



*Study Group
on Enhancing
Multilateral
Export Controls
for US National
Security*

The United States and Multilateral Export Controls: The British Perspective

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Preface

Achieving effective control over the transfer of sensitive technologies has proven increasingly difficult in the complex security environment that has emerged from the Cold War. In a world of global business operations, accelerating technological innovation and diffusion, and multiple and multiplying suppliers of militarily relevant technologies and products, national controls are often ineffective. While specialized supplier arrangements (NSG, Australia Group, MTCR), have helped to slow the spread of nuclear, chemical, and biological weapons and their delivery systems, the multilateral regime governing exports of conventional arms and dual-use items—the 33-member Wassenaar Arrangement—is considered weak, or at best, undeveloped.

In the United States, frustration with the current system of national and multilateral export controls is growing. Among industry associations, export controls tops the list of trade-related concerns, while individual businesses expend considerable time and effort to navigate the maze of regulations. Government officials at the Departments of State, Commerce, and Defense are increasingly overwhelmed by the daily burden of processing thousands of export licenses, while industry clamors about lost business and revenues. Some defense experts are concerned that national constraints on the transfer of US technologies will increasingly hinder US efforts to enhance cooperation with its closest allies and undermine the ability of US defense industries to develop the commercial technologies that have become essential to maintaining the United States' military capabilities. Others counter that the shortcomings of the current multilateral regimes leave the United States with no alternative to unilateral controls.

Reforming or replacing the existing framework for multilateral export controls will not be easy, however. Mutual mistrust between the United States and its allies must be overcome and a new consensus forged, both within the United States and internationally, on the purpose and target of multilateral export controls. Further, reform must be undertaken at a time of profound political, economic, and technological change. Yet, while a new approach may entail risks, the cost of inaction is likely to be higher. The weakness of the Wassenaar Arrangement forces the United States to rely on unilateral controls, which are often futile in a globalizing economy and costly to US business as well. Serious efforts are therefore needed to develop a new and effective multilateral framework to regulate trade in militarily useful goods and technologies.

To address this need, the US Congress in October 1999 appropriated monies in the FY2000 Department of Defense Appropriations Act to establish a "Study Group on Multilateral Export Controls." The Group's mandate is "to develop the framework for a new and more effective, COCOM-like agreement that would regulate certain militarily useful goods and technologies on a multilateral basis." The work of the Study Group is coordinated by the Henry L. Stimson Center in cooperation with the Europe Program of the Center for Strategic and International Studies (CSIS). The Group's membership includes serving Members of Congress, senior officials from the current Bush and former Clinton

Administrations, select industry representatives, and outside experts—all representing a diversity of experience and perspectives (see Appendix A for a complete list of project participants). The Study Group’s work will conclude with the publication of a consensus document outlining steps to achieve a strengthened multilateral regime.

To facilitate and support the Group’s discussions, the Henry L. Stimson Center and the CSIS Europe Program commissioned several respected analysts in the United States and Europe to undertake focused analyses of particular factors that will bear on the success or failure of US and multilateral reform efforts. These working papers have focused on many of the critical issues associated with the control of technology in a complex and rapidly changing world, including: the purpose of export controls in the new security and economic environment and their relationship to US national security interests, foreign policy, and global roles and responsibilities; trends in technological innovation and diffusion; allied perspectives on technology transfer and defense cooperation; the challenges associated with controlling dual-use or deemed exports; the strengths and weaknesses of the current multilateral export control arrangements; and alternative approaches to reform. (A complete list of working papers commissioned for the Study Group can be found in Appendix B.)

The British perspective on multilateral export control reform and, in particular, the impact on Britain from US efforts to reform its policies, regulations, and philosophy on export controls are examined in this working paper by Alexandra Ashbourne. Although the United Kingdom and the United States have long enjoyed a “special relationship,” the debate over export controls and new challenges posed by defense industry consolidation on both sides of the Atlantic have strained relations even between these two close powers. Ashbourne points out that while the diverse nature of foreign policy in Europe is a deterrent to closer transatlantic cooperation, so too is the overly restrictive and cumbersome US export control system.

We are especially indebted to Kate Walsh for her many contributions to this project. We are also grateful to David Brannegan and Adam Goldberg of the Henry L. Stimson Center and to Christina Balis of CSIS for their helpful comments on earlier drafts of this paper and for their assistance in preparing the manuscript.

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Executive Summary

The United States (US) and the United Kingdom (UK) share a broadly similar outlook on export controls. There is increasing resentment in the United Kingdom, however, that America's restrictive, protectionist export control policies prevent closer cooperation in defense industrial matters and put a strain on the Anglo-US "special relationship." The latter also affects Britain's relationship with its European neighbors, as Britain is often torn between supporting America or its fellow European Union (EU) members. Hence, the United Kingdom prefers to concentrate on its national export control policies, rather than on multilateral control regimes. While Britain supports multilateral export control regimes, there is little interest or excitement in debating the future of these regimes within the British defense establishment.

This paper examines British attitudes toward existing multilateral export control regimes and European regulations on exports of defense and dual-use goods. It analyses the effect of defense industry consolidation on UK-US relations and the British perception of US export control policies, and it presents a British perspective on America's complex export control policy, the Declaration of Principles, and the Defense Trade Security Initiative. Finally, the paper calls upon the United States to partially liberalize its export controls.

THE UNITED KINGDOM'S PERSPECTIVE ON MULTINATIONAL COOPERATION ON EXPORT CONTROLS

There is always a risk that licit arms transfers will be diverted to support insurgents or other unstable regimes. Hence, transparent and accountable multilateral cooperation in the field of export controls is vital. Britain's export control regime is viewed as considerably transparent, particularly when compared to that of the United States. The election of Tony Blair's New Labour government in 1997 led to a strengthening of Britain's already rigorous export control policy.

Britain's support for multinational cooperation on export controls also is evident in the fact that Britain is a founding member of all the existing multilateral export control regimes. Although much maligned, particularly in the United States, the Wassenaar Arrangement, from a British perspective is starting to gain real substance nearly five years since its founding. One aspect of the Wassenaar Arrangement that the British defense establishment particularly approves of is that it incorporates Russia and Ukraine. Both are states with significant defense industrial complexes that produce equipment that could easily end up in the hands of "rogue nations." By subscribing to Wassenaar, both Russia and Ukraine pledge to abide by its rules on arms control and defense exports.

An aspect of the Wassenaar Arrangement that does cause some concern in the United Kingdom is that Britain must balance its position as an upholder of the agreement with its status as the world's second-largest armaments exporter. While exports can be entirely legitimate, monitoring the end-use of a product or component is a virtually impossible process. It is also noted in the Arrangement that the illicit transfer or misuse of weapons, especially from non-Wassenaar states, is growing. Yet, paradoxically, the Arrangement endorses defense exports for legitimate self-defense, regardless of whether or not a state is a participant.

The British Perception of US Export Control Policies

Britain is traditionally sympathetic to US export control policies, not least because Britain is best-placed to benefit from them. There is common agreement between the United States and United Kingdom on the importance of secure technology transfer and, especially when comparing the United Kingdom to other EU states, on the classification of states as close allies, “rogues,” or “states of concern.”

Although Britain is sometimes perceived by other EU states as America's “poodle”—an attitude no doubt fostered by some jealousy of the UK–US “special relationship”—the British do disagree with key aspects of America's export control policy. The British defense establishment is particularly concerned about America's reluctance to transfer technology to its allies. The British take great exception to the American perception that Europe (en masse) has lax export control policies, and that US technology exported to Europe will end up in the hands of “rogue nations,” such as Iraq, Iran, or Libya. They do understand, however, American concerns about technology leaking, intentionally or otherwise, from some European sources.

