Economic Security and Arms Transfer Policy of the United States

– DTSI and Defense Cooperation with Allies –

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Introduction

On May 22, 2000, U.S. Secretary of State Madeleine Albright presented an overview of the Defense Trade Security Initiative (DTSI) at the North Atlantic Council (NAC) meeting held in Florence, Italy.[1] Concurrently, the U.S. Department of Defense and the Department of State released the details of 17 measures that make up the initiative in Washington D.C..[2] DTSI is the most important initiative in the area of U.S. arms exports since the Conventional Arms Transfer Policy (CAT) issued in 1993.[3] Focusing its goal to establish the functional linkage between arms transfer, export control, and restructuring of the defense industry, DTSI was designed to ease controls on defense-related exports and facilitate defense cooperation with NATO allies and other non-NATO allied nations, thereby streamlining the policy related to arms production, trade, and defense cooperation within allied countries.

Although DTSI was introduced under the initiative of the Clinton administration, its idea and policy continued after the transfer of the executive office to the Republicans in 2001. The fact indicates that improving efficiency in defense production and control of weapons exports is a non-partisan issue that the U.S. defense industry and government currently face in the post-Cold War environment of international security and defense procurement. The further contraction of developed countries' defense markets, accompanied by greater technological advancements in military equipment, which are likely scenarios in the contemporary security environment, would undoubtedly threaten the very survival of not only the defense industry in the United States, but of these industries worldwide. The expected U.S. response to this situation would be to step up arms exports and consolidate its defense industry in order to downsize the industry to an appropriate scale without compromising the state's arms production capacity both in terms of qualitative and quantitative means. The envisioned

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[1] Following the May 24 meeting, Albright renewed her call for NATO allies' cooperation on DTSI at the North Atlantic Council Foreign Ministers Meeting on December 14, 2000. "Officials: Export Control Reforms Signal New U.S. Gov't Stance on Cooperation," *Defense Daily International*, May 26, 2000; "Defense Trade Security Initiative Promotes Cooperation and Greater Technology Sharing With U.S. Coalition Partners," News Brief Released by the Bureau of Political Military Affairs, U.S. Department of State, Washington, D.C., May 26, 2000.

[2] Department of State, "Fact Sheet: Defense Trade Security Initiative," May 24, 2000.

[3] The White House, "Fact Sheet: Conventional Arms Transfer Policy," February 17, 1995; "Fact Sheet: Criteria for Decision making on U.S. Arms Exports," February 17, 1995; "Statement by the White House Press Secretary on Conventional Arms Transfer Policy," February 17, 1995.

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response, however, would virtually invite the proliferation of arms and military capability across the globe. Under these structural factors related to defense production and arms trade, the United States was determined to restructure the export control policy and restriction measures. Furthermore, the closing of the technological sophistication gap between military and civilian technology has added another consideration over export control policy. It became unrealistic in terms of actual implementation to prevent the proliferation of military equipment and technology, since the line between military and civilian technologies has been blurred. In addition, both the globalization of economy and the emergence of international society also made its prevention difficult to manage. Security concerns demanded the simultaneous reevaluation of arms transfer and export control policy as necessitated by the condition for policy implementation. With these structural factors, a transfer of power from Democrats to the Republican administration did not cause any significant alternation to the approach taken by the United States with regard to defense export issues.

As an attempt to resolve the various issues involved with arms transfers in the post Cold War era under a single but comprehensive initiative, DTSI has encountered a variety of criticism since it was first announced. One of the objection holds that the United States is using DTSI for commercial promotion. It is said that the U.S. policy to bring the export control licensing policies of other nations in line with its policy for the purpose of promoting defense cooperation with allied countries. As part of U.S. trade and commerce policy, however, the "Buy American" provision remains in place under the U.S.'s trade legislation and other regulations. Therefore, the critic argues that the enforcement of DTSI would in truth merely serve to promote U.S. arms export policy.[4] Furthermore, DTSI implicitly envisions establishing some kind of multilateral export control framework separate from the Wassenaar Arrangement on Export Controls for Conventional Arms and Double-Use Goods (WA) with NATO allies, Japan and Australia once these countries adopt licensing policies consistent with U.S. standards. This type of multilateral export control framework has also been criticized as establishing an international technology control hierarchy administered by the developed countries in possession of this technology. The harshest critics even argue that the initiative resurrects the Coordination Committee on Multilateral Export Controls (COCOM) instituted during the Cold War.

