://www.merriam-webster.com/dictionary/reform*](http://www.merriam-webster.com/dictionary/reform)*)*

Policy:

“a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body” (*Merriam Webster Online Dict. 2016* [*http://www.merriam-webster.com/dictionary/policy)*](http://www.merriam-webster.com/dictionary/policy))

OBSERVATION 2. INHERENCY

The US has strict export controls on China

Oliver Brauner, Mark Bromley and Dr. Mathieu Duchatel 2015. (Brauner – researcher with Stockholm International Peace Research Institute (SIPRI). Bromley - Co-Director of the SIPRI Dual-Use and Arms Trade Control Programme Duchatel - PhD; Senior Researcher and Head China representative at SIPRI. ) STOCKHOLM INTERNATIONAL PEACE RESERCH INSTITUTE, Jan 2015 Western Arms Exports to China SIPRI Policy Paper No. 43 <http://books.sipri.org/files/PP/SIPRIPP43.pdf> (brackets added)

Strict US controls on arms exports to China are likely to remain in place for the foreseeable future, as indicated by the fact that the USA is seeking to ensure that its ECR [Export Control Reform] initiative does not affect controls on transfers to China. In addition, the USA shows continued willingness to use re-export controls and political pressure to convince other states to block particular exports to China.

OBSERVATION 3. GOALS. Our policy on Export Controls should meet two Goals:

1. PROTECT NATIONAL SECURITY and

2. PROMOTE TECHNOLOGICAL LEADERSHIP. And sadly, they fail at both, as we learn from:

Neena Shenai 2010 (attorney practicing international trade law, adjunct scholar at the American Enterprise Institute for Public Policy Research, former law clerk to a judge at the U.S. Court of International Trade, advisor to the Assistant Secretary for Export Administration at the Commerce Department's Bureau of Industry and Security) 2 Feb 2010 [https://www.aei.org/publication/export-control-reform-2010/](https://www.google.com/url?q=https://www.aei.org/publication/export-control-reform-2010/&sa=D&ust=1442836078755000&usg=AFQjCNEiIs57_8vvPQyALJCBZSBJelFpqQ)

The principal goals of the U.S. export control system are to protect U.S. national security and promote U.S. technological leadership. However, the system is an over 50 year old piecemeal framework which no longer structurally or substantively serves its purposes.

OBSERVATION 4. We see the FAILURES of current policy to meet the goals.

FAILURE 1. Reduced national security. Export controls on China reduce national security through reduced American business competitiveness.

Nina Hsu 2010 (VP of Larkin Trade International, LLC) , 7 May 2010, American Chamber of Commerce, People's Republic of China, <http://www.ndia.org/Resources/ExportImportComplianceResources/DailyBugle/Documents/May%202010/May%2020.pdf>

Reform resistors have championed national security—citing cases of weapons proliferation, military build-up and espionage—as justification for blocking reforms that would loosen restrictions on commercial trade with China. Reform oppositionists, however, do not have a monopoly over national security concerns. It is essential to consider the national security implications of moving towards overly-restrictive export control policy and unilateral controls. Given a case where a controlled technology is readily available for sale from US allies, excessive restrictions or prohibitions may cost the US company the sale, which has direct implications for the sustainability of American companies and the availability of US jobs. When US companies lose these types of sales, they are at best short-term problems for a single exporter. At worst, the long-term result will be lost market share and revenue, not only for a given US exporter, but also for its US competitors, all of whom now have less money to reinvest in technology innovation, R&D, and other US-based operations, undermining the US industrial base.

FAILURE 2. Lost research opportunities

US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009. "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," (ITAR = "International Traffic in Arms Regulations," part of the Arms Export Control Act of 1968) <http://www.fas.org/irp/congress/2009_hr/export.pdf>

During the late 1990s, the implementation of export control policies tightened in response to findings about the unintentional transfer of controlled defense technologies and information to China. Since those changes, the time required to approve ITAR licenses, in particular, has put stress on the federal agency systems for processing licenses and on the applicants for those licenses. In 2007, the Government Accountability Office (GAO) commented that the time required for processing export licenses ‘‘increased from a median of 13 days in 2002 to 26 days in 2006.’’ And by late 2006, ‘‘State’s backlog of applications reached its highest level of more than 10,000 open cases.’’ The time involved in obtaining Technical Assistance Agreements (TAAs), which are required to discuss ITAR-controlled technologies, has also increased. These delays mean that commercial companies may lose the opportunity to respond to a bid while waiting for a license, and that government projects may be delayed and incur cost increases. Other impacts of export controls pertain to researchers who may not be able to discuss ideas or research equipment with foreign colleagues at an international conference for fear of inadvertently transmitting controlled information.

FAILURE 3. Export controls fail 96% of the time - with billions of dollars of trade lost

INGRID LOMBARDO, Fannie Chen & Justin Chan 2009 (Lombardo - consultant at Larkin Trade International (LTI) Associates. Chen - Policy Analyst at American Chamber of Commerce – China. Chan - editor in chief at American Chamber of Commerce -China) Oct 2009 “The Impact of US Export Controls,” <http://www.amcham-shanghai.org/NR/rdonlyres/0BE4C980-EEAC-4B66-953F-77C5629157BA/11190/oct09_policy_update.pdf>

Of those who had lost sales due to U.S. export controls, 96 percent found that their customers ended up purchasing similar items from non-U.S. sources. Among the 14 companies that provided value estimates, the total impact of U.S. export controls on lost sales was placed at more than US$560 million per year. Although most respondents were not able to provide value estimates of lost sales, the data given provides an estimate that the total value of lost sales and opportunities to American businesses in China could reach billions of U.S. dollars each year.

OBSERVATION 5. Congress and the President enact the following PLAN immediately after an Affirmative ballot:

1. New Policy. US export controls on China will allow all technology sharing, research collaboration, and export unless the US Dept of Defense provides specific research and justification to the Secretary of Defense for blocking the export.

2. Two Automatic Exemptions. All technologies that can be legally imported to China from other countries are automatically exempt from all US Export Controls. And all fundamental research is automatically exempted.

3. Sunset Rule. All China export control restrictions end after 12 months, and must start over with a new justification to be renewed.

4. Coordinating Center. We establish a coordinating center for China export controls to receive license applications, determine the appropriate jurisdiction for those licenses, and manage appeals.

5. Independent Appeals. We establish an independent export license appeals panel empowered to judge and reject export controls for China.

Enforcement: Through existing export control enforcement methods and personnel.

Funding: From general federal revenues

And all Affirmative speeches may clarify the plan as needed.