A convergence of foreign policies is one way in which Europe could counter these American concerns. European countries do not yet have uniform export control policies, nor are existing policies enforced with the same degree of competence in individual countries. Although there is a need for at least a degree of convergence in foreign policies and, more specifically, export control policies, complete harmonization represents an almost impossible goal. Nevertheless, some degree of convergence would send a signal to the United States that the Europeans are determined to become reliable partners for technology transfers from the United States. America might then be persuaded to adopt a more liberal export control policy.

The method by which the US government grants export licenses, however, contributes to the restriction of US technology and defense exports, even to American allies. America's export control policy is a growing obstacle to transatlantic defense cooperation. British MoD officials view US export control policy as excessively time-consuming and unwieldy, as the various bureaucratic departments

involved in licensing decisions have markedly different interests, concerns, and attitudes with regard to technology transfers and export controls.

The US government's philosophy on export controls is defined by the International Traffic in Arms Regulations (ITAR), the process by which the State Department regulates international defense industrial collaboration and exports. Under the Clinton administration, the Department of Defense (DoD) wanted to reform the ITAR to strengthen the transatlantic alliance by allowing more technology transfer arrangements. The Defense Trade Security Initiative (DTSI), announced in May 2000, indicated that Britain could have an ITAR exemption (facilitating future UK-US defense-related exports and technology transfers). But British MoD officials are extremely concerned about the implications of such a waiver. They believe that the United States might expect them to harmonize the UK export rules in line with American principles (including to whom and how they can export technology) in return for a greater flow of technology transfer, thus causing tension between Britain and its European neighbors.

The ITAR also governs the US Munitions List (USML), the list of defense-related items and services that require a US government-approved export license. British government officials believe that the USML needs refinement: thousands of components—including non-lethal products and civilian products adapted for military use, such as mechanical parts—are described as “inherently military” and therefore require a license. But much of the technology on the USML is now obsolete or is widely available commercially, particularly computer technology covered by the military electronics and other military-specific technology listed in the ITAR. Many British analysts, thus, believe that the ITAR is little more than a mechanism for US protectionism. Despite ambitious Pentagon plans to shorten the USML and speed up the licensing process, the list is controlled by the State Department, and without a radical shift in the latter's departmental philosophy, is likely to remain unchanged.

The tension between the US Departments of State and Defense is a critical obstacle to multilateral export control reform. Since the Cold War ended, DoD officials have realized that sharing some defense technology with America's most trusted allies is more beneficial for US security than prohibiting technology transfer. The State Department, however, does not tend to support such a policy. The Commerce Department, unlike State, appears to echo the Defense Department's view that reform of the US export control process is inevitable and necessary. Senior officials at both Commerce and Defense want to see “higher walls around fewer items” on the USML. Apart from concern about the inter-departmental relationships, the United Kingdom is troubled by the fundamental inefficiency of the whole US export licensing process.

Although British defense officials understand the reluctance of the United States to liberalize its export control regulations, they feel that unless there is radical reform of the ITAR, the severe licensing

restrictions currently in place could deter commercial suppliers from offering their technology to the US Defense Department. America could then lose its competitive edge in the global defense market.

The Effect of Defense Industry Consolidation on British Views Regarding Cooperation with the United States

Due to defense industry consolidations on both sides of the Atlantic, Europe now must build a transatlantic defense industry to remain competitive with the United States. British defense employees, therefore, are increasingly concerned about the consequences of America's export control policy, as they are now more likely than ever before to be affected by it. BAe's takeover of Marconi in January 1999 highlighted the fact that defense industry restructuring in Europe is led by industry, rather than government-driven.

By mid-2000, Europe's aerospace and defense electronics industry had consolidated around three cores: BAE Systems, EADS, and Thomson-CSF. With defense budgets in Europe either stagnant or in decline, all three companies want to access the US market, as it is the one area where defense spending is still a priority. But thanks to the inherent protectionism of America's export control and technology transfer policies, Europeans, to date, have enjoyed only limited success in penetrating the US market. As a result of America's onerous export control restrictions, few European companies have penetrated the US market. BAE, Rolls Royce, Smiths Industries, and Cobham (all British firms) have been quite successful, but no European prime contractor has won a significant order from the US Defense Department. This is in stark contrast to the success of American defense companies in Europe.

The greatest problem for Europeans operating in America is the need to employ a "proxy board," a mechanism unique to the United States in which a group composed entirely of American citizens oversees the daily running of a company. In rare cases, proxy boards are replaced by a Special Security Arrangement, which establishes a board composed of US nationals and citizens of the country of the parent company. When this board discusses issues with possible national security implications, the citizens of the parent company are excluded.

The Effect of the Letter of Intent and the Framework Agreement

There is a growing belief in continental Europe that by creating a special, privileged relationship with certain countries (the United Kingdom, in particular), the United States wants to undermine the Letter of Intent (LoI) signed by France, Germany, Italy, Spain, Sweden, and the United Kingdom in July 1998 on facilitating defense exports and procurement. The LoI was the start of a process that led to the

signing of a Framework Agreement in July 2000. The Framework Agreement calls for a convergence of practices, particularly on security of supply, technology transfer, and export controls. The Agreement also supports the harmonization of requirements for the armed forces of the six signatories.

British MoD officials recognize US suspicion of both the Letter of Intent and the subsequent Framework Agreement, principally because of the US belief that exports are handled in a cavalier manner in Europe. The British also accept that some American government officials think that the sentiment behind the LoI and Framework Agreement is that of “Fortress Europe versus Fortress America,” the scenario opposed by many on both sides of the Atlantic. But this is not a view held by the British defense establishment. Britain’s signature on the Framework Agreement does not alter its position on cooperation with the United States on export controls.

While the United Kingdom was at the forefront of negotiations to draw up both the LoI and Framework Agreement, many analysts in the United Kingdom argue that these agreements are more symbolic than practical. UK defense analysts are aware that the reality of successfully implementing the Framework Agreement will be difficult to achieve, although some suggest that it will be “unworkable.” One of the greatest hurdles will be gaining agreement from all the signatories on export controls.

The EU Code of Conduct and Other EU-Related Initiatives

While the British defense community supports the 1998 EU Code of Conduct in principle, it is aware of its weaknesses. Because the United Kingdom has much stronger export control regulations (in general) than its Framework Agreement and EU partners, many British defense analysts see little conflict between endorsing the Code of Conduct and maintaining closer ties with the United States. Moreover, as with Britain’s position on the Wassenaar Arrangement, the fact that recent EU legislation regarding export controls is so broadly similar to existing UK legislation means that there is little excitement or interest in it in the UK defense community. None of the EU legislation enacted over the past five years alters Britain’s attitude toward cooperation with the United States on export controls.

The Declaration of Principles and the Defense Trade Security Initiative

In 2000, the US government made two significant moves to relax its rigorous export control policies—the February Declaration of Principles (DoP) and the Defense Trade Security Initiative (DTSI) announced in May. Unlike other European countries, Britain has benefited from both initiatives.

While the contents of the Declaration of Principles send, in theory, an extremely positive message, critics of the Declaration remarked that it had been over-hyped, and the very harsh referred to it as a “waste of space.” A senior British MoD official admired the “visionary principles” behind the Declaration but felt that the United States might be promising more than it could realistically offer. Many British analysts believe that the DoP is merely a statement of intent to improve the transatlantic defense industrial relationship, and nothing more substantial. The Declaration of Principles is further weakened by the fact that its industrial element is *passé*, as it does not reflect the fact that European companies are *multi*-national.

The Defense Trade Security Initiative, was seen initially in Britain as a comprehensive review of the American position on export controls. As the DTSI was drafted by a joint team of Defense and State Department officials, it has the credibility that the Declaration of Principles lacked. The DTSI also will improve interoperability within the NATO alliance—which the British, in particular, value—as it was designed specifically to support NATO’s Defense Capabilities Initiative (DCI).