In the face of U.S. attempts through DTSI to establish a new policy framework that expressly links arms transfers with export control, we must consider how we are to interpret these criticisms and how the United States stands to benefit from DTSI. With these points in mind, this article will explore the larger context in which DTSI was developed, the specific proposals put forth under this initiative, and the direction in which arms transfers and export control will evolve in the post-Cold War era.

[4] "U.S. Defense Export Controls Reforms: A European Perspective," *Defense Daily International*, July 14, 2000.

I. DTSI: Background and its Implications

Essentially, DTSI is an initiative which aims to enhance the market competitiveness of the U.S. defense industry and improve efficiency in defense production, while maintaining the export control necessary to guarantee national security. In this subject, the interests of the Department of State, which oversees and administers the arms trade, and the Department of Defense, which is in charge of military affairs, are intertwined; therefore, the DTSI is expected to cause significant impact on both the domestic and international affairs of the United States. The initiative will most strongly impact U.S. relations with its allies that are in formal security alliances and with countries with which the United States maintains friendly ties.

The Defence Capabilities Initiatives (DCI) favored by NATO is a venture similar to DTSI.[5] This initiative is designed to respond to NATO policy by maintaining robust defense industries in member nations, while simultaneously improving military interoperability by promoting technology sharing among these countries. Under this initiative, which was released at NATO's 50th Anniversary Summit in Washington D.C. held during the 1999 Kosovo bombing campaign, NATO heads of state and governments agreed that export controls would not be strictly enforced in the case of mobilizing the equipment and information needed to deploy rear support, supply arms and munitions, and carry out other tasks in order to ensure the smooth execution of concerted NATO military operations. NATO Secretary General Lord Robertson has stated, "The Defence Capabilities Initiative is designed to ensure that all Allies not only remain interoperable, but that they also improve and update their capabilities to face the new security challenges." As these remarks indicate, DCI was advanced against a backdrop of increasing European security cooperation in response to the lessons learned in Bosnia-Herzegovina and the concept of the European Security and Defence Identity (ESDI), as well as the authorization of new duties for which NATO is responsible.[6]

In this respect, DTSI works in effect to boost the advancement of DCI. In contrast to the limited DCI goal of promoting defense cooperation within the NATO member states, however, DTSI is aimed at a wider coalition, including not only NATO member countries, but also Japan, Australia and other nations built on Western market economies. The obvious result of proceeding with DTSI would be the need for greater cooperation within the alliance in order to simplify export control procedures and make them more efficient. If this type of defense cooperation materializes, the countries involved would be positioned under a security framework that, while not formally organized, would be based on a common understanding. In planning for post-Cold War military mobilization, for which concerted multilateral action is deemed essential, the United States is focused on improving interoperability, a problem that has gone unresolved since the Cold War era. This policy of improved interoperability was also

[5] Robert E. Hunter, *The European Security and Defense Policy: NATO's Companion or Competitor,* (Santa Monica: RAND, 2002).
[6] NATO Fact Sheets: "NATO's Defence Capabilities Initiative," August 9, 2000.

developed in response to the problems the defense industry has faced since the end of the Cold War.

Defense industries in a number of countries had seen the very existence of their production bases threatened by the significant post-Cold War reduction in the worldwide reduction of defense procurement budgets. The U.S. national defense budget shrank approximately 30% between fiscal years 1987 and 1997, with funds allocated for acquisition and R&D spending falling roughly 45% over this period. Beyond this, the United States has seen a gap between acquisition and R&D plans and the necessary capital should surface as a significant issue to be considered since fiscal year 1998 due to the disparity between Future Years Defense Plans (FYDP) and the amount of money actually budgeted for defense spending.[7] The Conventional Arms Transfer (CAT) policy released in 1995, the lifting of the embargo on exports of advanced conventional weapons to Latin American countries in 1997,[8] and the policy of defense industry consolidation advocated in July 1993 by late Secretary of Defense Les Aspin and Deputy Secretary of Defense William Perry (later Secretary of Defense) were U.S. responses to these fiscal realities.[9] The policy ultimately adopted led to a policy to promote exports to increase industrial production efficiency and also maintain production lines at the same time.