OBSERVATION 6. SOLVENCY. The Plan overcomes the failures

US House of Representatives Committee on Science & Technology quoting & referencing National Academies Committee on Science Security and Prosperity 2009 (co-chaired by John L. Hennessy, President, Stanford University and Lt. General Brent Scowcroft (ret.),former National Security Advisor) report, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," [www.fas.org/irp/congress/2009\_hr/export.pdf](http://www.fas.org/irp/congress/2009_hr/export.pdf)

‘‘As a nation, we cannot, and should not abandon well-conceived efforts to keep dangerous technology and scientific know-how out of the hands of those who would use this knowledge to create weapons of mass destruction and other, equally dangerous military systems. However, these represent a very narrow and limited set of goods, technology, and knowledge. Our former unilateral strategy of containment and isolation of our adversaries is, under current conditions, a self-destructive strategy for obsolescence and declining economic competitiveness. A strategy of international engagement is a path to prosperity that can be coupled with a smarter approach to security using an adaptive system of government regulation and incentives. The committee recommends the issuance of an Executive Order that implements the recommendations it has outlined as one of the first orders of business in January 2009.’’ Some of the elements of the Order would include:- Establishing a process for removing every item on a control list after 12 months unless there is a strong case for keeping it;  
- An economic competitiveness exemption that ‘‘eliminates export controls on dual-use technologies where they, or their functional equivalents, are available without restriction in open markets outside the United States’’;  
- Establishing a coordinating center for export controls that would receive license applications, determine the appropriate jurisdiction for those licenses (i.e., Commerce or State), ensure the efficient processing of licenses, and manage an appeals process;  
- Creating an independent export license appeals panel; and  
- Ensuring support for excluding fundamental research from export controls.

OBSERVATION 7. ADVANTAGES

ADVANTAGE 1. Better Research & Development.

We improve US national security through stronger Research & Development

Nina Hsu 2010 (VP of Larkin Trade International, LLC) 7 May 2010, American Chamber of Commerce, People's Republic of China, <http://www.ndia.org/Resources/ExportImportComplianceResources/DailyBugle/Documents/May%202010/May%2020.pdf>

On the other hand, there are great national security benefits in allowing US exporters to engage in the dual-use hightech sector in China. More US engagement with China through high-tech exports and technology cooperation means a decreased risk of diversion as US parties require high standards of export control compliance. Also, more engagement with China will give US parties a deeper understanding of the Chinese domestic market. Finally, greater US exports will promote financially healthy US companies, who can then employ more American workers and channel more funds into R&D. As the US is no longer the sole source of most dual-use technologies, unilateral US export control actions and procedures impacts US national and economic security— and therefore should be an explicit component of the export license review process.

ADVANTAGE 2. International Technology.

We improve national security through better access to international technology

retired Lieutenant General Brent Scowcroft 2009 (Co-Chair of the National Academies Committee on Science Security and Prosperity and former National Security Advisor for Presidents Ford and George H. W. Bush), testimony before the US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," <http://www.fas.org/irp/congress/2009_hr/export.pdf>

The Fortress America approach of current controls cuts us off from information and technologies that we need for our national security. There is clearly a better way to manage the application of American science and technology abroad that protects our national security and our competitiveness. We need to change the mindset, and we need an agile system of security controls that can adapt quickly to the changing political and technological landscapes. Our mindset is now negative. Don’t let anything out which might be of use abroad or don’t let any H–1 visa applicants in who might be a problem. We need to turn to an open mindset. Export unless there is a reason not to. Let H–1 visa applicants in unless there is a reason not to.

ADVANTAGE 3. New jobs.

Better technological development, with new investment and new jobs

INGRID LOMBARDO, Fannie Chen & Justin Chan 2009 (Lombardo - consultant at Larkin Trade International (LTI) Associates. Chen - Policy Analyst at American Chamber of Commerce – China. Chan - editor in chief at American Chamber of Commerce -China) Oct 2009 “The Impact of US Export Controls,” <http://www.amcham-shanghai.org/NR/rdonlyres/0BE4C980-EEAC-4B66-953F-77C5629157BA/11190/oct09_policy_update.pdf>

The green technology space is equally important to the U.S. and China from both an environmental and economic standpoint. As an international leader in greentech solutions, the U.S. should be able to take advantage of the sincere interest in China to develop clean energy solutions by promoting and selling its products in China. Limits on technology transfer have the potential to hinder U.S.-China cooperation that would not only contribute to a more sustainable environment but will encourage investment and create jobs.

ADVANTAGE 4. Chinese environmental cleanup

A. The Link: Relaxed export controls will allow US technology to help China meet environmental goals

Henry Paulson & Robert Rubin 2015 (both are former US Secretaries of the Treasury) June 2015 THE ATLANTIC “Why the U.S. Needs to Listen to China” <http://www.theatlantic.com/magazine/archive/2015/06/the-blame-trap/392081/>

Relaxing some export controls is another way to expand opportunities for U.S. firms—and address a common Chinese critique of U.S. economic policy in the bargain. The U.S. should of course restrict the export of technologies with military applications when the national-security implications are significant. But many so-called dual-use products—those with important nonmilitary applications and some military applications—are restricted unnecessarily, and this harms the workers who make those products. In some areas, such as clean energy, the U.S. can both increase exports and promote other national interests—like helping China meet environmental goals and climate-related commitments.

B. The Impact: Chinese pollution costs 1.2 million lives per year

Eleanor Albert and Beina Xu, last updated in 2016 (both are online writers/editors for Council on Foreign Relations) last updated 18 Jan 2016 “China’s Environmental Crisis” <http://www.cfr.org/china/chinas-environmental-crisis/p12608>

Data on the toll of China’s pollution on public health paint a devastating picture. Air pollution contributes to an estimated [1.2 million premature deaths](http://www.thelancet.com/themed/global-burden-of-disease) in China annually. Epidemiological studies conducted since the 1980s in northern China suggest that poor air quality in Chinese cities causes significant [health complications](http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPENVIRONMENT/0,,contentMDK:21252897~pagePK:34004173~piPK:34003707~theSitePK:502886,00.html), including respiratory, cardiovascular, and cerebrovascular diseases. Pollution has also been linked to the proliferation of acute and chronic diseases; estimates suggest that around 11 percent of digestive-system cancers in China may stem from unsafe drinking water.

2A EVIDENCE: RELAX CHINA EXPORT CONTROLS

DEFINITIONS & BACKGROUND

Definition of Export Controls + they are outdated.

INGRID LOMBARDO, Fannie Chen & Justin Chan 2009 (Lombardo - consultant at Larkin Trade International (LTI) Associates. Chen - Policy Analyst at American Chamber of Commerce – China. Chan - editor in chief at American Chamber of Commerce -China) Oct 2009 “The Impact of US Export Controls,” <http://www.amcham-shanghai.org/NR/rdonlyres/0BE4C980-EEAC-4B66-953F-77C5629157BA/11190/oct09_policy_update.pdf>

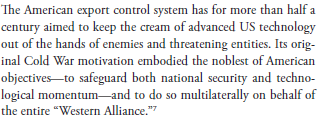
U.S. export controls govern the shipment, transmission or transfer of specific products and information to foreign entities.

