

Current United States Nonproliferation Export Controls 3

Slowing the proliferation of weapons of mass destruction is only one of many purposes for which the United States has established a system of export controls. Table 3-1 shows the range of U.S. agencies administering export controls, the major legislation underpinning those controls, and the variety of purposes intended for them (as of early spring, 1994).¹ This report focuses on the most controversial type of export controls, those over dual-use items. The Department of Commerce administers export licensing of dual-use items under authority of the Export Administration Act.

Figure 3-1, presenting the sub-categories on the (Department of) Commerce Control List (CCL), shows the range of dual-use export controls falling under the EAA of 1979.² The EAA contains two broad categories of dual-use item control: “national security” (established by Section 5 of the Act) and “foreign policy” (Section 6). National security controls are primarily those placed on items formerly in the COCOM³ Industrial List, originally intended to preserve Western technological superiority by reducing the flow of advanced dual-use technologies from Western industrial nations to the Soviet bloc and other Communist nations.

Despite their obvious national security implications, controls over items that might be used to make weapons of mass destruc-

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¹For additional descriptions of the establishing laws, see the first report of this OTA assessment, *proliferation of Weapons of Mass Destruction: Assessing the Risks*, OTA-SC-559 (Washington, DC: U.S. Government Printing Office, August 1993).

²In 1992, this law was extended for 18 months, to end in June, 1994.

³COCOM was the Coordinating Committee on Multilateral Export controls. It was abolished in the spring of 1994, probably to be succeeded by another, substantially changed, multilateral export control arrangement.

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TABLE 3–1: Agencies Administering U.S. Export Control Laws

| Agency | Legislation | Items or countries |
|--|---|--|
| Department of Commerce: Bureau of Export Administration | Export Administration Act Nuclear Non-Proliferation Act Trading With the Enemy Act International Emergency Economic Powers Act National Defense Authorization Act | National Security Controls (COCOM) Nuclear Referral List Embargoed countries Iran / Iraq, MTCR |
| Department of Defense | Arms Export Control Act | Defense articles and services |
| Department of Energy | Atomic Energy Act Nuclear Non-Proliferation Act | Nuclear technical assistance and subsequent arrangements Nuclear-related dual-use items |
| Department of State: Center for Defense Trade | Arms Export Control Act National Defense Authorization Act | U.S. Munitions List defense articles and services Nuclear weapon and design equipment Chemical weapon agents Biological weapon agents MTCR |
| Department of Treasury: Office of Foreign Assets Control | Trading With the Enemy Act International Emergency Economic Powers Act | Various prohibited transactions |
| Nuclear Regulatory Commission | Atomic Energy Act Nuclear Non-Proliferation Act | Nuclear power generation, nuclear material, and fuel cycle equipment and technology |

Note that this table only identifies the major departments with legislated responsibilities for administering the export control licensing. It does not list all the many bureaus and interagency groups that play a variety of jurisdictions and roles in managing the whole export control process

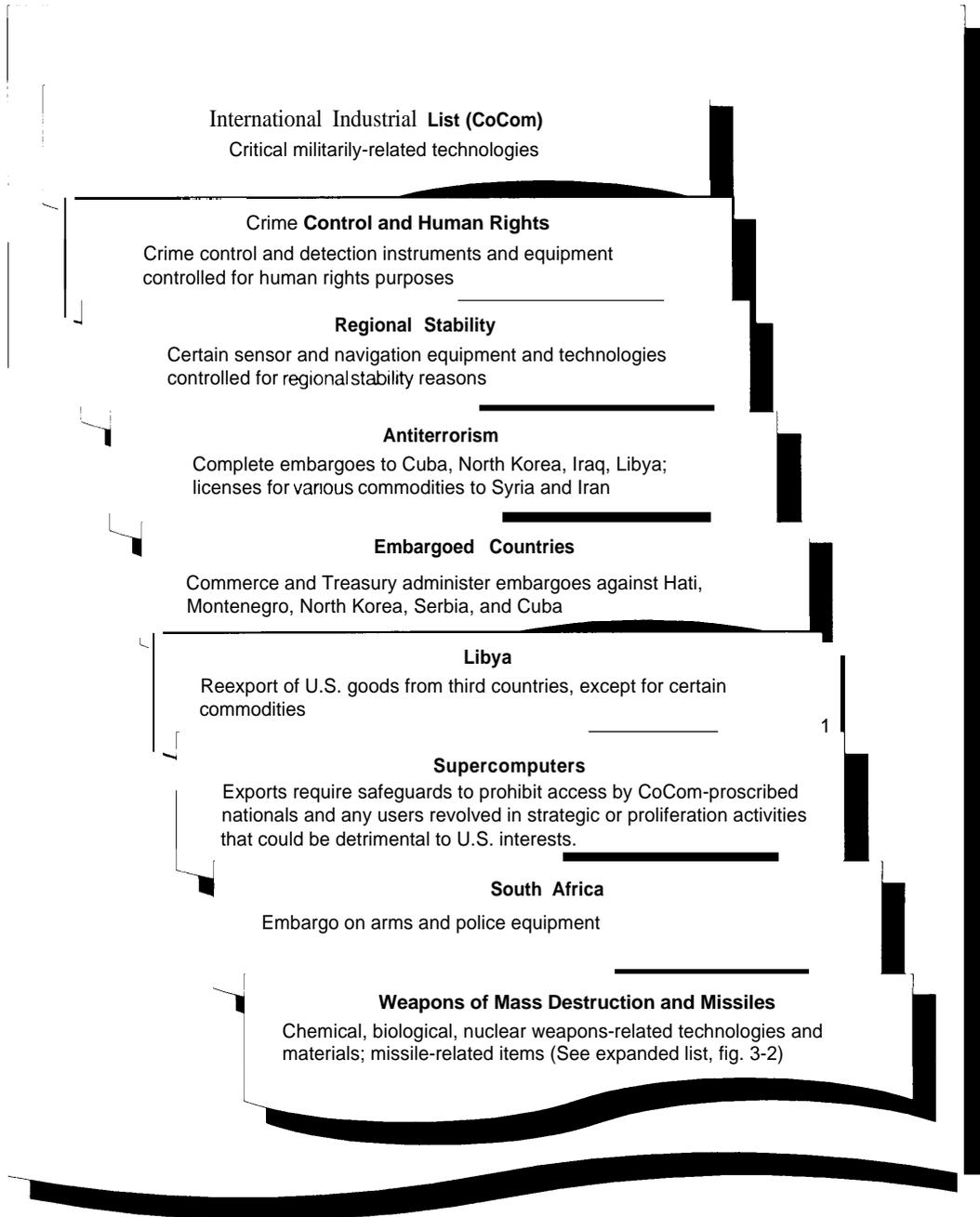
SOURCE Office of Technology Assessment, 1994