It was under these circumstances that consolidation of the U.S. defense industry was pursued, with significant progress made in this area until 1998, when the Department of Defense denied approval for the merger of Lockheed Martin Co. and Northrop-Grumman Inc. The number of major defense contractors, which once stood close to 50 in the early 1990s, has fallen into the single digits.[10] Defense industry consolidation, however, subsequently brought the realization that the resulting reduction in the number of defense companies had led to fewer contracting options for the U.S. government, while the consolidation of production had not led to greater efficiency in production capacity and facilities. During the second term of the Clinton administration, consolidation of the major defense industries in fact came to a standstill. Due to the accounting systems employed, the defense industry was obliged to maintain a short-term cost balance by keeping inefficient facilities open, rather than gauging profitability and closing down excess facilities accordingly. The resulting increase in the long-term debt burden at certain defense companies prompted a downgrading of investment ratings. Meanwhile, the private commercial, telecommunications and biotechnology industries boom in the early to mid 90s further dampened the ability of defense companies to acquire

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[7] Cindy Williams, ed., *Holding the Line: U.S. Defense Alternatives for the Early 21st Century*, (Cambridge: MIT Press, 2001).

[8] The White House, "U.S. Policy on Arms Transfers to Latin America," August 1, 1997.

[9] AIAA Defense Forum 2001, "A Blueprint for Action: Final Report," February 14 – 15, 2001.

[10] Integration proceeded among Boeing, Litton, Lockheed Martin, Northrop Grumman, Raytheon and other defense contractors up to 1998, the year in which the Department of Defense denied approval of a merger between Lockheed Martin and Northrop Grumman and also rejected the acquisition of the Newport News Shipbuilding and Dry Dock Company. The department did, however, approve the acquisition of Hughes Space and Communications by Boeing, indicating that policy since 1998 has not been one of unqualified

direct financing through stock market.[11]

In addition to a reduction of the government acquisition funds, the U.S. defense industry was facing new challenges, namely the "globalization" of the defense industry and the increase of international acquisitions. The report compiled in 1999 by the Defense Science Board (DSB) Task Force on Globalization and Security anticipates that defense industries in various countries will be subject to international integration, joint production and development and increased international parts acquisition as a result of globalization.[12] The Task Force also calls on the defense industry and the Department of Defense to formulate government policy that incorporates these realities. Recognition that the affects of globalization on the defense industry would be serious had emerged in the United States in the late 1990s, and the Department of Defense produced 81 initiatives to revitalize defense trade and international investment, including the 1999 DSB report.[13] Several of these initiatives have remained in place under the Bush administration.

The bulk of these initiatives were designed to simplify licensing procedures within the Department of Defense. Under national security and export control, license screening was concentrated in the hands of the Defense Department and the State Department, a process that was widely criticized for requiring too much time from application to approval. This criticism had at times come up even during the Cold War, and any number of attempts were made by the United States to shorten the cycle, most notably in the Export Administrations Act (EAA) of 1979. Many in the industry have pointedly asserted that if further improvements are not made, the U.S. defense industry risks losing its credibility, particularly as economic globalization advances in the post-Cold War era.[14] As the U.S. General Accounting Office (GAO) points out, however, these initiatives, which were set in motion in 1999, merely resolve export control and arms trade problems that have long been specified, most notably by the industry itself, and are not based on uniform government policy.[15] When these initiatives

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opposition to consolidation.

[11] AIAA Defense Forum 2001, "A Blueprint for Action," pp. 3-6.

[12] Office of the Under Secretary of Defense for Acquisition and Technology, *Final Report of the Defense Science Board Task Force on Globalization and Security* (December 1999).

[13] GAO, *Defense Trade: Analysis of Support for Recent Initiatives*, (GAO/NSIAD-00-191) (August 2000). Of the 81 initiatives, 13 were Foreign Disclosure Initiatives designed to reduce the amount of time required to screen for approval of disclosure of technological information to foreign nationals; 11 were Automation Initiatives designed to eliminate redundancies among ministries and agencies working on license screening; 12 were Export Control Initiatives designed to simplify export control licensing systems; eight were Defense Industrial Base Initiatives granting authorization for the application of overseas and other technologies by the defense industry; three were Defense Industrial Security Initiatives designed to revise national industrial security program application manuals; and 34 were Foreign Military Sales Reinvention Initiatives designed to improve FMS efficiency.