**END QUOTE. Lombardo, Chen & Chan go on later in the same context to say QUOTE:**

Outdated export controls restrict items and technologies that once impacted national security, but no longer do because of rapid technology developments and increasing availability in foreign markets.

Cold War legacy. US export controls were designed to fight the Cold War by keeping technology out of the hands of our enemies

Prof. [J. David Richardson](http://www.piie.com/staff/author_bio.cfm?author_id=57) & Dr. Asha Sundaram 2013. (Richardson -  professor of economics in the Maxwell School of Syracuse University and Public Affairs at Syracuse University; senior fellow (retired) at Peterson Institute for International Economics. Sundaram - Asst Professor at The School of Economics, Faculty of Commerce, Univ of Cape Town, South Africa; PhD in Economics from Syracuse Univ.) Sizing Up US Export Disincentives for a New Generation of National-Security Export Controls May 2013 PDF downloaded from <http://www.piie.com/publications/interstitial.cfm?ResearchID=2408>



Definition and background on export controls

US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," (brackets in original) [www.fas.org/irp/congress/2009\_hr/export.pdf](http://www.fas.org/irp/congress/2009_hr/export.pdf)

Export controls, which are the focus of this hearing, are directed by the Arms Export Control Act of 1968 and the Export Administration Act of 1979. The Arms Export Control Act governs the export of components and systems that are listed as defense articles; the Department of State administers the International Traffic in Arms Regulations (ITAR), which are the regulations to implement the Act. The U.S. Munitions List (USML) comprises the list of defense articles regulated under the ITAR; and that list includes such categories of items as tanks and military vehicles, aircraft and associated equipment, military electronics, optical and guidance and control equipment, toxicological agents, and spacecraft systems and associated equipment. ITAR also controls technical data, including data for the design and development of defense articles, and defense services, which are ‘‘The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles’’ [International Traffic in Arms Regulations, Section 120.9(a)(1)].

Historical background: The US imposes export controls based on laws from the 1960s and 70s that were supposed to fight the Cold War.

US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY 2009 "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," 25 Feb 2009, <http://www.fas.org/irp/congress/2009_hr/export.pdf>

The Cold War sparked the United States to make historic investments in scientific research and development that could serve our national security needs, including the support of university, government, and industrial research institutions. Those Cold War investments created a robust science and engineering workforce, drove innovation, fueled economic growth, and established the United States’ preeminence in science and technology. The Soviets, however, sought access to U.S. technologies for potential military applications. In response, the U.S. instituted mechanisms aimed at preventing the transfer of certain U.S.-developed components, systems, and information to the Soviet Union and other adversaries. These national security controls include the classification system, export controls, limitations on the transfer of knowledge about technologies, visa controls, and measures to restrict the dissemination of certain government- funded research that could threaten national security. Export controls, which are the focus of this hearing, are directed by the Arms Export Control Act of 1968 and the Export Administration Act of 1979.

Bureau of Industry & Security enforces export controls, has $99.7 million in funding and 390 employees

Ian F. Fergusson & Paul Kerr 2014. (Both are with Congressional Research Service. Fergusson - Specialist in International Trade and Finance. Kerr - Analyst in Nonproliferation) January 13, 2014 The U.S. Export Control System and the President’s Reform Initiative <https://www.fas.org/sgp/crs/natsec/R41916.pdf>

The Bureau of Industry and Security (BIS) in the Department of Commerce administers the dual-use export control system. The export licensing and enforcement functions that now form the agency mission of BIS were detached from the International Trade Administration (ITA) in 1985 in order to separate it from the export promotion functions of that agency within the Department of Commerce. In FY2012, BIS processed 23,229 export license applications worth approximately $204.1 billion—$113.6 billion of which were licenses for crude oil exports. It denied less than 1% of license applications, although some licenses were approved with conditions. BIS was appropriated $99.7 million, including rescissions, by the Consolidated Appropriations Act (P.L. 113-6) in FY2013 with approximately 390 full-time employee positions. For FY2013, the President’s budget requests $112.1 million.

INHERENCY

The US government is increasingly applying export control restrictions today in our trade with China

[Joseph D. Gustavus](http://www.millercanfield.com/JoeGustavus) *2013. (attorney; partner in the law firm Miller Canfield, specializes in automotive, defense, aerospace, software and information technology sectors on corporate and export control matters) Nov 2013* What U.S. and Chinese companies need to know about U.S. export control laws applicable to China  *“* <http://www.millercanfield.com/resources-341.html>

The mutually beneficial trade relationship between China and the United States is growing increasingly complex due to the rapid pace of economic integration. At the same time, U.S. national security concerns are at a high-water mark. U.S. technology transfers to China under U.S. export control laws receive increasing scrutiny from enforcement authorities. Significant civil and criminal penalties result from violating the confusing patchwork of U.S. export control laws, which control the possession, trade, and export of controlled items and technology. U.S. export control compliance is particularly important for companies involved in the aerospace, automotive, defense, information technology, telecommunications, and software industries.

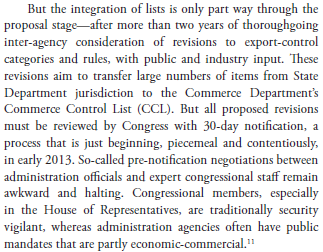
“Reforms underway” – Reforms failed. Problems still continue despite the 2009 reform policy

Michael S. Swetnam 2016 (Chairman of Potomac Institute for Policy Studies) 8 March 2016 Report to Congress “ANALYSIS OF THE IMPACTS OF ITAR ON U.S. NATIONAL SECURITY AND ECONOMIC INTERESTS” <http://www.potomacinstitute.org/images/RSEC/ITAR.pdf>

The United States has handicapped itself and its industries by allowing regulations to restrict who we can hire and who wants to do business inside our borders. The United States is putting itself at a disadvantage by losing tax revenue and access to companies, technology, and talent by implementing such restrictive regulations. The current Export Control Reform effort started in 2009 has been unsuccessful in mitigating and/or correcting the impacts and problems caused by the ITAR as it intended to do. Due in large part to inefficiencies in the U.S. regulatory system, the reform effort has been unable to adequately respond to the serious national security and economic impacts the ITAR is having on the United States.