The most important component of the DTSI, as far as the British are concerned, was the extension of the ITAR to NATO allies, Australia, and Japan. This exemption would permit—without a license—the permanent and temporary export, as well as the temporary import, of certain unclassified defense articles, data, and defense services. But unlike the original Canadian ITAR exemption (in which all defense companies were included), the UK exemption would apply only to specific companies identified as reliable by the US government. This is great cause for concern in Britain: no one yet knows which companies will be in the ITAR waiver “club,” nor how they will be selected for “membership.”

While the Defense Trade Security Initiative contains many points designed to enhance the US export control system, it has numerous weaknesses, which already has reduced its appeal in the United Kingdom. The most significant is that the DTSI applies only to unclassified technology and equipment, thus ensuring that technology and capability gaps between the United States and its allies will continue to grow. Furthermore, the initiative was designed for implementation under the existing Arms Export Control Act, through which Congress oversees defense exports. This means that the DTSI is insufficiently challenging, in order to conform to current Congressional controls and restrictions. The DTSI would be more effective if it contained proposals to review the role of Congress itself—a well-documented grievance.

Another problem with the DTSI is that it still considers countries on an individual basis and does not take into account multinational ventures, such as Matra BAE Dynamics, where one or more of the components making up the firm may not be qualified for the more liberal licensing procedures. Britain’s European partners, especially French and German industrialists, believe that the initiative cements the United Kingdom’s preferential status in the eyes of the United States. Many British industrialists are inclined to agree.

Critics of the DTSI further suggest that it is a process designed to encourage greater exports of US defense equipment at the expense of any European alternative. They also argue that the DTSI does little to tackle the problems faced by European companies of operating in the United States. Although the announcement of the Defense Trade Security Initiative certainly represents a welcome start toward loosening US export controls, it is not enough to appease those in the United Kingdom who want greater transatlantic cooperation in this area.

It is unduly optimistic to think that either the Declaration of Principles or the DTSI will lead to new multilateral export control regimes. British defense analysts agree that bilateral or, at most, regional agreements would be more successful than widespread multilateral export control regimes. Neither the DoP nor the DTSI offers truly multilateral export controls: both imply compliance with American policies, rather than being joint agreements between equal states. While the United Kingdom is clearly treated as a privileged party compared with its European partners in both the DoP and DTSI, there is little real will in the British defense establishment for a more concrete multilateral regime based on either agreement.

CONCLUSION

Many British defense experts believe that enhancing multilateral export controls is almost impossible at the current time. This is chiefly because, on the one hand, America's policy on export controls is seen by many Europeans as overly obstructive and, on the other hand, there is no concrete pan-European export control policy upon which to build. Existing multilateral control regimes (such as Wassenaar) are welcomed by the United Kingdom in principle but are perceived as weak due to their well-documented limitations.

Therefore, Europe—and especially the United Kingdom, which would benefit most—would welcome US reform or liberalization of its policy on export controls. The May 2000 Defense Trade Security Initiative, while accepted as a slow move toward export control reform, does not go nearly far enough. New reforms would have to challenge existing congressional legislation in order to be successful. Such a move would have huge political and constitutional implications, however, and is therefore unlikely to happen until America's domestic defense industry is hampered (both economically and politically) by its own export control policies.

The growth of worldwide accumulations of conventional weapons and dual-use goods means that the issue of export controls (national, bilateral, or multilateral) will not fade from the international stage. Rather than trying to run before being able to walk, it is particularly vital that EU Member States and the United States thoroughly examine their own export control policies and carry out reforms where

necessary—either strengthening or liberalizing controls. Only once this has been achieved can serious, workable multilateral export control regimes begin to be effective.

About the Author

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Alexandra Ashbourne is co-director of Ashbourne Beaver Associates, a consultancy specializing in government and market intelligence for the defense and aerospace industry, founded in January 2001. Formerly, she was the defense analyst at the Centre for European Reform, a London-based think tank, where she chaired the Centre's Defense Industry Working Group, which studied the future of the European defense market.

Dr. Ashbourne has particular expertise in the German, US, and Eastern European defense arenas and since 1994 has been a special adviser to Menzies Campbell MP, the Liberal Democrat defense spokesman. She also is a member of Eurodéfense, a pan European, senior-level think tank. At St. Andrews University in Scotland, where she completed her PhD on the legacy of the Soviet Occupation in Lithuania, she lectured on Russian, Soviet, and post-Soviet history and politics.

Dr. Ashbourne's publications include *Lithuania: The Rebirth of a Nation, 1991-1994* (1999), *Europe's Defense Industry: A Transatlantic Future?* (1999), and *Opening the US Defense Market* (2000).

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List of Abbreviations

BAe	British Aerospace
CASA	Construcciones Aeronauticas SA
CESDP	Common European Security and Defense Policy
CGEA	Community General Export Authorization
Dasa	DaimlerChrysler Aerospace AG
DCI	Defense Capabilities Initiative
DoD	Department of Defense
DoP	Declaration of Principles
DTSI	Defense Trade Security Initiative
EADS	European Aeronautics Defence and Space Company
EU	European Union
ITAR	International Traffic in Arms Regulations
LoI	Letter of Intent
MANPADS	Man-Portable Air Defense Systems
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NDP	National Disclosure Process
OSCE	Organization for Security and Cooperation in Europe
SSA	Special Security Arrangement
UK	United Kingdom
US	United States
USML	US Munitions List

The United States and Multilateral Export Controls: The British Perspective

Alexandra Ashbourne

INTRODUCTION

The United States (US) and the United Kingdom (UK) share a broadly similar outlook on export controls. But there is increasing resentment in the United Kingdom that America's restrictive, protectionist export control policies prevent closer cooperation in defense industrial matters and put a strain on the Anglo-US "special relationship." The latter also affects Britain's relationship with its European neighbors, as Britain is often torn between supporting America or its fellow European Union (EU) members. Hence, the United Kingdom prefers to concentrate on its national export control policies, rather than on multilateral control regimes.

This paper examines British attitudes toward existing multilateral export control regimes and European regulations on exports of defense and dual-use goods. It analyses the effect of defense industry consolidation on UK-US relations and the British perception of US export control policies, and it presents a British perspective on America's complex export control policy, the Declaration of Principles, and the Defense Trade Security Initiative. Finally, the paper calls upon the United States to partially liberalize its export controls.

The paper concludes by suggesting that, probably unlike Britain's European counterparts, national defense export controls are of far greater immediate importance to the British defense community than are multilateral controls. Moreover, while Britain supports multilateral export control regimes, there is little interest or excitement in debating the future of these regimes within the British defense establishment.

THE UNITED KINGDOM'S PERSPECTIVE ON MULTINATIONAL COOPERATION ON EXPORT CONTROLS

Some of the driving issues behind multinational cooperation on export controls include maintaining international security and stability as a result of greater transparency, accountability in transfers of conventional arms and dual-use technology, and ensuring the right of legitimate governments

to acquire arms with which to defend themselves, as laid out in Article 51 of the Charter of the United Nations.

There is always a risk, however, that licit arms transfers will be diverted to support insurgents or other unstable regimes. Hence, transparent and accountable multilateral cooperation in the field of export controls is vital. Britain is a founding member of all the existing multilateral export control regimes, including the Nuclear Suppliers Group, Zangger Committee, Australia Group, the Missile Technology Control Regime, and the Wassenaar Arrangement, and is committed—according to the 1998 Strategic Defense Review—to improving their effectiveness.