[14] Larry M. Wortzel, "Export Controls and National Security in an Age of Globalization," Heritage Lectures, No. 652, January 18, 2000; Testimony by John D. Douglass, President & CEO, Aerospace Industries Association of America, Inc., "Rethinking Export Controls," Senate, Committee on Armed Services, March 23, 2000.

[15] Ibid., pp. 4-5.

were initially put forth, the Department of Defense cited three goals: (1) the improvement of interoperability in concerted military operations; (2) the revision of disparities in military capabilities between the United States and other NATO countries; and (3) preserving the competitiveness of the U.S. defense industry overseas. These 1999 initiatives, however, did not explicitly point to solutions to the economic feasibility of export control other than in terms of cost relief.

This lack of specific proposals can be attributed to the fact that efforts to improve interoperability are controlled by factors other than efficiency in license screening. Differences in basic military platforms significantly restrict interoperability in terms of finding ways to secure delivering lines for the flow of goods and information between militaries of different countries. For reasons of military organizational interests, all nations are equally reluctant to share classified national security information. Taking the issue of revising the military disparity among NATO allies as another example, the much lower budgets for military research and development among NATO nations than in the United States also made widening disparities unavoidable. Moreover, most countries in NATO were more inclined to purchase within their own borders when a comparison of their own weapons and those of the United States was made.

Along with the widening gap of military capabilities between the Atlantic alliance, new problems related to defense exports were also surfacing. Throughout the 1990s, the range of equipment and technologies subject to export control by the United States was gradually relaxed.[16] As noted above, deregulation was obviously instituted against the backdrop of an intentional push to revive arms exports in order to maintain the U.S. defense industrial base. At the same time, though, there were also moves to deregulate dual-use technology in order to improve international commercial competitiveness, and it was in this context that the U.S. defense industry and companies producing advanced equipment and technologies actively pursued exports. A driving force behind these moves from the international political arena was the need for more advanced technology transfers in order to boost the economic recovery in former Communist bloc nations. In 1994, the COCOM, which had played a central role in security administration and export control during the Cold War, was dissolved. The WA was established in 1996 with 33 countries, a number that included nations previously subject to COCOM regulations.[17]

As evident in the WA's Initial Element, the transfiguration of the multilateral export control regime from COCOM to the WA obviously signified a shift in the entities seen as a threat from former Communist bloc nations to "rogue" nations – those nations or groups desiring to challenge the world order. The fact that a shift in the approach to export control from "controlling trade with the enemy" to "nonproliferation" accompanied the shift in

[16] Ian F. Fergusson, Robert D. Shuey, Craig Elwell, and Jeanne Grimmett, "Export Administration Act of 1979 Reauthorization," *CRS Report for Congress*, RL20169, March 11, 2002.

[17] Testimony by John D. Holum, Senior Adviser for Arms Control and International Security, Department of State, "Wassenaar Arrangement and the Future of Multilateral Export Controls," Senate, Committee on Governmental Affairs, April 12, 2000.

perceived threats must also be taken into consideration. Since this shift in focus is leading to a deeper enmeshment of national security and economic interests, a consensus on policy that focuses on maintaining security administration and export control becomes more difficult to achieve. For this reason, the attraction to the market of export industries in China and other Asian countries as a venue to pursue economic interests has become problematic or even ironic because they have actively introduced market economies that developed countries wished to come about. In this situation, economic interests have left national security concerns to take up the rearguard, and the proliferation of technologies associated with classified information has increased. This schism is particularly notable in the United States, which first discovered the economic opportunities offered by the Chinese market in the mid-1990s.