“Reforms underway” – Response: Export process is still really complicated and lots of barriers still exist

Prof. [J. David Richardson](http://www.piie.com/staff/author_bio.cfm?author_id=57) & Dr. Asha Sundaram 2013. (Richardson -  professor of economics in the Maxwell School of Syracuse University and Public Affairs at Syracuse University; senior fellow (retired) at Peterson Institute for International Economics. Sundaram - Asst Professor at The School of Economics, Faculty of Commerce, Univ of Cape Town, South Africa; PhD in Economics from Syracuse Univ.) Sizing Up US Export Disincentives for a New Generation of National-Security Export Controls May 2013 PDF downloaded from <http://www.piie.com/publications/interstitial.cfm?ResearchID=2408>



“Reforms underway” – Response: Reforms are very limited and actually tightening controls in some cases

US International Trade Administration 2014. (a bureau within the US Department of Commerce) 18 Mar 2014 Export Control Reform News <http://export.gov/ecr/eg_main_043652.asp> (brackets added)

There is a misconception that ECR [export control reform] is simply a decontrol effort that will result in U.S.-origin items being more widely available for use in human rights abuses. In fact, the opposite is true. ECR that is a reprioritization of controls designed to focus U.S. Government resources on the most sensitive exports, tightening embargoes in the process. The Administration is only easing the export license requirement for less sensitive items, mostly parts and components, for ultimate end-use in a group of 36 countries that are NATO members or members of all four multilateral export control regimes. Additional compliance measures will apply to such exports to provide an audit trail. Licenses will still be required for items outside of the 36 countries, and the eased licensing burden will be balanced by an increase in the enforcement resources focused on the export of items that move to the Commerce Control List. For More information, please visit Export Control Reform Initiative Fact Sheet #8: Myths and Facts About the Impact of Reform on U.S. Foreign Policy Equities.

“Satellite export restrictions were reformed in 2013” – Response: Reforms didn’t go very far, and China is still heavily restricted

Jeff Foust 2013. (journalist) Export control reform enters the home stretch 17 June 2013 THE SPACE REVIEW <http://www.thespacereview.com/article/2314/1> (brackets added)

Late last year, years of lobbying by the industry and other space advocates paid off: a provision in the fiscal year 2013 defense authorization bill that Congress passed in December struck that late-90s language that put satellites and related items onto the USML [US Munitions List] (see [“Key space issues for 2013”](http://www.thespacereview.com/article/2211/1), The Space Review, December 31, 2012). The bill left in place prohibitions on the export of such items to a number of countries, including China; the transfer of technologies by US companies to China during investigations of Chinese launch failures provided the impetus for moving satellites onto the USML in the first place. While the bill removed the language from the earlier law that put satellites and related components onto the USML, it did not itself move those items off the list and back onto the less-restrictive Commerce Control List (CCL), administered by the Commerce Department. Instead, the law simply restored the authority to the President to determine which technologies should be on which control lists.

HARMS / SIGNIFICANCE / FAILURES

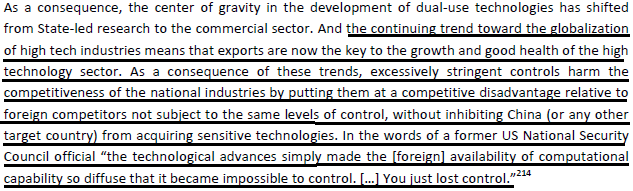
Export controls hurt competitiveness of US satellite industry – buyers move to other alternatives

[Jeffrey Gerrish](http://www.skadden.com/professionals/jeffrey-gerrish), [Nathaniel Bolin](http://www.skadden.com/professionals/nathaniel-bolin), [Jamieson Greer](http://www.skadden.com/professionals/jamieson-greer) 2014. (attorneys with Skadden, Arps, Slate, Meagher & Flom law firm, which specializes in foreign trade law) "US Government Announces Reforms to Space and Satellite Systems Export Controls" 13 May 2014 <http://www.skadden.com/insights/us-government-announces-reforms-space-and-satellite-systems-export-controls>

Items that will transition from the USML to the CCL under the new rules include certain commercial communications satellites and remote sensing satellites and probes and rovers for planetary and interplanetary science and exploration. In part, this transition reverses the move in the late 1990s that put licensing jurisdiction over commercial satellites in the hands of DDTC in response to concerns over improper release of U.S. satellite technology to China. Many in the industry have blamed that move for reducing U.S. competitiveness, as foreign buyers increasingly turned to “ITAR-free” alternatives to U.S. satellite technology. Importantly, however, items that transition from the USML to the CCL under the new rules will remain subject to stringent end use controls, including prohibitions on their export, re-export and transfer to China and embargoed countries such as Iran and North Korea (even when the U.S.-origin items constitute only a small fraction of the overall finished product or system).

Export controls hurt US industrial competitiveness and don’t do anything to limit China

Dr Hugo Meijer 2014. (PhD;Lecturer in Defence Studies, King’s College London) “Transatlantic perspectives on China’s military modernization: The case of Europe’s arms embargo against the People’s Republic of China” Oct 2014 (brackets and ellipses in original) <https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.academia.edu%2F9414828%2F_Transatlantic_Perspectives_on_Chinas_Military_Modernization_the_Case_of_Europes_Arms_Embargo_against_the_Peoples_Republic_of_China_Paris_Paris_No._12_Strategic_Research_Institute_of_the_French_Military_Academy_IRSEM_2014&ei=YnFpVYy3CIOBU-2vgbAN&usg=AFQjCNH4KHFX2osAIsXdpIJ6f1o1T63wTQ&sig2=8y5pLodq0hmh9n6-aJW_wA&bvm=bv.94455598,d.ZGU>



Recent example: Intel was denied export of super-computer chip to China in April 2015

WALL STREET JOURNAL 2015. (journalist Don Clark) 9 Apr 2015 U.S. Agencies Block Technology Exports for Supercomputer in China <http://www.wsj.com/articles/u-s-agencies-block-technology-exports-for-supercomputer-in-china-1428561987>

The Tianhe-2 system in 2013 vaulted to the top of a twice-yearly ranking of supercomputers, based on its performance on a series of standard computing tests. The U.S. government action effectively blocks Intel and others from selling newer chips to update the system. They must seek an export license to sell technology to be used by the four Chinese sites. Such licenses are “usually subject to a policy of denial,” according to the Commerce Department notice.

Denying export licenses hurts long-term strength of US industrial base

Nina Hsu 2010 (VP of Larkin Trade International, LLC) , 7 May 2010, American Chamber of Commerce, People's Republic of China,” Reforming US Export Controls“ <http://www.ndia.org/Resources/ExportImportComplianceResources/DailyBugle/Documents/May%202010/May%2020.pdf>

The export license review process is carried out by an interagency group composed of licensing officers from the Commerce, State, Defense, and Energy departments. It is, by its fundamental nature, intended to be an assessment of whether or not the proposed export poses an unacceptable risk of jeopardizing US national security or foreign policy agendas. The various government stakeholders provide their input and carefully analyze this threat. However, one critical element is missing from this formal license review process. Currently, it does not take into account the unintended consequences of denying and delaying a license. Delaying license approval or requiring overly-burdensome reporting and audit measures impacts short-term business opportunities of the exporter, in addition to the long-term health and sustainability of the US industrial base.

