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Less-developed nations seeking to produce weapons of mass destruction (or missiles for delivering them) usually need to import certain equipment, materials, and technologies. The United States and other countries have instituted export controls on such commodities as a tool of nonproliferation policy. OTA's report on *The Proliferation of Weapons Of Mass Destruction: Assessing the Risks*¹ concluded that **export controls will continue to be a useful nonproliferation tool.** They are unlikely to stop a determined proliferant in the long run, but nevertheless may buy important time in the shorter term—time that may be used to bring other nonproliferation tools to bear.

The Export Administration Act (EAA) provides the legislative basis for U.S. export controls on dual-use items—goods and services with civilian applications that could in principle be used for military purposes.² In 1994 the EAA, temporarily renewed in 1992, will expire and Congress must reauthorize it. Virtually everyone involved in export control matters agrees that a new EAA is overdue. There is less agreement about what the most urgent problems are and what the best solutions may be. **Moreover, the core issues are likely to remain in contention well beyond passage of a new export control bill.**

The initial report of this OTA assessment pointed out that there are tensions between the goals of effective nonproliferation ex-

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¹U.S. Congress, Office of Technology Assessment, *Proliferation of Weapons of Mass Destruction: Assessing the Risks*. OTA-ISC-559 (Washington, DC: U.S. Government Printing Office, August 1993).

²The Nuclear Non-Proliferation Act of 1978, however, establishes the basis for control of nuclear-related dual-use items.

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port controls on the one hand and enhanced export competitiveness on the other. When it comes to specific proposed reforms of the EAA, however, the tradeoffs are not completely clear-cut and direct. **Some proposed changes in export control laws and regulations are aimed primarily at improving their effectiveness. Proponents of other changes are seeking mainly to reduce the burdens to industry of export controls and to reduce barriers to legitimate exports. These two objectives are not necessarily contradictory: any given change intended for one purpose may hinder, have no effect on, or even help pursuit of the other.**

The most desirable export control measures would contribute to one or both goals (effectiveness and economic competitiveness) and detract from neither. For example, increasing the resources available to review export license applications might assure both that the applications are screened in greater detail (possibly increasing the chances that dangerous exports will be stopped) *and* that the review process is sped up (reducing the waiting time for exporters and their potential customers). If an option does detract from one goal while contributing to another, policy makers will, ideally, evaluate the tradeoff and choose the more valued goal.

Unfortunately, as will be shown below, this evaluation does not always lend itself to a clear-cut analysis. As a result, the revision of the EAA is likely to become a focus of strong political controversy both in the Congress and in the executive branch.

NONPROLIFERATION EMPHASIS

Those whose foremost objective is strengthening the nonproliferation regimes tend to stress the benefits of export controls. Citing Pakistan, Iraq, and others, they point out that in the past, ineffectiveness of export controls has resulted not just from the inherent deficiencies of the tool, but from failures by the United States and other nations to apply it rigorously. They argue that, given the horrendous consequences of the spread of weapons of mass destruction, even partially effective controls

may help avoid catastrophic future costs. (Some would also argue that we have a moral imperative not to contribute to proliferation, whatever others might be doing.) They also point out that controls serve some purposes beyond limiting access to potentially dangerous goods and technology. By creating a record of what is sold to whom, controls provide information to help monitor proliferation. They also serve to indicate a government's determination to oppose proliferation: a state that decries the spread of weapons of mass destruction, but does nothing to prevent its own citizen from helping those who seek to acquire them, loses credibility.

Those stressing the benefits of controls, then, argue that some economic sacrifices (in the form of reduced exports) are worth the price. They say that if exporters are burdened by controls, the burdens should be seen as part of the price of doing business with potentially dangerous commodities. Moreover, some nonproliferation advocates question whether the business lost because of nonproliferation-related controls is in fact very significant to the U.S. economy: few solid figures are available to prove that it is. Presented with proposals to ease the burdens to industry imposed by export controls, these advocates are more likely than others to perceive dangers that those proposals will decrease effectiveness of controls.

Within the school of thought emphasizing the benefits of export controls, there is some division between those who would apply nonproliferation controls uniformly toward all potential proliferants and those who advocate singling out "rogue nations" that are perceived to pose the greatest immediate threats to international stability. Those favoring a more universal policy argue that weapons of mass destruction are dangerous no matter which states are acquiring them. Therefore, proliferation on the part of states considered friendly to the United States should be opposed as vigorously as that by states thought to be more hostile. First, the international consensus needed to fight proliferation is much harder to mobilize in a world of double standards, in which proliferation is tolerated in some states but not in others. Second,

states are not likely to agree on which states should be considered particularly unfit to possess weapons of mass destruction, making it hard to reach consensus on measures that should be imposed against regime violators. One state's ally may well be another state's "rogue." Third, as was shown in the case of Iran in the late 1970s, or Iraq in the late 1980s, today's friends can turn into tomorrow's adversaries. Arsenal amasses when bilateral relationships are favorable may pose serious diplomatic and military problems should the political situation change.