The election of Prime Minister Tony Blair's New Labour government in 1997 led to a strengthening of Britain's already rigorous export control policy. British export control policy is determined by its international obligations, including adherence to international arms embargoes, export control regimes, and support for nonproliferation; Britain's national interests; the importance of safeguarding human rights and preventing internal repression; preventing international aggression; and trying to ensure regional stability.

Britain's export control regime is seen to be considerably more transparent than that of the United States. The government reports annually to Parliament on the United Kingdom's export control policy and must inform Parliament of any changes to export licensing criteria.¹ While the US Congress demands that the Departments of State, Defense, and Commerce report to it frequently, the processes by which Congress (and indeed the Executive Branch of government) oversees America's export control policy often appear less-than transparent, both to industrialists and analysts. This lack of clarity has caused some confusion on both sides of the Atlantic.

Britain thoroughly endorses the position on multilateral cooperation on export controls and control regimes as laid down by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Technology.² The tenets of Wassenaar are enshrined in its so-called "Initial Elements" that cover the scope of the Arrangement and include the compilation of control lists for defense and dual-use exports and the procedures for information exchanges on dual-use technology, defense equipment, and

¹ For a more thorough guide to UK export control policy, see the Department of Trade and Industry's *Strategic Review of UK Export Licensing*.

² The 33 original signatories are Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States.

general information. The purpose of the Initial Elements is to ensure that the participating states “maintain responsible national policies” on defense and dual-use exports and arms control.³

One aspect of the Wassenaar Arrangement that the British defense establishment particularly approves of is that it incorporates Russia and Ukraine. Both are states with significant defense industrial complexes that produce equipment that could easily end up in the hands of “rogue nations.” By subscribing to Wassenaar, both Russia and Ukraine pledge to abide by its rules on arms control and defense exports.

Another aspect of the Wassenaar Arrangement causes some concern in the United Kingdom, which is that Britain must balance its position as an upholder of the agreement with its status as the world’s second-largest armaments exporter. While exports can be entirely legitimate, monitoring the end-use of a product or component is a virtually impossible process.⁴ It also is noted in the Arrangement that the illicit transfer or misuse of weapons, especially from non-Wassenaar states, is growing. Yet, paradoxically, the Arrangement endorses defense exports for legitimate self-defense, regardless of whether or not a state is a participant.

The British defense establishment welcomed the outcome of the sixth plenary of the Wassenaar Arrangement, held at the start of December 2000. The plenary session addressed some of the issues of concern to the British, not least of which was the importance of frequent updating of the munitions lists to keep pace with technological advances (especially in the computer sector) while maintaining security interests. Commitments also were made at the plenary session to continue studying what can be done to improve transparency in the arms brokering process, to guarantee information exchange on national legislation, and to discuss possible enforcement measures.

... after nearly five years, the Wassenaar Arrangement is starting to gain real substance.

The ongoing issue of control of intangible transfers also was raised. A key matter discussed at the plenary was elements for export controls of Man-Portable Air Defense Systems (MANPADS). The British defense establishment is well aware of the threat posed by unauthorized proliferation of such systems, yet they form a vital component of Britain’s military arsenal, as well as a portion of British

³ This is according to the Wassenaar Arrangement, Public Statement, 1999 Plenary Meeting (December 1999).

⁴ In particular, exports to Indonesia, although legitimate, were highly criticized by many in the international community when it appeared that British-manufactured products had been used in the attempted repression of the East Timorese. Britain’s exports to Saudi Arabia, Israel, and Zimbabwe also have attracted opposition.

defense exports. All of these above criteria demonstrate—from a British perspective—that after nearly five years, the Wassenaar Arrangement is starting to gain real substance.

Nonetheless, Britain is aware of the limitations of Wassenaar. Each country still retains the right to exercise national control over the approval or denial of an export license request, which leaves such decisions entirely dependent on the national governments' regulations. Perhaps most importantly for Britain, the contents of the Wassenaar Arrangement comprise the basis of existing UK national export control policy. Thus, Wassenaar is more or less “taken for granted” as a day-to-day manifestation of British policy in the international arena. Some members of the British defense establishment go so far as to refer to Wassenaar as “an irrelevance.” Such attitudes encapsulate the British position on multilateral export control regimes.

The British Perception of US Export Control Policies

Britain is traditionally sympathetic to US export control policies, not least because Britain is best-placed to benefit from them. There is common agreement between the United States and the United Kingdom on the importance of secure technology transfer and, especially when comparing the United Kingdom to other EU states, on the classification of states as close allies, “rogues,” or “states of concern.”

But although Britain is sometimes perceived by other EU states as America's “poodle”—an attitude no doubt fostered by some jealousy of the UK–US “special relationship”—the British do disagree with key aspects of America's export control policy. The British defense establishment is particularly concerned about America's reluctance to transfer technology to its allies. America's export control policy is a growing obstacle to transatlantic defense cooperation. The British take great exception to the US perception that Europe (en masse) has lax export control policies, and that US technology exported to Europe will end up in the hands of “rogue nations,” such as Iraq, Iran, or Libya. They do understand, however, American concerns about technology leaking, intentionally or otherwise, from some European sources.

A convergence of foreign policies is one way in which Europe could counter these American concerns. As European states do not always share the same outlook on foreign policy, there is a built-in disincentive to loosen America's export control system. Crucially, different European states have varying perspectives on which countries are close allies and which are “rogues.” French defense industrialists, for example, admit freely that France's foreign policy in particular (especially towards Iran and Iraq) is sometimes notably at odds with American thinking.

Furthermore, European countries do not yet have uniform export control policies, nor are existing policies enforced with the same degree of competence in individual countries. Hence, there is a need for at least a degree of convergence in foreign policies and, more specifically, export control policies; complete harmonization, however, is an almost impossible goal to achieve. Nevertheless, some degree of convergence would send the right signal to the United States: that the Europeans are determined to become reliable partners for US technology transfers. America might then be persuaded to adopt a more liberal export control policy.

The now notorious “ABC speech” by Dr. John Hamre in 1998 (in which he suggested a three-tiered categorization of US allies vis-à-vis approvals of defense industrial mergers and acquisitions) made Europeans increasingly wary about dealing with the United States because his distinction—even though it was an off-the-cuff remark and never official DoD policy—appears still to permeate DoD thinking.⁵ Even though Britain emerged well from the “ABC” categorization, UK Ministry of Defense (MoD) officials were perturbed by such a caustic analysis of America’s allies from the deputy defense secretary.

The “ABC” mentality is a real hindrance to attempts to induce harmonization of export control policies. One reason is that, especially at the prime contractor level, there are no

America’s export control policy is a growing obstacle to transatlantic defense cooperation.

longer national champions in Europe. Although the US Defense Department will grant export licenses to BAE Systems, because it sees BAE as a British company, British analysts are concerned about how BAE’s joint venture with France, Matra BAE Dynamics, or its ownership of 49 percent of the German STN Atlas Elektronik will be perceived. The lack of clear national boundaries in European defense companies will make both the relaxation of tight US export controls and the extension of multilateral controls extremely difficult. If the United States, for example, signs a Memorandum of Understanding (MoU) with BAE Systems, the MoU technically only covers British citizens and not BAE’s non-British employees.

The existence of government holdings in some European defense companies also makes the US government reluctant to relax its export control policies. Many American government officials have yet to follow the leadership of US defense companies: industry realizes that the future is transnational, but

⁵ John Hamre, then deputy defense secretary, made these comments in an address to the Aerospace Industries Association at a meeting on 20 November 1998. (Vago Muradian, “DoD Global Merger Rules to be Broad, Not Country Specific,” *Defense Daily*, vol. 200, no. 84, 22 December 1998.)

government departments have not adjusted to that mindset. The United Kingdom, in particular, is waiting to see what the attitude of the Bush administration will be towards reforming the export control system.