China export controls cost jobs and do not accomplish objectives

Paul Freedenberg and Prof Michael Czinkota 2010 (Freedenberg - former under-secretary of commerce for export administration under President Reagan; chairman of MK Technology in Washington, D.C. Czinkota - former senior advisor for export controls in the Commerce Department; professor at Georgetown University's McDonough School of Business and the University of Birmingham in the U.K.) 7 Apr 2010 KOREA TIMES, [www.koreatimes.co.kr/www/news/opinon/2010/04/137\_63782.html](http://www.koreatimes.co.kr/www/news/opinon/2010/04/137_63782.html)

Delays combined with foreign availability of products have meant lost business for U.S. firms and trade friction with China. To take but one example, China is the largest and fastest growing machine tool market in the world. The U.S. still tightly licenses five-axis machine tools, because they are considered to be the most sophisticated. These licenses can take from six months to a year to gain government approval. The Swiss, Germans, and Italians license products with identical capabilities in weeks. Over the past decade the U.S. has lost 50 percent of its share in this fast-growing market. At the same time, the domestic U.S. market has shrunk by 50 percent. Similar problems occur for semiconductor manufacturing equipment and scientific instruments. Without the cooperation and enthusiastic support between allies, the current export control system does not work. Unilateralism is dead. It costs jobs and does not accomplish its objectives.

Defense Department report: Export controls hurt US leadership in space technology, should be relaxed

US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," 25 Feb 2009 <http://www.fas.org/irp/congress/2009_hr/export.pdf> (brackets added; ITAR = "International Traffic in Arms Regulations," part of the Arms Export Control Act of 1968)

The Department of Defense (DOD) examined the impact of export control policies on the health of the U.S. space industrial base and issued a report in 2007. The report, Defense Industrial Base Assessment: U.S. Space Industry Final Report, which will be discussed in later sections of this charter, states that ‘‘The National Security Space Industrial Base (NSSIB) is critical to U.S. success in developing and deploying national security space assets.’’ As part of the conclusions, the report states that: ‘‘To maintain and enhance the U.S. competitive position in the global market, ITAR processes need to be frequently reviewed and adjusted, as appropriate.’’ In response to direction in P.L. 109–364, the John Warner National Defense Authorization Act for Fiscal Year 2007, the Institute for Defense Analyses produced a report, Leadership, Management, and Organization for National Security Space. The report, which was prepared by an Independent Assessment Panel chaired by Mr. A. Thomas Young, was accompanied by a letter to the Honorable Carl Levin, Chairman, Senate Committee on Armed Services that in part stated: “Today, U.S. leadership in space provides a vital national advantage across the scientific, commercial, and national security realms. In particular, space is of critical importance to our national intelligence and war-fighting capabilities. The panel members nevertheless are unanimous in our conviction that, without significant improvements in the leadership and management of NSS [national security space] programs, U.S. space preeminence will erode to the extent that space ceases to provide a competitive national security advantage.’’ The Independent Assessment Panel (IAP) referenced a study by the Center for Strategic and International Studies (CSIS) on the health of the U.S. space industrial base, and noted that ‘‘The IAP supports the recommendations of the CSIS panel to revisit the ITAR and relax those aspects that are counterproductive to U.S. competitiveness.”

Export Controls don't work: Satellites were put on the list - foreign countries developed their own and US industry was hurt, and US research was blocked

US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," (brackets added; ITAR = "International Traffic in Arms Regulations," part of the Arms Export Control Act of 1968) [www.fas.org/irp/congress/2009\_hr/export.pdf](http://www.fas.org/irp/congress/2009_hr/export.pdf)

The CSIS report found that aspects of current export control policies and regulations are at variance with the national space policy. For instance, the export control system does not enable cooperation while also denying capabilities to adversaries. Placing satellites on the USML [United States Munition l List, a list of prohibited export items] has encouraged the development of non-U.S. space capabilities, and ITAR regulations have had negative impacts for U.S. industry. CSIS [Center for Strategic and International Studies] also notes that export controls have interfered with a legacy of beneficial collaboration with foreigners and have made it difficult for international partners to resolve anomalies in collaborative space activities.

Hurts US tech leadership: Other countries look at the control list and produce those items themselves; some researchers abandon research on controlled technologies. 12-month "Sunset" requirement is needed

US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," (ITAR = "International Traffic in Arms Regulations," part of the Arms Export Control Act of 1968) 25 Feb 2009 [www.fas.org/irp/congress/2009\_hr/export.pdf](http://www.fas.org/irp/congress/2009_hr/export.pdf)

Using lists such as the Commerce Control List and the U.S. Munitions Control List, according to the National Academies report, are ineffective ways to control technology transfer because the technologies and information on the lists are, in many cases, available for sale on the open market from non-U.S. sources. The lists can also have the effect of advancing indigenous science and technology capabilities and competitiveness elsewhere. For example, the report notes that foreign nations may use the lists to prioritize research and development investments, because they anticipate that U.S. companies and institutions may face challenges in exporting those controlled technologies abroad. The case of U.S. commercial communications satellite development exemplifies this point. As a result of ITAR hurdles, Europe began to develop satellite components itself and to produce satellites that do not use U.S.-developed technologies rather than purchase the components, which are ITAR controlled, from the U.S. The lists also affect how U.S. researchers make decisions on the type of research they pursue. The National Academies report notes that ‘‘Some avoid research in areas that are affected by federal controls out of an apprehension that significant work may not be published or that students or researchers needed for first-rate laboratories will not be available. Breakthroughs will thereby be thwarted.’’ The recommendation from the National Academies is to: ‘‘Apply ‘sunset’ requirements to all items on export control lists that are controlled unilaterally by the U.S., and require findings to be made every 12 months that removing controls on an item would present a substantial risk to national security.’’

Catastrophic national security consequences if we don't collaborate on technology

retired Lieutenant General Brent Scowcroft 2009 (Co-Chair of the National Academies Committee on Science Security and Prosperity and former National Security Advisor for Presidents Ford and George H. W. Bush), testimony before the US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," <http://www.fas.org/irp/congress/2009_hr/export.pdf> (brackets in original)

The emerging threats in my statement refer to technological advances taking place elsewhere that could weaken America’s position in the battlefield, and to technologies that could have catastrophic consequences if unleashed on the American population. As the report states, ‘‘[w]hile the United States remains a world leader in advanced science and technology, it no longer dominates; it is now among the leaders. We are increasingly interdependent with the rest of the world.’’ Therefore advanced science and technology will develop in the United States, but also, for example, in China, Germany, India, and Russia. If export controls prevent foreign scientists from coming here to study, or from collaborating with American scientists, the United States will lose vital information about what is going on elsewhere.