In contrast with those favoring a universal approach to nonproliferation strategy, others stress that such weapons become a concern primarily when they are acquired by "brogue" or "outlaw" states that are particularly hostile towards the United States or to international security. In this view, "weapons don't kill, nations do": it is more important to deal with the particular dangers posed by such nations than it is to enforce global nonproliferation norms. From a United States' point of view, today's "rogue"* states include Iran, Iraq, Libya, and North Korea (but not India, Pakistan, or Israel).³

Since these states generally already have strained relations with Washington, little would be lost by applying highly coercive policies—such as more restrictive export controls and stronger economic sanctions—that threaten to further disrupt ties to the United States. As with the universal nonproliferation approach described above, this approach views preventing the proliferation of weapons of mass destruction, at least to rogue states, to be one of the highest national priorities. Unlike the universal approach, however,

this approach would devote less attention to nonproliferation efforts targeted against friendly states.

Table 2-1 contrasts the export control policies implied by these two approaches as well as a third approach, emphasizing enhancement of exports, described below. The views here do not, of course, encompass every individual with a role in the export control debate. Other positions between the ones starkly differentiated here are also possible and likely.

EXPORT ENHANCEMENT EMPHASIS

Those who worry most about the economic costs of export controls tend to emphasize the ineffectiveness of unilateral controls and the spreading availability of dual-use technologies. They are likely to give less credence to arguments about the utility of partially effective controls and the value of the United States' continuing to set an example of more stringent controls when other suppliers fail to cooperate quickly. They are more likely to perceive measures reducing the burdens to industry of export controls as increasing the effectiveness of controls as well. But when a tradeoff does seem necessary, they argue, the government should make explicit evaluations of not only the foreign policy benefits of controls, but also of their economic costs.⁴ For further discussion⁴ the arguments about the costs and benefits of nonproliferation export controls, see chapter 4 and appendix A of this report.

Table 2-2 lists the criteria that a policy satisfying proponents of the contrasting approaches to export controls would have to meet—criteria that

³President Clinton's Assistant for National Security Affairs refers to "backlash states," naming Cuba as well as North Korea, Iran, Iraq, and Libya. See Anthony Lake, "Confronting Backlash States," *Foreign Affairs*, vol. 73, N(1), 2, March/April 1994, pp. 45-55.

⁴Analysts from the Brookings Institution have expressed a third point of view: export controls are increasingly ineffective and should be drastically reduced, but in their place the United States should try to build an international consensus on achieving greatly increased transparency in international trade and in national industrial activities. This might mean that reduced export controls would be replaced by increased export reporting requirements, plus intensified governmental and other monitoring aimed at exposing proliferant programs to international sanctions. See testimony of Janne Nolan and John Steinbruner before the Subcommittee on Economic Policy, Trade, and Environment of the House Committee on Foreign Affairs, on June 9, 1993 and June 23, 1993, respectively. However, beyond those two short presentations, further analysis of this approach does not appear to have been carried out or published.

TABLE 2-1: Differing Approaches to Dual-Use Export Control Policy

Policy issue	Nonproliferation emphasis	“Rogue Nation” non-proliferation emphasis	Export enhancement emphasis
Priority to nonproliferation policies	Few If any foreign policy priorities should be higher	Nonproliferation is the highest priority regarding “rogue nations” that threaten regional or global stability: other goals may rank higher with friendly nations	Nonproliferation needs to be weighed against other national objectives, particularly global economic competitiveness
Universality of nonproliferation policies	Apply universal rules to all potential proliferants, whatever their current political stance, today’s “safe” nation may become tomorrow’s “rogue”	Focus nonproliferation policies (and export controls) on rogue nations	May favor either a universalist or a “rogue” approach, as long as near complete cooperation among suppliers exists
Unilateral U.S. export controls	Are acceptable, even when not effective in blocking proliferation ” <ul style="list-style-type: none"> ■ Nuclear Nonproliferation Act requires U.S. not to contribute to proliferant nuclear weapon programs, whether other supplier nations do or not, ● U S leadership often necessary to win export control cooperation from other nations 	Same as nonproliferation emphasis, but to be applied selectively to rogue nations and their suppliers	Unilateral controls are ineffective, economically costly, and should be avoided, exceptions may be made If embargo against target nations is complete, not partial
Using export controls as economic sanctions	When any dual-use items (including those not normally controlled for proliferation reasons) exported to a given country have potential to be diverted to weapon programs, all such transfers should be denied, the economic handicap borne by the target nation may help persuade it to end weapon-of-mass-destruction programs	Similar to nonproliferation emphasis, but to be applied only to rogue nations, such as those identified by the United States as supporters of International terrorism	Broad-based export controls intended to punish or coerce a state are generally ineffective but if applied should be as part of an explicit complete embargo of the target nation’s economy, export control laws should be applied only for their explicitly authorized purposes, not as ad hoc sanctions