The relaxing export controls to former Communist bloc nations, including China, gave rise to two problems. First, enabling them to access the advanced technologies of the West, they could upgrade their technologies and increase their production capabilities, making these countries not only able to function as production bases for developed countries, but also to establish their own independent technological foundations. Viewed in terms of the international economy, this technological and production development is nothing more than a functional specialization of global production, but from a national security standpoint, the increasing dependence of a number of countries on these former Communist bloc nations for defense production is considered cause for concern. Moreover, the increased military capability in these countries brought about by higher technological standards has also been perceived as a problem in terms of military balance Second, these countries' domestic export control institutions and procedures are not yet fully developed, nor do they share the national security concerns of developed capitalist nations. From the developed nations' point of view, primarily that of the United States, the inability to prevent the technologies exported by the developed nations themselves or those technologies possessed independently by former Communist bloc countries from proliferating into "rogue nations" is problematic.[18] With regard to the proliferation of dual-use technology in particular, an appeal for cooperation to all nations in possession of these technologies was seen as the only viable option since no effective method of preventing their proliferation existed, and effective cooperation could not be expected under the WA already in place.

Although the issue of the transfer of satellite technology to China by Loral Space and Communications Ltd. posed an indirect problem in terms of export control, concrete problems of this nature began to surface inside the United States with the allegations of spying directed at a Chinese-American researcher at Los Alamos National Laboratory. The Loral issue can be traced back to the delays in U.S. rocket launches caused by the failed launch of the space shuttle *Challenger* in 1986. These delays led the United States to contract with China for U.S. commercial satellites to be launched by Chinese rockets. Despite the economic sanctions

[18] Gary K. Bertsch and William C. Potter, eds., *Dangerous Weapons, Desperate States: Russia, Belarus, Kazakhstan, and Ukraine*, (New York: Routledge, 1999); Gary K. Bertsch and Suzette R. Grillot, eds., *Arms on the Market: Reducing the Risk of Proliferation in the Former Soviet Union*, (New York: Routledge, 1998).

imposed in response to the Tien An Men incident and problems associated with the U.S. renewal of most favored-nation status for China, cooperation between the two countries in the area of satellite launches has continued since that time, and with it the transfer of U.S. technologies to China. The core of the Loral issue was about whether the political contributions to the Clinton administration led directly to the easing of regulations on satellite technology transfers to China. Although the select committee formed to investigate this issue inevitably focused on theories of the threat China poses to the United States, the crux of the Cox Report compiled by the committee was to point out the inadequacies of the U.S. export control system.[19] The Cox Report calls for the re-legislation of EAA, with its legal authority maintained by the International Emergency Economic Powers Act (IEEPA), and goes on to concur with the Rudman Report, drafted in response to the allegations of spying levied against the Chinese-American researcher, by noting the importance of policy to tighten export controls within parameters that do not lead to losses in economic profits.[20]

An export control system that attempted to respond to the new reality the defense industry faces and the changing definition of nonproliferation by merely augmenting the framework established during the Cold War with minor changes was no longer adequate in resolving the incongruence of these controls within the new international environment. The United States therefore found it necessary to transform its concept of export control. The new U.S. concept accepts prevention of the proliferation of technology and other products as impossible and recognizes the need to develop capabilities to deal with more widespread military power stemming from the inevitable spread of capabilities over a wider area. Under this new concept, the United States began to focus on maintaining and expanding a defense industrial base that is functionally dispersed across national borders, which created the need for an economically efficient export control system. It was in this context that DTSI was initiated by the Clinton administration.

II. DTSI and the U.S. Export Control System

The reforms outlined under DTSI are proposed in 17 articles, the first four of which are concerned with U.S. commercial export procedures. These articles propose to establish three new licenses: Major Program Authorization, Major Project Authorization, and Global Project Authorization. The next five articles are designed to facilitate the ease with which equipment and technologies are distributed by expanding the scope of existing licenses and providing greater flexibility in the application of regulations. These articles include clauses that address

[19] The Cox Report is officially titled “The United States House of Representatives Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China.”

[20] A Special Investigative Panel, President’s Foreign Intelligence Advisory Board, “Science at its Best, Security at its Worst; A Report on Security Problems at the U.S. Department of Energy” (June 1999). This report addresses the issue of intelligence transfers and puts forward a basic policy on tightening regulations on “intentional transfers” under export control law.

the application of Multiple Destination Licenses, the agreement on integrated purpose and retransfer, the elimination of screening for transfer licenses associated with DCI, the elimination of license screening for transfer applications submitted by the embassies of NATO members, Japan and Australia in Washington D.C., and the improvement of computer interfacing between the State Department and the Department of Defense and between government and industry.