Export controls hurt national security: Accelerates foreign tech developments to get around our restrictions

A. Thomas Young 2009, (Lockheed Martin Corporation (Ret.); Co-Chair, Center for Strategic and International Studies (CSIS), Working Group on the Health of the U.S. Space Industrial Base and the Impact of Export Controls, testimony before the US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," (ITAR = "International Traffic in Arms Regulations," part of the Arms Export Control Act of 1968) [www.fas.org/irp/congress/2009\_hr/export.pdf](http://www.fas.org/irp/congress/2009_hr/export.pdf)

And our concern, when we really got into this, and it is no matter what country we are dealing with, the way we are currently implementing our export controls is having a detrimental effect on our national security. In other words, I think if we make a mistake, I would be in favor of making a mistake on the conservative side relative to not harming national security. But what alarmed us, when we really got into this, is that the way we are currently going about it, including even with adversaries, is we are doing it in a manner that has a negative impact on our national security. If I could just add one item, not an adversary, but we had various foreign governments come in and talk to us. Indian government came in and talked to us. They said the best thing that ever happened to them was ITAR, that it accelerated their program beyond what would have ever been possible if it had not been for U.S. export controls.

Export controls hurt university research programs

US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," (brackets and ellipses in original) <http://www.fas.org/irp/congress/2009_hr/export.pdf>

In response to concerns about the transfer of export controlled hardware and information to China during the 1990s, the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [P.L. 105–261] transferred ‘‘all satellites and related items that are on the Commerce Control List of dual-use items . . . to the United States Munitions List and controlled under section 38 of the Arms Export Control Act . . ..’’ In 2002, the Department of State revised the ITAR language concerning scientific satellites for fundamental research. ITAR licenses are not required for scientific research satellites when specific conditions are met. Space researchers, however, report confusion about the application of that exemption to space research projects. The summary report of the National Academies workshop on space science and ITAR noted that regulations are applied differently to institutions involved in a single space project—national labs, universities, industry, and government. In addition, researchers are unclear about the type of information that can be placed in the public domain, including in the classroom. Moreover, the fundamental research exclusion in the ITAR applies only to ‘‘accredited U.S. institutions of higher learning.’’ There is also a lack of clarity about involving foreign students and researchers in space research projects that may use ITAR-controlled technology. Researchers are also unclear about what information regarding a satellite project they can share with non-U.S. individuals or students in an academic environment. In the absence of clarity, universities and researchers interpret regulations conservatively and may add burdens that are not necessary and lead to decisions that affect university engagement in space research. For example, according to the National Academies’ workshop summary, universities and researchers may make decisions not to pursue projects requiring ITAR licenses or to allow non-U.S. researchers and students to participate in space research projects. In addition, the report says that ‘‘uncertainties are leading some professors to ‘dumb down’ course content rather than risk ITAR violations by discussing their research in the classroom setting.’’ The workshop summary on space science and ITAR also notes that compliance ‘‘creates a significant unfunded mandate for universities, because they operate with capped overhead costs . . ..’’ In addition, universities bear the costs of educating faculty and contracting and grants officers, maintaining documentation, handling negotiations with the State Department, and ‘‘the substantial costs of delays in securing approvals for activities that fall under ITAR,’’ according to the report.

Export controls hurt US technological leadership, working against our national self-interest

Rep. Ralph M. Hall 2009 (Texas), US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," <http://www.fas.org/irp/congress/2009_hr/export.pdf>

As a consequence of these uncertainties and the lack of transparency within the exporting licensing bureaus, industry and academia are shying away from bringing products and ideas into the international arena or collaborating with our friends and allies. This result is less business and less engagement with leading researchers the entire world over. It is, in essence, a system that is designed to slowly erode our technological superiority which we don’t want. The current system has no transparency, and as a result, export licensing is bogging down the very same R&D enterprise that made our economy the largest in the world. And as I stated just a moment ago, we have to continue to deny our adversaries access to emerging technologies, but I am convinced the current export control regime is working against our own national self-interest.

Export controls hurt national security, hurt technology development, hurt the economy

retired Lieutenant General Brent Scowcroft 2009 (Co-Chair of the National Academies Committee on Science Security and Prosperity and former National Security Advisor for Presidents Ford and George H. W. Bush), testimony before the US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," <http://www.fas.org/irp/congress/2009_hr/export.pdf>

‘‘The national security controls that regulate access to and export of science and technology are broken. As currently structured, many of these controls undermine our national and homeland security and stifle American engagement in the global economy, and in science and technology. Fixing these controls does not mean putting an end to them, but implementing reforms based on the realities of the risks and opportunities of today’s threats to our nation.’’

Clear and substantial lost trade and lost jobs due to export controls with China

Ingrid Lombardo, Fannie Chen & Justin Chan 2009 (Lombardo - consultant at Larkin Trade International (LTI) Associates. Chen - Policy Analyst at American Chamber of Commerce – China. Chan - editor in chief at American Chamber of Commerce -China) Oct 2009 “The Impact of US Export Controls,” <http://www.amcham-shanghai.org/NR/rdonlyres/0BE4C980-EEAC-4B66-953F-77C5629157BA/11190/oct09_policy_update.pdf>

There is a growing body of evidence showing that current U.S. export controls, which are designed to protect America’s national security interests, are outdated. Instead of protecting sensitive U.S. products and information, many measures cost U.S. companies huge business opportunities in China and elsewhere around the world. According to the recent Impact of U.S. Export Controls survey jointly conducted by the American Chamber of Commerce in China (AmCham-China) and the American Chamber of Commerce in Shanghai (AmCham Shanghai), U.S. companies have lost hundreds of millions in sales to foreign competitors due to real and perceived restrictions from U.S. export controls. While survey respondents, comprised of U.S. companies with operations in China, responded with wide ranges in their estimates of the total negative impact of U.S. export control policies in terms of dollar amounts and lost U.S. jobs, the losses were clear and substantial.

Export controls motivate China to develop their own technology, while US companies lose out

WALL STREET JOURNAL 2015. (journalist Don Clark) 9 Apr 2015 U.S. Agencies Block Technology Exports for Supercomputer in China <http://www.wsj.com/articles/u-s-agencies-block-technology-exports-for-supercomputer-in-china-1428561987>

Horst Simon, a supercomputer expert and deputy director of the U.S. Department of Energy’s Lawrence Berkeley National Laboratory, said the U.S. restrictions in the long run will help Chinese chip makers and hurt U.S. companies. “The Chinese will be more incentivized to develop their own technology, and U.S. manufacturers will be seen as less reliable and potentially not able to satisfy foreign orders,” Mr. Simon said.