tion were grouped in the EAA in the Section 6 “foreign policy” category. Controlled in this latter group are the items on the Australia Group (chemical and biological weapons) and Missile Technology Control Regime (MTCR) lists.⁴ Nuclear exports are controlled under authority both of the EAA and of the Nuclear Non-Proliferation Act of 1978. (See figure 3-2 for further detail on nonpro-

liferation portions of the CCL.) **Miscellaneous other controls, not directly related to proliferation, fall under the rubric of foreign policy. Many industry complaints about the economic burdens of export controls have arisen from cases concerning these other foreign policy controls, as well as COCOM controls, rather than nonproliferation controls.**

⁴The MTCR began as an informal agreement among coordinating countries to control goods relevant to missile manufacture; the United States implemented these controls administratively. Amendments in 1990 to the EAA, made in a section of the National Defense Authorization Act for that year, provided a specific U.S. legislative basis for missile technology controls.

FIGURE 3-1: Dual-Use Export Controls



The Department of Commerce administers a variety of dual use commodity, technology, and software export controls, only some of which relate directly to weapons of mass destruction. The Commerce Control List (CCL) is categorized by some 430 Export Control Classifications Numbers (ECCNS). The ECCNS do not correspond one for one to single commodity technology or software items in some cases an ECCN covers only a single narrowly defined item, but in many cases multiple related items fall under the same ECCN. The reason for control of each ECCN category may be single or multiple (e.g., for both National Security and Nuclear Proliferation) but the reason(s) may in fact apply only to some subset of items within the category.

SOURCE: Office of Technology Assessment 1994

FIGURE 3-2: Nonproliferation Controls on the Commerce Control List

| | |
|---|--|
| Biological (Australia Group) | |
| <i>Items</i> Certain dual-use equipment; biological agents, related technical data, or any other commodity that exporter knows will be used for BW in listed countries. | <i>Target countries</i> For biological agents, all except Canada; For others, list of countries in Supp. 5, Pt. 778, EAR |
| Chemical (Australia Group) | |
| <i>Items:</i> 54 chemical precursors and related technical data; certain other dual use equipment to listed countries; any other commodity that exporter knows will be used for CW in listed countries | <i>Target countries</i> For precursors, all non-Australia Group countries; For others, list of countries in Supp. 5, Pt. 778, EAR |
| Nuclear Referral List (Nuclear Suppliers Group) | |
| <i>Items</i> Commodities or related technical data that might be significant for nuclear explosive purposes or that exporter knows (or has reason to know) will be used for nuclear-weapon related purposes (e.g. making special nuclear materials without international safeguards). | <i>Target countries</i> No published lists, but license reviews closely tied to country's status as member of Nuclear Non-Proliferation Treaty. |
| Missile Technology Control Regime | |
| <i>Items</i> Specific items related to use in missile programs. Any other commodities or related technical data that exporter knows will be used in a missile program | <i>Target countries</i> For listed items, all countries except Canada. For others, listed missile programs, EAR Supp. 6 countries, or programs in non-MTCR that exporter knows to involve missiles |