The method by which the US government grants export licenses also contributes to the restriction of US technology and defense exports, even to American allies. Decisions on defense industrial matters are made in several government departments: Defense, State, and Commerce. But, unlike in Europe, Congress oversees them all, and ultimately has the power to review any decision on defense exports with which it does not agree. British MoD officials view America's export control policy as excessively time-consuming and unwieldy, as all departments have markedly different interests, concerns, and attitudes with regard to technology transfers and export controls.

The US government's philosophy on export controls is defined by the International Traffic in Arms Regulations (ITAR), the process by which the State Department regulates international defense industrial collaboration and exports. Many British analysts believe that the ITAR is little more than a mechanism for US protectionism.

Under the Clinton administration, the Department of Defense wanted to reform the ITAR to strengthen the transatlantic alliance by allowing more technology transfer arrangements. The Defense Trade Security Initiative (DTSI), announced in May 2000 (see below), indicated that Britain could have an ITAR exemption (facilitating future UK-US defense-related exports and technology transfers). But British MoD officials are extremely concerned about the implications of such a waiver. They believe that the United States might expect them to harmonize UK export rules in line with American principles (including to whom and how they can export technology) in return for a greater flow of technology transfer, thus causing tension between Britain and its European neighbors. A senior civil servant notes that the United Kingdom is not at all enthusiastic about "subscribing to this American vision of the world."

The ITAR also governs the US Munitions List (USML), the list of defense-related items and services that require a US government-approved export license. British government officials believe that the USML needs refinement: thousands of components—including non-lethal products and civilian products adapted for military use, such as mechanical parts—are described as "inherently military" and therefore require a license. But much of the technology on the USML is now obsolete or is widely available commercially. This is particularly applicable to the computer technology covered by the military electronics and other military-specific technology listed in the ITAR.

Despite ambitious Pentagon plans to shorten the USML and speed up the licensing process, the list is controlled by the State Department and, without a radical shift in departmental philosophy, is likely

to remain unchanged. Traditionally, the State Department is the point of entry into the United States for foreign governments and companies and works with the Defense Department to safeguard America's defense technology. The Defense Department is able to review and advise the State Department on export controls, but does not regulate the export licensing process. The ongoing revision of export controls highlights the tension between the Departments of State and Defense, perhaps more than any other single issue.

Since the Cold War ended, DoD officials have realized that sharing some defense technology with America's most trusted allies is more beneficial for US security than prohibiting technology transfer. The State Department, however, does not tend to support such a policy. On export controls for dual-use technology, State and DoD liaise with the Department of Commerce (which has licensing authority over dual-use items), but Commerce, unlike State, appears to echo the Defense Department's view that reform of the US export control process is inevitable and necessary. Senior officials at both Commerce and Defense want to see "higher walls around fewer items" on the USML.

In addition, British defense analysts are concerned about the crucial role of Congress in overseeing export controls and technology transfers. Congress has an entirely different set of priorities and culture from the Departments of Defense, Commerce, and State. Congress is kept informed of, and technically has the power to veto, all exports of defense articles and services with a value of \$50 million or more and exports of defense equipment with a minimum value of \$14 million. This figure of \$14 million remains constant, unlike the size of defense orders, which have risen with inflation. This means that over the past decade, there have been increasing numbers of notifications to Congress and corresponding delays in the granting of defense export licenses. Congress also requires notification of all technical assistance agreements and manufacturing license agreements for the manufacture abroad of significant military equipment, regardless of their dollar value.

Furthermore, Congress has the power to increase or reduce the defense budget. As one British observer noted: "State is in fear of Congress. While Congress doesn't create formal obstacles for State and the DoD, there are plenty of informal ones."

Apart from concern about the inter-departmental relationships, the United Kingdom also is troubled by the fundamental inefficiency of the whole US export licensing process. This is typified by the poor communication links between State, DoD, and Commerce. The three departments only now are being linked by a secure computer network.

DoD research showed that in 1998, of the 28,000 licenses examined (13,000 from the Department of Commerce and 15,000 from the State Department) many took over two months, and the normal

processing time averaged 46 days.⁶ In contrast, export licenses in the United Kingdom take a maximum of only 20 days to process, and those that require only the approval of the Department of Trade and Industry are cleared within 10 days.⁷

In addition, there are several cases when the inefficiency of the American export control process could have had severe implications for allied peace-enforcement operations. At the height of the Kosovo operation, for example, the State Department took two months to approve a license to sell 35 flares to the Italian Coast Guard, despite the fact that these flares had already been approved for sale to 30 countries, and that they would be used for illumination in the possible rescue of NATO pilots.⁸ This case, and others like it, has done little to assuage British concerns about the reliability of the United States as a partner.

The interagency National Disclosure Process (NDP) further complicates the export control process. The NDP ensures that classified information is only disclosed to foreign governments when there is a clearly defined advantage to the United States and that the information will be guaranteed the same level of security protection as in the United States. British defense officials note that the NDP

Although British defense officials understand the reluctance of the United States to liberalize its export control regulations, they feel that unless there is radical reform of the ITAR, the severe licensing restrictions currently in place could deter commercial suppliers from offering their technology to the DoD.

decision-making process is extremely lengthy: each case takes at least 30 days—and some can take up to 270 days. Furthermore, NDP decisions on the release of classified information can become entangled with the ITAR decision on the authorization of specific arms transfers, adding further time delays. These processes fuel British suspicions that America is not committed to sharing its defense technology with its allies.

US export control policies clearly were designed to safeguard US technology and to preserve America's technological lead. Although British defense officials understand the reluctance of the United

⁶ Author's interview with Steven Grundman, assistant deputy under secretary of defense (industrial affairs), Office of the Secretary of Defense, DoD, May 2000.

⁷ Interview with Professor Keith Hayward, Research Director, Society of British Aerospace Companies, September 2000.

⁸ John W. Douglass, "Rethinking Export Controls," Testimony before the Committee on Armed Services, United States Senate, 23 March 2000, available online at: http://aia-aerospace.org/aianews/testimony/tst_jwd3_23_00.html.

States to liberalize its export control regulations, they feel that unless there is radical reform of the ITAR, the severe licensing restrictions currently in place could deter commercial suppliers from offering their technology to the DoD. America could then lose its competitive edge in the global defense market.

The Effect of Defense Industry Consolidation on British Views Regarding Cooperation with the United States on Export Control-Related Matters

Defense industry consolidation already has had a serious effect on British views, policies, and cooperation with the United States on export control issues. This is because the takeover by British Aerospace (BAe) of Marconi Electronic Systems in January 1999, and the subsequent consolidation, laid the foundation for building transatlantic bridges, rather than grouping Europe's defense companies into a single firm.⁹ Europe now must build a transatlantic defense industry to ensure competition. British defense employees, therefore, are increasingly concerned about the consequences of America's export control policy, as they are now more likely than ever before to be affected by it.

BAe's takeover of Marconi was greeted with bitter disappointment by Europe's other aerospace companies. They felt that any chance of forming a pan-European aerospace and defense company that included Britain had been lost, because the new BAe would be so much larger than its partners. BAe's move highlighted the fact that defense industry restructuring in Europe is led by industry, rather than government-driven. British Prime Minister Tony Blair had indicated that he would have preferred a pan-European, rather than a national merger, yet BAe decided to follow its own course.

Further consolidation in February 1999 resulted in the formation of Aérospatiale-Matra after a merger between Aérospatiale and Matra Hautes Technologies (the military and space unit of the Lagardère Group). In June, Germany's DaimlerChrysler Aerospace AG (Dasa) merged with the Spanish firm Construcciones Aeronauticas SA (CASA). Then, in October, the Lagardère Group and Dasa announced the creation of the European Aeronautic, Defence and Space Company (EADS).