ADVANTAGES

Benefits of the plan, how it works

retired Lieutenant General Brent Scowcroft 2009 (Co-Chair of the National Academies Committee on Science Security and Prosperity and former National Security Advisor for Presidents Ford and George H. W. Bush), testimony before the US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," <http://www.fas.org/irp/congress/2009_hr/export.pdf>

The changes recommended in the report will bring about greater transparency, openness, consistency and agility, all of which are lacking in the current system. The ‘‘one-stop-shop’’ will reduce licensing timetables and therefore promote consistency and agility. The appeals process, which recommends publication of decisions, will promote transparency and openness. A process that applies principled and consistent sunset requirements will be able to bring about consistency and rationality. The Economic Competitiveness Exemption will make the system more realistic because it takes into account the fact that the U.S. gains no significant protection by prohibiting legitimate U.S. companies from exporting dual-use items that are, or soon will be, legally available in open markets overseas.

Export controls should be modernized - the technology exports are no threat to US security

Daniel Griswold 2010 (director of the Center for Trade Policy Studies at the Cato Institute) 27 Apr 2010, WASHINGTON TIMES, GRISWOLD: A free-market '5-year plan' to boost U.S. exports, [www.washingtontimes.com/news/2010/apr/27/a-free-market-5-year-plan-to-boost-us-exports/](http://www.washingtontimes.com/news/2010/apr/27/a-free-market-5-year-plan-to-boost-us-exports/)

Four, modernize our regime of export controls. In the name of national security, we make it hard to export "dual-use" (military and civilian) goods to China and other non-democracies, even when such technology is generally available in global markets and poses no real threat to U.S. security.

Revising export controls would increase US sales in China by hundreds of millions of dollars/year

Ingrid Lombardo, Fannie Chen & Justin Chan 2009 (Lombardo - consultant at Larkin Trade International (LTI) Associates. Chen - Policy Analyst at American Chamber of Commerce – China. Chan - editor in chief at American Chamber of Commerce -China) Oct 2009 “The Impact of US Export Controls,” <http://www.amcham-shanghai.org/NR/rdonlyres/0BE4C980-EEAC-4B66-953F-77C5629157BA/11190/oct09_policy_update.pdf>

Outdated export controls restrict items and technologies that once impacted national security, but no longer do because of rapid technology developments and increasing availability in foreign markets. This presents a severe challenge to U.S. companies in China competing against companies from countries without the same restrictions. Reforming these controls would provide U.S. businesses a level playing field to compete on in international markets. Recent reports estimate that reform could increase U.S. sales in China by hundreds of millions of dollars annually for high-tech companies. Revising U.S. export control policy is a critical element to ensuring continued U.S. economic security and success over the next decades.

Stakes are high - we need immediate reform of export control so US businesses can compete in China

Ingrid Lombardo, Fannie Chen & Justin Chan 2009 (Lombardo - consultant at Larkin Trade International (LTI) Associates. Chen - Policy Analyst at American Chamber of Commerce – China. Chan - editor in chief at American Chamber of Commerce -China) Oct 2009 “The Impact of US Export Controls,” <http://www.amcham-shanghai.org/NR/rdonlyres/0BE4C980-EEAC-4B66-953F-77C5629157BA/11190/oct09_policy_update.pdf>

U.S. industry is hopeful that the efforts of the ECWG and American businesses will result in changes for U.S. export control policy. This would allow U.S. companies to engage as responsible partners in future Chinese high-tech markets, such as aerospace, manufacturing equipment and green technology. The stakes are high and time is of the essence. Until the U.S. is able to properly calibrate its export control policy, American businesses will continue to lose hundreds of millions – if not billions – of U.S. dollars every year in China. Meanwhile, their European and other non-U.S. competitors step in and fill the gaps.

US businesses face increasing regulatory problems with export control to China. China could be the fastest growing market for US exports & jobs if we relaxed export controls

Nina Hsu 2010 (VP of Larkin Trade International, LLC) , 7 May 2010, American Chamber of Commerce, People's Republic of China, <http://www.ndia.org/Resources/ExportImportComplianceResources/DailyBugle/Documents/May%202010/May%2020.pdf>

President Obama emphasized the role that US exports can play in revitalizing the American economy and creating new jobs. These announcements are renewing optimism among members of the business community who have supplied the administration with recommendations for redirecting US trade policies. However, US business representatives in China note challenges still remain. They report an increasing number of cases where US export control procedures delay or deny US exports to China. Experiences with lengthy export license approvals, license denials, inconsistent commodity classifications and burdensome post-export requirements have produced many skeptics about export control reform and its impact on US exports to China. Their fear is that policymakers will exempt exports to China from serious reforms in the interest of minimizing domestic opposition to the changes. However, including China in these export control reforms is necessary to achieve real US export and job growth in order to stimulate the US economy. If China is exempted from the export control reforms, this will remove the most dynamic and fastest growing market for US exports and job creation.

DISADVANTAGE RESPONSES

“Export controls = national security” – Response: Export controls weaken US national security by making US industry less competitive

Dr. Loren Thompson 2015 (PhD; Chief Operating Officer of the non-profit Lexington Institute and Chief Executive Officer of Source Associates; former Deputy Director of the Security Studies Program at Georgetown University and taught graduate-level courses in strategy, technology and media affairs at Georgetown) FORBES 2 June 2015 “How Export Controls Can Hurt National Security” <http://www.forbes.com/sites/lorenthompson/2015/06/02/how-export-controls-can-hurt-national-security/#2715e4857a0b716f8940789c>

Not only are new technologies constantly emerging, but many breakthroughs now come from commercial sources rather than from government labs and contractors.  And a growing number of those commercial players are overseas.  So restricting the export of dual-use technology may have the unintended effect of strengthening foreign companies at the expense of their U.S. rivals.  Overseas customers will circumvent U.S. regulation by turning to those offshore producers, U.S. producers will lose economies of scale, and in the end America’s military may become dependent on foreign sources for vital technology.

Export controls don't control proliferation of technology - sometimes they encourage it

US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," [www.fas.org/irp/congress/2009\_hr/export.pdf](http://www.fas.org/irp/congress/2009_hr/export.pdf)

In 2008, the CSIS issued a Briefing of the Working Group on the Health of the U.S. Space Industrial Base and the Impact of Export Controls, which reviewed the results of the 2007 DOD Defense Industrial Base Assessment, interviewed and collected data from across the government, industry, and other experts, and examined the findings of other reports on export controls. The findings of the CSIS study echo many of the issues affecting the broader areas of science and technology that were raised in the National Academies report. The CSIS report concludes, for example, that:  
• U.S. policies are not controlling the rapid proliferation of non-U.S. space capabilities and in some cases the policies are encouraging them;  
• U.S. preeminence in space is being challenged;  
• Current export control policies are restricting U.S. international space activities and partnerships; they have led to separation between U.S. and emerging non-U.S. space actors;  
• Certain elements of export controls are in variance with U.S. National Space Policy; and  
• U.S. market share in foreign space markets is declining and it is harder for U.S. companies to compete in non-U.S. markets, particularly for the lower tier companies.