The next five articles deals with expanding the scope of existing International Traffic in Arms Regulations (ITAR) exemptions. These clauses include exceptions to ITAR rules (exemptions to ITAR application) for allies whose export control systems meet U.S. standards, exemptions to the application of licenses for the maintenance of systems exported to ally nations by U.S. companies or for systems training when products and other services are transferred, exceptions for licenses to transfer technological data upon request of the Department of Defense, the expansion of exceptions for licenses for use overseas by the Defense Department, and the establishment of a special regime in relation to licenses for commercial satellites. The final three DTSI articles address transfers executed under government-to-government agreements. These include ITAR exceptions for the transfer of defense services under Foreign Military Sales (FMS). Exceptions for the transfer of defense products under FMS were already in place, and DTSI would also allow exceptions for defense services for which Technical Assistance Agreements (TAA) with the recipient nation were previously required. Finally, the article also includes deregulation of the retransfer of goods transferred under government-to-government agreements and regular reviews of the U.S. Munitions List (USML).[21]

Indeed, the U.S. national security policy is beginning to attempt a comprehensive review of export controls proposed by DTSI. The basic policy on tightening the control of exports to certain countries outlined in DTSI, for example, was an integral part of the Security Assistance Act of 2000. This act requires that nations receiving arms assistance revise their arms export control regulations to bring them in line with the U.S. system when a flexible systematic response in receiving transfers is desired.[22] Furthermore, the State Department reported on May 26, immediately following the DTSI announcement, that it would introduce a special regime of commercial satellite regulations by fiscal year 2002 and give public notice of approvals and rejections of ITAR exemptions in the Federal Register in the interim.[23]

Bilateral cooperation agreements preceded the DTSI initiative, with the United States and the United Kingdom signing the Declaration of Principles (DoP) in February 2000 to promote cooperation between the two countries in matters of defense equipment.[24] Designed to ensure that neither the U.S. nor U.K. defense industries are treated unfairly when operating in the

[21] Sections of the USML will be designated each year for review, with review of the entire list scheduled for completion in 2004. Review work will continue beyond this initial stage under the same process.
[22] Wade Boese, "Bills Sets Terms for Allied Imports Under DTSI, " *Arms Control Today* (November 2000).
[23] *Federal Register*, Vol. 65, No. 103, Rules and Regulations 22 CFR, Part 123.
[24] This document is officially titled "Joint U.S.–U.K. Declaration of Principles for Defense Equipment and Industrial Cooperation."

other country, the DoP declares the two nations' intent to cooperate in coordinating military requirements standards, securing information, implementing export procedures, overseas holdings and corporate governance, and conducting defense equipment research.[25] Some critics have argued, however, that the DoP is nothing more than a declaration of intent to cooperate since it does not stipulate any practical measures, while others assert that the declaration merely uses the United Kingdom to curb the European move toward protectionism in European defense industrial cooperation as signaled in the Letter of Intent. DTSI, however, provides the substance in defense cooperation through harmonizing export regulations that the DoP lacks, and on this basis, U.S.-U.K. negotiations were taken up on ITAR exemptions. The United States and the United Kingdom issued a joint declaration on January 17, 2001, in which the countries agreed to share military lists, introduce regulations on "deemed" or "intangible" transfers by the United Kingdom, work together in regulating re-exports by U.K. companies, and introduce re-export regulations under the U.K. export control system.[26]

The United States and Australia have also worked on cooperation in defense equipment and industry, signing the Principles of Enhanced Cooperation in Matters of Defence Equipment and Industry in July 2000. Aiming to promote joint research, development, production and acquisition on defense equipment between the United States and Australia, the agreement focused on strengthening the security relationship between the two countries by advancing the level of bilateral negotiations. Australia, which stands to gain from greater access to U.S. advanced technologies, particularly the improved *Collins*-class submarine performance expected with the introduction of propeller manufacturing technologies, has responded positively to DTSI and subsequent agreements.[27]

On June 14, 2001, the United States announced that DTSI would be expanded to include Sweden.[28] This expansion is attributed to the fact that Sweden had come to be viewed by the United States as a future partner in security cooperation since it had cooperated with NATO in military operations in Bosnia and Kosovo. Furthermore, the Swedish government already has an export control system that conforms with the U.S. system, possesses the sixth most capable defense aircraft manufacturing sector in Europe, and has the capacity to manufacture various advanced technology systems.[29]

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[25] Since February 2000, BAE Systems acquired Lockheed Martin Control Systems and Lockheed Martin AES (Sanders), in June 2000 and November 2000, respectively, making BAE Systems North America the sixth largest defense contractor for the U.S. Department of Defense. The merging of the U.S. and U.K. defense industries has continued on pace with other mergers and acquisitions, namely the acquisition of Orbital Sciences Corporation's Fairchild Defense unit in October 2000 and the acquisition of Econ Microwave by Cobham Corporation in August 2000.