In April 2000, Alenia Aerospazio, the aerospace division of the Italian company Finmeccanica, announced that it was forming a joint venture with the Franco-German-Spanish company. This was to come to fruition, in the shape of the European Military Aircraft Company, in April 2001. Meanwhile, in January 2000, Thomson-CSF announced its intention to acquire the British company Racal.¹⁰ This move

⁹ British Aerospace (BAe) was renamed BAE Systems (BAE) in December 1999.

¹⁰ In December 2000, Thomson-CSF renamed itself Thales, to reflect its new global identity.

was of particular importance because it made Thomson-CSF the second-largest defense company in the United Kingdom and offered the French valuable access to the American defense market.

Therefore by mid-2000, Europe's aerospace and defense electronics industry had consolidated around three cores: BAE Systems, EADS, and Thomson-CSF. With defense budgets in Europe either stagnant or in decline, all three companies want to access the US market, as it is the one area where defense spending is still a priority. But thanks to the inherent protectionism of America's export control and technology transfer policies, Europeans, to date, have enjoyed only limited success in penetrating the US market. This is in marked contrast to America's success in operating in Europe.

The greatest problem for Europeans operating in America is the need to employ a "proxy board." A proxy board is a mechanism unique to the United States: a group composed entirely of American citizens, who oversee the daily running of a company. In rare cases, proxy boards are replaced by Special Security Arrangements (SSAs). A Special Security Arrangement creates a board composed of US nationals and citizens of the country of the parent company. When the board discusses issues with possible national security implications, the citizens of the parent company are excluded.

As a result of America's onerous export control restrictions, few European companies have penetrated the US market. BAE, Rolls Royce, Smiths Industries, and Cobham (all British firms) have been quite successful, but no European prime contractor has won a significant order from the US Defense Department. This is in stark contrast to the success of American defense companies in Europe. As transatlantic defense industrial cooperation is the aim of both British and American defense companies, they want the US government to radically reform the ITAR.

The Effect of the Letter of Intent and the Framework Agreement

There is a growing belief in continental Europe that by creating a special, privileged relationship with certain countries (the United Kingdom, in particular), the United States wants to undermine the Letter of Intent (LoI) signed by France, Germany, Italy, Spain, Sweden, and the United Kingdom in July 1998 on facilitating defense exports and procurement. This view is held mostly by the French and Germans, who greatly resent the Anglo-US special relationship.¹¹ The LoI was the start of a process that led to the signing of a Framework Agreement in July 2000. The Framework Agreement calls for a

¹¹ Representatives of the Franco-German-Spanish firm EADS have been among the most vocal in questioning how the "special relationship" would affect the LoI process. Defense equipment attachés at both the French and German embassies in London endorse this view.

convergence of practices, particularly on security of supply, technology transfer, and export controls. It also supports the harmonization of requirements for the armed forces of the six signatories.

British MoD officials recognize US suspicion of both the Letter of Intent and the subsequent Framework Agreement, principally because of the US belief that exports are handled in a cavalier manner in Europe. The British also accept that some US government officials think that the sentiment behind the LoI and Framework Agreement is that of “Fortress Europe versus Fortress America,” the scenario opposed by many on both sides of the Atlantic. But this is not the view held by the British defense establishment.

The United Kingdom was at the forefront of negotiations to draw up both the LoI and Framework Agreement. But many analysts in the United Kingdom argue that these agreements are more symbolic than practical. The British government wants to demonstrate that it can lead in Europe, but with the United Kingdom outside the Euro currency zone, the only area where the government can do so is in defense. So the LoI and Framework Agreement serve a definite political purpose.

UK defense analysts are aware that the reality of successfully implementing the Framework Agreement will be harder to achieve. Some suggest that it will be “unworkable.” One of the greatest hurdles is that it will be extremely difficult to get agreement from all the signatories on export controls. Germany, in particular, pursues a restrictive policy on arms exports, compared to Britain and France. British industrialists are concerned that according to Article 13 of the Agreement, collective export controls on new collaborative projects will remain hostage to a national veto. They are also distinctly unenthusiastic about the six nations’ approach to the drawing up of so-called “white lists” of acceptable export destinations and fear that countries not placed on the original lists will be seen as unacceptable destinations for future defense exports.

Thus, it is apparent that British objections to the LoI/Framework Agreement have considerably more to do with questions about the Agreement’s viability than whether it would separate Britain from its European partners. British defense officials do not generally believe that the Agreement would adversely affect its relationship with the United States, as they—unlike some other Europeans—do not subscribe to the Fortress Europe-Fortress America philosophy. Britain’s signature on the Framework Agreement does not alter its position on cooperation with the United States on export controls.

The Effect of the EU Code of Conduct and Other EU-Related Initiatives

In the past decade, the European Union has issued several key pieces of legislation on export-control matters, especially regarding dual-use goods. The EU Code of Conduct of 25 May 1998 was a significant achievement, as it made some progress toward the development of common EU controls over defense exports. The Code of Conduct called for case-by-case decisions on defense exports and took into account existing export control arrangements such as Wassenaar, the Nuclear Suppliers Group, and the Australia Group. But one vital area where the Code of Conduct conflicted with the United States is that it also reaffirmed the European Union's commitment to refrain from exporting any form of anti-personnel landmines.

The EU Code of Conduct has limitations, however, that reduce its impact in the eyes of UK analysts. It makes no provision for controls on international arms brokering, licensed production agreements, and end-use certification and monitoring. Some of its weaknesses were addressed at the end of 2000 and the beginning of 2001 by additional legislation (see below). British defense analysts believe that the terminology of the Code offers those intent on doing so a number of options by which to circumvent it. The Code's legal status contributes to the ease with which it can be bypassed: it is only a Council Declaration and, therefore, it is a politically but not a judicially binding agreement. The Code also increases the need for national parliamentary scrutiny of defense exports.

While the British defense community supports the EU Code of Conduct in principle, it is aware of these weaknesses. Because the United Kingdom has much stronger export control regulations (in general) than its Framework Agreement and EU partners, many British defense analysts see little conflict between endorsing the Code of Conduct and maintaining closer ties with the United States.

The British defense establishment also supports the EU initiatives taken in 1994, 1998, and 2000. The December 1994 Council Regulation called for setting up a Community Regime for the Export of Dual-Use Goods, designed to both improve competitiveness of the European defense industry and comply with existing international legislation on nonproliferation.¹² It should be applicable for both intra-EU trade and for exports to non-EU members.

The Joint Action of December 1998 emphasized the European Union's commitment to combating the destabilizing accumulation and spread of small arms and light weapons.¹³ The European Union

¹² See *Official Journal of the European Communities*, L 367, 31 December 1994, 1-7 for the complete text of Council Regulation 3381/94.

¹³ See *Official Journal of the European Communities*, L009, 15 January 1999, 1-5 for complete text of the Joint Action.

pledged to assist the United Nations, the Organization for Security and Cooperation in Europe (OSCE), and other international fora to attempt to reach a commitment from all countries to import light weaponry only at a level commensurate with their legitimate security needs. The Joint Action stated that EU Member States would supply arms only in accordance with appropriate arms export criteria, such as those in Wassenaar. It also called for national inventories of all weaponry and regional registers of small arms.

The Council Joint Action of 22 June 2000 is perhaps the most important piece of legislation after the Code of Conduct.¹⁴ The Joint Action contains four key elements: it introduces a Community General Export Authorization (CGEA), establishes a military end-use control, brings under control certain technology transfers by electronic means, and makes changes to licensing requirements for intra-Community trade. The CGEA permits the export of dual-use items to Australia, Canada, the Czech Republic, Hungary, Japan, New Zealand, Norway, Poland, Switzerland, and the United States. The military end-use control applies to items not previously subject to control for export to countries subject to international arms embargoes. The new electronic technology transfer control extends the meaning of “export” to include the transmission of technology by electronic media, fax, or telephone to a destination outside the European Union. The fourth element of the Regulation details new lists of goods that require licenses: those exported within and outside the European Union.