Tech export disads non-unique: European Union circumvents US rules – China gets technology from France and Germany instead

Oliver Brauner, Mark Bromley and Dr. Mathieu Duchatel 2015. (Brauner – researcher with Stockholm International Peace Research Institute (SIPRI). Bromley - Co-Director of the *SIPRI* Dual-Use and Arms Trade Control Programme Duchatel - PhD; Senior Researcher and Head China representative at SIPRI. ) STOCKHOLM INTERNATIONAL PEACE RESERCH INSTITUTE, Jan 2015 Western Arms Exports to China SIPRI Policy Paper No. 43 <http://books.sipri.org/files/PP/SIPRIPP43.pdf>

Therefore, it is often assumed that, since 1989, no transfers of military-related technologies from Western states to China have taken place. However, while the US embargo restricts all transfers of military equipment and related components, the EU embargo lacks clear guidelines and has been interpreted differently by individual EU member states. As a result, while sales of complete weapons and weapon systems have not occurred, both components and subsystems have been supplied. Many Chinese submarines are powered by German engines or equipped with French sonar systems. China has also acquired French military helicopters and now produces its own using French technology.

US export controls against China motivate them to get equivalent technology from Russia

Wall Street Journal 2015. (journalist Brian Spegele) 14 Apr 2015 China Wants U.S. to Drop Tech Export Limits, or It Will Shop Elsewhere” <http://www.wsj.com/articles/china-wants-u-s-to-drop-tech-export-limits-or-it-will-shop-elsewhere-1429014924>

Chinese Premier [Li Keqiang](http://topics.wsj.com/person/L/Li-Keqiang/7155) urged U.S. officials to drop limits on high-technology exports or it would seek alternatives from Russia or other countries, said people with knowledge of the discussions, in a reminder of technology tensions between Washington and Beijing. Mr. Li raised the issue on Monday with U.S. Commerce Secretary Penny Pritzker during her visit to Beijing, these people said. Mr. Li said China was determined to secure technology it needed with or without U.S. cooperation, one participant said. “They specifically said they would look elsewhere if they couldn’t get the deals,” the person said. Mr. Li named Russia specifically, according to this person.

US controls don't deny China anything: China gets the same stuff from Europe or 3rd parties

retired Lieutenant General Brent Scowcroft 2009 (Co-Chair of the National Academies Committee on Science Security and Prosperity and former National Security Advisor for Presidents Ford and George H. W. Bush), testimony before the US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," <http://www.fas.org/irp/congress/2009_hr/export.pdf>

The United States and its allies do not see eye-to-eye on selling advanced ‘‘dual use’’ goods and technologies to China. For example, as stated in the report: ‘‘despite U.S. protests on the transfer of dual-use technology, the European Union signed an agreement with China in 2003 that allowed China to invest 230 million Euros in the European Union’s satellite navigation system.’’ Furthermore, China is able to buy U.S. products from third country manufacturers who are the original legal buyers; there are no international legal restraints to prevent this. Thus it is a mistake to think that withholding U.S. products from the Chinese actually prevents them from getting the same advanced ‘‘dual-use’’ goods elsewhere.

“Bad guys get advanced technology” – Response: Technology is so widespread that export controls can’t be effective at stopping it

Dr. Hugo Meijer 2011. (PhD; Lecturer in Defence Studies, King's College London; Research Associate at the Center for International Research and Studies) Controlling the Uncontrollable ? U.S. Dual-Use Export Controls in the Post-Cold War Era Dec 2011 <http://www.defense.gouv.fr/content/download/153100/1551427/file/Fiche_n10_Post_Cold_War_US_Export_Controls_2.pdf>

The proliferation of sources of supply of dual-use items lowers entry barriers for a wide range of actors to acquire advanced technologies that could be employed as an asymmetric means to disrupt the opponent’s C4ISR networks in the framework of an anti-access/area denial (A2/AD) strategy. In light of the growing importance of dual-use technologies in national force structures and of their vulnerability to disruptive attacks, this paper examines the key trends that have affected the efforts to control the proliferation of dual-use technologies in the post-Cold War era. It will be argued that, since the dissolution of the Soviet Union, multilateral, technological and industrial dynamics have eroded the ability of states – both unilaterally and multilaterally – to control the diffusion of dual-use technologies.

Export controls only work well under 3 conditions that existed during the Cold War - those conditions don't exist today

retired Lieutenant General Brent Scowcroft 2009 (Co-Chair of the National Academies Committee on Science Security and Prosperity and former National Security Advisor for Presidents Ford and George H. W. Bush), testimony before the US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," <http://www.fas.org/irp/congress/2009_hr/export.pdf>

The study we have done on export controls and technology in a globalized world concludes that the national security controls on science and technology are broken. They harm our national security and reduce our economic competitiveness. These controls which were established during the Cold War work well as long as three conditions prevail. The U.S. science and technology establishment has only one significant competitor, the Soviet Union, and that was a weak competitor. Two, military research and development production took place separately from the commercial sector and generally led it by a great degree. And third, a common sense of purpose existed among the United States and its allies regarding the nature of the threat. These three conditions no longer obtain.

Controls don't solve for exports of national-security technology to China: They will get it from Britain or France if not from us

Rep. Dana Rohrabacher and General Brent Scowcroft 2009. US House of Representatives COMMITTEE ON SCIENCE AND TECHNOLOGY, 25 Feb 2009, "Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness," (Rep. Dana Rohrabacher, R-Calif. and retired Lieutenant General Brent Scowcroft ,Co-Chair of the National Academies Committee on Science Security and Prosperity and former National Security Advisor for Presidents Ford and George H. W. Bush) <http://www.fas.org/irp/congress/2009_hr/export.pdf>

Mr. ROHRABACHER. Nobody wants to say China. The bottom line is our major industries are making billions of dollars off of trade with China that could potentially cause damage to our national security. When our businessmen acknowledge that, we are going to have some progress on this. Until then, we are going to have controls because the American people can’t count on our big businessmen to watch out for the security interests of our country over temporary and short-term profit. Mr. HALL. I yield back my time. Mr. ROHRABACHER. That is what this is all about. Lieutenant General SCOWCROFT. Mr. Rohrabacher, if the Chinese can get the same product from the British or the French that they could get from us, then we don’t solve your problem but we injure the American economic competitiveness. That is why it is a complicated answer.