SOURCE : Office of Technology Assessment, 1994

would maximize both control effectiveness and ease of compliance. Although the criteria do not appear to be logically incompatible, finding the appropriate tradeoffs among them is a difficult policymaking task.

The primary focus of this report discussion of policy options is on measures that might increase the effectiveness of U.S. export controls. Where relevant, however, the possible consequences for exporting companies are also considered. An additional set of options deals with reducing the

burdens export controls may place on exporting companies.

Chapter 3 of this report discusses the U.S. export control regime as it was configured early in 1994. This configuration was the baseline from which Congress would revise the Export Administration Act, which governs U.S. export controls on dual-use commodities.

Chapter 4 discusses the problem of assessing the benefits and costs of export control measures. It outlines the factors that determine how effective

TABLE 2-2: Criteria for an "Ideal" Export Control Regime

Regime goal	Criterion
Effective control lists	<ul style="list-style-type: none"> ▪ Timely and thorough list-construction process identifies the right goods, technology, and users for controls ▪ Policy makers have flexibility to adjust to changing circumstances ▪ Licensing process feeds back information about buyer behavior that would be useful to the list-making process
Effective licensing administration	<ul style="list-style-type: none"> ▪ Licensing decisions based on adequate information • Licensing decisions based on the best available judgment • Licensing offices have adequate resources ▪ Licensing process is run efficiently • Exporters kept well informed of suspect end-users
Effective enforcement	<ul style="list-style-type: none"> • Adequate investigation and prosecution of exporting violators • Regular monitoring of end-uses
High degree of multilateral support	<ul style="list-style-type: none"> • Agreement among major suppliers on controlled commodities and users • No undercutting of license denials by other governments ▪ Effective enforcement
Minimum burden on exporters	<ul style="list-style-type: none"> ▪ Policies explicitly balance nonproliferation goals and economic competitiveness goals ▪ Commodities controlled kept to a minimum ▪ Foreign competitors do not undercut controls ▪ Applicants have access to lists of controlled items, countries, and end-users ▪ Licensing decisions are rapid ▪ End-user controls are not so onerous as to deter legitimate buyers ▪ Licensing decisions are consistent, fair, and subject to adequate appeals process • Licensing process protects proprietary information that could be useful to competitors

SOURCE Office of Technology Assessment 1994

particular export controls may or may not be. OTA has previously observed that the effectiveness of export controls in slowing proliferation will vary with the characteristics of the weapons of concern, the capabilities of the target countries and programs, the controllability of the designated commodities and technology, the degree of international cooperation, and the quality of enforcement. **In some circumstances, they may do little to stem proliferation; in others, they may impose significant obstacles and delays.**

Chapter 4 of this report also describes the potential costs of imposing export controls and points out the difficulty of reliably quantifying those costs. OTA also pointed out in its earlier report that, besides the costs to the government of

administering an export control system, the affected exporting companies must bear the burdens of complying with regulations and the possible loss of legitimate business to competitors who are less strictly regulated. However, data to reliably quantify such losses are difficult to find.

Chapter 5 analyzes policy options aimed at making nonproliferation export controls more effective. **The chapter does not attempt to provide a single set of recommendations reflecting one coherent approach to export control policy. Instead, it analyzes a range of options culled from a variety of sources.** It categorizes those options according to the phase of the regulatory process each would affect most:

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- the making of lists of controlled goods and technology as well as target countries and organizations,
- the administration of export control licensing, - the enforcement of laws and regulations, and
- the engagement of international cooperation in making controls effective.

Chapter 6 reviews some recent proposals for easing the burdens that export control laws and regulations place on exporting companies. Of particular interest for this report are the possible consequences (positive or negative) of such measures for nonproliferation efforts.