The British defense establishment supported enacting the 22 June Regulation, as—to a great extent—it conforms to existing British legislation. The CGEA, almost verbatim, duplicates the Open General Export Licenses, and the electronic technology transfer component of the Regulation is broadly consistent with the recommendations in the British *White Paper on Strategic Export Controls* of 1998. This consistency was emphasized in a speech to the UK Parliament by the minister of state in the British Foreign Office, Peter Hain, in December 2000.

But the 22 June Regulation already has required several amendments to keep up with the pace of changing technology. The first amendment came in December 2000, just six months after its introduction. The amendment removed the need for authorization of intra-EU transfers of certain, less-sensitive nuclear materials and altered the Annex of the Regulation to ensure that these materials would be specifically excluded from the CGEA. A further amendment was made on 6 March 2001, emphasizing the delicate nature of controlling dual-use exports. A decision was taken to liberalize the control parameters at an EU-wide level to facilitate the export of certain electronic goods such as micro-processors and some computers. This move was welcomed heartily by the UK government.

¹⁴ See *Official Journal of the European Communities* L159, 30 June 2000, 216 for the complete text of the Joint Action.

The regulations instigated since the mid-1990s are certainly symbolic of a more uniformed EU approach toward export licenses, especially for dual-use goods. But these regulations, particularly the Code of Conduct, are subject to different interpretations by Member States. The Regulations give no indication as to how individual states should perceive different countries. The Code of Conduct was essentially an attempt to outline what criteria Member States should consider when approving or vetoing export licenses. But many British officials accept that the European Union is still far from having all its members subscribe to the same criteria when assessing which states are, or are not, “rogue.”

British Department of Trade and Industry officials, in particular, believe that the United States should support the new regulations, as they provide a degree of uniformity throughout the European Union, which it has lacked until recently. The June 2000 Regulation also confirms the importance of the

None of the EU legislation enacted over the past five years alters Britain’s attitude towards cooperation with the United States on export controls.

United States to the European Union, as it is listed as one of the 10 most-favored countries on the CGEA list. But as with Britain’s position on the Wassenaar Arrangement, the fact that the EU legislation is so broadly similar to existing UK legislation means that there is little

excitement or interest in it in the UK defense community. None of the EU legislation enacted over the past five years alters Britain’s attitude towards cooperation with the United States on export controls.

The Declaration of Principles and the Defense Trade Security Initiative

In 2000, the US government made two significant moves to relax its rigorous export control policies—the February Declaration of Principles (DoP) and the Defense Trade Security Initiative (DTSI) announced in May. Unlike other European countries, Britain has benefited from both initiatives.

The Declaration of Principles

The Declaration of Principles aims to improve the arrangements for defense equipment cooperation and trade between Britain and America. It covers five key areas: harmonization of military requirements, security of information, export procedures, foreign ownership and corporate governance,

and defense research.¹⁵ Some British industrialists greeted the DoP as one of the most significant breakthroughs in the move towards transatlantic defense industrial cooperation. Others were less enthused—they noted that the Defense Department consulted neither the State Department (which has ultimate control over many of the issues contained within the Declaration) nor the Congress, before the Declaration was signed. Furthermore, the fact that the DoP is not a legally binding document increased the level of skepticism with which it was met.

While the contents of the Declaration of Principles send, in theory, an extremely positive message, critics of the Declaration remarked that it had been over-hyped, and the very harsh referred to it as a “waste of space.” Particularly vehement European (including some British) critics of the DoP suggested that it was a ruse whereby the United States could isolate the United Kingdom from its European neighbors. The DoP is further weakened by the fact that its industrial element is *passé*, as it does not reflect the fact that European companies are *multi-national*.

A senior British MoD official admired the “visionary principles” behind the Declaration but felt that the United States might be promising more than it could realistically offer. Many British analysts believe that the Declaration of Principles is merely a statement of intent to improve the transatlantic defense industrial relationship, and not something more substantial.

The Defense Trade Security Initiative

The Defense Trade Security Initiative, was seen initially in Britain as a comprehensive review of the American position on export controls.¹⁶ As the DTSI was drafted by a joint team of Defense and State Department officials, it has the credibility that the Declaration of Principles lacked. The DTSI also will improve interoperability within the NATO alliance—which the British, in particular, value—as it was designed specifically to support NATO’s Defense Capabilities Initiative (DCI).¹⁷

¹⁵ See the website of the US Department of Defense for the full text of the Declaration of Principles, Internet: <http://www.defenselink.mil>.

¹⁶ For the complete text of the DTSI, see US Department of State, “Seventeen Agreed Proposals of the Defense Trade Security Initiative: Fact Sheet Released by the Bureau of Political Military Affairs,” Washington, DC, 26 May 2000, available online at http://www.state.gov/www/global/arms/bureau_pm/dtc/fs_000526_proposals.html.

¹⁷ The DCI was agreed upon at the April 1999 Washington summit, which celebrated NATO’s 50th anniversary. Its objective was to ensure the effectiveness of future NATO operations across the full spectrum of Alliance missions by improving interoperability among allied forces. The DCI concentrates on deployability, mobility, sustainability, logistics, and command and control.

The most important component of the DTSI, as far as the British are concerned, was the extension of the ITAR to NATO allies, Australia, and Japan. This exemption would permit—without a license—the permanent and temporary export, as well as the temporary import, of certain unclassified defense articles, data, and defense services. But unlike the original Canadian ITAR exemption (in which all defense companies were included), the UK exemption would apply only to specific companies identified as reliable by the US government. This is great cause for concern in Britain: no one yet knows which companies will be in the ITAR waiver “club,” nor how they will be selected for “membership.”

Negotiations on the ITAR exemption for the United Kingdom are underway but have not, to date, made major progress. This lack of progress, however, has been camouflaged by the joint US–UK statement on defense export controls signed on 17 January 2001. The statement declared that there was, indeed, a high degree of commonality between the UK Military List and its equivalent in the United States, the USML. It confirmed that the United Kingdom planned to extend export controls to intangible transfers and to arms trafficking and brokering, but that was the only concrete announcement contained in the joint statement. The remainder concentrated on agreements “in principle” on the extension of the ITAR waiver to certain British companies, according to which they would commit themselves to abide by certain end-use and re-transfer conditions.

The UK government furthermore proposed introducing possible additional procedures in its export licensing process in order to provide reassurance to the United States on re-export issues. The two governments also stated that they would enhance their already close relationship in law enforcement cooperation on export control violations and to increase the amount of information exchanged on implementation of their respective export control regimes.

The joint statement made frequent references to the desire of the United States and United Kingdom to promote interoperability, increase defense capabilities, and improve transatlantic defense industrial cooperation, but at the same time continue to protect national, sensitive defense technologies. The statement noted, however, that there still were some outstanding (and mostly unspecified) issues that needed resolution before a binding US–UK agreement—and with it the implementation of the full range of elements in the DTSI—could be reached. Only then could the ITAR be revised to allow the export, without a license, of unclassified defense technology to qualified UK companies. Defense analysts in the United Kingdom believe that such a binding agreement will not happen for at least another six months, as the commitments referred to as being “in principle” will take a significant amount of time to achieve. While the respective governments continue to debate the issues, the leading British defense companies—who would be affected by any UK–US agreement—share the concerns of their government officials.

The United Kingdom faces real difficulties in reconciling American control over defense exports with the British desire for independence in this field. A leading British defense academic believes that if Britain accepts the ITAR exemption, the US third-party veto (based on the need for prior approval from the US State Department for re-exports or re-transfers of US-controlled munitions items or technology) could cause many problems, especially if a British company completes a defense export sale with which the US government does not agree. Sales to India could be just such a test case, due to the different attitudes of the United States and Europeans. This could trigger a revocation of the ITAR exemption and a deterioration of Anglo–US relations.

While the Defense Trade Security Initiative contains many points designed to enhance the US export control system, it also has numerous weaknesses, which already has reduced its appeal in the United Kingdom. The most significant is that the DTSI applies only to unclassified technology and equipment, thus ensuring that technology and capability gaps between the United States and its allies will continue to grow.

Furthermore, the initiative was designed for implementation under the existing Arms Export Control Act, through which Congress oversees defense exports. This means that the DTSI is insufficiently challenging, in order to conform to current Congressional controls and restrictions. The DTSI would be more effective if it contained proposals to review the role of the Congress itself—a well-documented grievance. Such proposals, of course, would have far-reaching constitutional implications, well beyond the scope envisaged by the original DTSI and well outside the jurisdiction of the Executive Branch of the United States government.

Another problem with the DTSI is that it still considers countries on an individual basis and does not take into account multinational ventures, such as Matra BAE Dynamics, where one or more of the components making up the firm may not be qualified for the more liberal licensing procedures. Britain's European partners, especially French and German industrialists, believe that the initiative cements the United Kingdom's preferential status in the eyes of the United States. Many British industrialists are inclined to agree.

Critics of the DTSI further suggest that it is a process designed to encourage greater exports of US defense equipment at the expense of any European alternative. They also argue that the DTSI does little to tackle the problems faced by European companies of operating in the United States. The announcement of the Defense Trade Security Initiative certainly represents a welcome start toward loosening US export controls, but it is not enough to appease those in the United Kingdom who want greater transatlantic cooperation in this area.

The issue of closer transatlantic cooperation, however, has stalled in the first quarter of 2001, with the election to office in the United States of the new Republican administration of George W. Bush. Republicans are seen to be traditionally more unilateralist than their Democratic counterparts, although this attitude has to be balanced with the demands of corporate, industrial America—a key base of Republican support. Many Republicans in Congress are opposed to the development of a Common European Security and Defense Policy (CESDP) and, therefore, would oppose any measure—such as the DTSI—that could be seen as supporting such a policy. But those American defense industrialists who would benefit from closer transatlantic links as offered by the DTSI are more enthusiastic.

Such attitudes are more or less irrelevant, however, until the new US administration is complete. Even several months after the inauguration—as a result of the confusion following the November election—positions in the lower ranks of the State Department and the Pentagon have yet to be filled. There is also uncertainty as to the balance of power and influence in the new administration, with three key figures from previous Republican administrations appointed to senior posts: Donald Rumsfeld, as secretary of defense, is working alongside Dick Cheney as vice president and Colin Powell as secretary of state. The three men have differing views on issues such as transatlantic defense industrial cooperation,

It is unduly optimistic. . . to think that either the Declaration of Principles or the DTSI will lead to new multilateral export control regimes.

and it is perhaps too soon into George W. Bush's presidency to see which man will exert more influence and clout.¹⁸ British defense analysts believe that if Colin Powell's policy of pragmatism predominates, this would mean that the DTSI process would most likely continue.

It is unduly optimistic, however, to think that either the Declaration of Principles or the DTSI will lead to new multilateral export control regimes. British defense analysts agree that bilateral or, at most, regional agreements would be more successful than widespread multilateral export control regimes. Neither the DoP nor the DTSI offers truly multilateral export controls—both imply compliance with American policies, rather than being joint agreements between equal states. While the United Kingdom is clearly treated as a privileged party compared with its European partners in both the DoP and DTSI, there is little real will in the British defense establishment for a more concrete multilateral regime based on either agreement.

¹⁸ In the EP-3 hostage crisis of April 2001, it was Colin Powell's strategy that appeared to dominate over that of Donald Rumsfeld.

CONCLUSION

Many British defense experts believe that enhancing multilateral export controls is almost impossible at the current time. This is chiefly because, on the one hand, America's policy on export controls is seen by many Europeans as overly obstructive and, on the other hand, there is no concrete pan-European export control policy upon which to build. Existing multilateral control regimes (such as Wassenaar) are welcomed by the United Kingdom in principle but are perceived as weak due to their well-documented limitations.

Although broadly supportive of the *raison d'être* behind America's export control policy (to safeguard critical technologies), and a staunch pillar of the Anglo-American "special relationship," the British defense establishment is highly critical of the methods by which the United States grants export licenses. The French and Germans, in particular, also have suffered from America's restrictive licensing policy. America's attitude toward export controls is not conducive to creating a transatlantic export control regime.

Therefore, Europe—and especially the United Kingdom, which would benefit most—would welcome American reform or liberalization of its policy on export controls. The May 2000 Defense Trade Security Initiative, while accepted as a slow move toward export control reform, does not go nearly far enough. New reforms would have to challenge existing congressional legislation in order to be successful. But such a move would have huge political and constitutional implications and is therefore unlikely to happen until America's domestic defense industry is hampered (both economically and politically) by its own export control policies.

Many in the United Kingdom accept that the diverse nature of foreign policy in Europe is a deterrent to closer transatlantic cooperation. While analysts are skeptical about the prospect of full harmonization of either foreign policies or export control policies, they feel that even a small degree of convergence in Europe would make enhancing multilateral export controls more feasible. Some steps in this direction were taken in the last decade, in particular the drawing up of the EU Code of Conduct. But, as outlined above, these declarations are insufficient. Harmonization of EU foreign policy raises questions about the status of the European Union itself: will the European Union, in fact, become a federal super-state? Such issues, however, are beyond the scope of this paper.

Many British defense officials argue that the European declarations on export controls are actually of little importance or relevance to them, as Britain's export controls are already rigorous and well-monitored. The criteria laid out in both the Wassenaar Arrangement and the EU declarations comprise the basis of the United Kingdom's existing export control policy. Hence, there is little real

interest in them within the British defense community. That is chiefly why, unlike some other Europeans, the British are far more concerned about national export controls than about European or multilateral regimes.

The growth of worldwide accumulations of conventional weapons and dual-use goods means that the issue of export controls (national, bilateral, or multilateral) will not fade from the international stage. Rather than trying to run before being able to walk, it is particularly vital that EU Member States and the United States thoroughly examine their own export control policies and carry out reforms where necessary—either strengthening or liberalizing controls. Only once this has been achieved can serious, workable multilateral export control regimes begin to be effective.

Appendix A: Project Participant List

Study Group on Enhancing Multilateral Export Controls for US National Security

CO-CHAIRS

The Honorable Michael B. Enzi
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^α Government observers take no position on the report or its recommendations.

Appendix B: Working Papers and Authors

Study Group on Enhancing Multilateral Export Controls for US National Security

- (1) Richard T. Cupitt **Multilateral Nonproliferation Export Control Arrangements in 2000: Achievements, Challenges, and Reforms**
- (2) Stephen D. Bryen **The Future of Strategic Export Controls**
- (3) Frank M. Cevasco **Survey and Assessment: Alternative Multilateral Export Control Structures**
- (4) François Heisbourg **From European Defense Industrial Restructuring to Transatlantic Deal?**
- (5) Larry Lynn **Forecasting Critical Military and Commercial Technologies: Potential Long-term Challenges for Export Controls**
- (6) Alexandra Ashbourne **The United States and Multilateral Export Controls: The British Perspective**
- (7) Dov S. Zakheim **Export Controls and Military Planning**
- (8) Peter Rodman **The Paradox of American Power**
- (9) Burkard Schmitt **Toward a Common European Export Policy for Defense and Dual-use Items?**