[26] U.S.–U.K. Joint Statement on Defense Export Controls, January 17, 2001.

[27] The Hon. Peter Reith, MP Minister for Defense, Address to the ANZUS Conference, "The U.S. Australian Alliance in an East Asian Context, at University of Sydney," June 30, 2001.

[28] The White House, "Fact Sheet: U.S.–Sweden Defense Trade Security Initiative," June 14, 2001.

[29] Traditionally recognized ITAR exemptions for Canada were temporarily suspended as punitive action against Canadian companies for their export activities. These exemptions were reinstated, however, on May 30, 2001, in response to subsequent tightening by Canada of its export controls.

However, the fact that the legal foundations to regulate U.S. export control policy are based on the IEEPA, a resolution temporarily extending the authority under the EAA 1979, an act which had been repealed, has led to a significant loss of credibility for the DTSI initiative in terms of its enforcement. The reinstitution of the EAA was deliberated from the beginning of the 107th Congress, primarily by the Senate Committee on Banking, Housing, and Urban Affairs, but lawmakers at the Congress were unable to reach a conclusion on this matter by the end of the session. Furthermore, although the DTSI itself had bipartisan support, since the initiative was announced during the final term of the Clinton administration, solidification of the initiative was affected by the political calendar of the new administration. With the inauguration of the Bush administration and the September 11 terrorist attacks, however, work to mold these concepts into concrete measures has been effectively obscured by other pressing political issues, and the DTSI goal of significantly shortening the license screening cycle has not yet been met.

A trial return of the Defense Trade Security Administration (DTSA) back to the Pentagon was being studied before the September 11 attacks. The DTSA, the Department of Defense office that screens export control licenses on security trading, was transferred out from under the domain of the Under Secretary of Defense for Policy to the supervision of the Defense Threat Reduction Agency (DTRA) at the Pentagon during the Clinton administration. Beyond the physical move from Alexandria, Virginia to the Pentagon, the idea of transferring the agency was reportedly seen by Secretary of State Colin Powell and Deputy Secretary of Defense Paul Wolfowitz as symbolically signaling the strong resolve on the part of the Bush administration to implement export control.[30] The return of the DTSA to the Pentagon can also be seen as a move to facilitate cooperation with the Defense Security Cooperation Agency (DSCA), which handles FMS and other matters, and to increase export control efficiency.

The in depth examination of the impact of the terror attacks on U.S. export control system reform might be necessary, since the war against terror and emphasis put on homeland security after the incident significantly altered the tone and the operation of the security policy of the United States. The incident did solidify recognition of the need to reinforce the export control system. Although there is no evident correlation between greater efficiency in export control and stricter regulation, it is a fact that concern over the proliferation of weapons of mass destruction and the technology needed to manufacture them has grown even as export control efficiency has improved. On May 20, 2002, at the Trans-shipment Enforcement Conference for Middle East States held in Barcelona, Spain, Norman A. Wulf, Deputy General Counsel for Nonproliferation and Regional Arms Control and Disarmament Agency (ACDA), remarked that a multilayered approach comprising global nonproliferation treaties, multilateral export control regimes and national export control systems would be needed to

[30] "Pentagon Considers Shifting DTSA From Acquisition To Policy; May Help Exports," *Defense Daily International*, July 27, 2001.

ensure the nonproliferation of weapons of mass destruction.[31] While not a major departure from the nonproliferation policy advocated by the United States in the past, Wulf has not offered an explanation to DTSI of the political relevance of the comprehensive U.S. export control legislation, an important pillar to nonproliferation policy.[32] We cannot presume that these are directly related, but attention must be paid to the changing interests within the future U.S. administrations.

III. DTSI and Security Cooperation

A. Criticism of DTSI

Since its introduction, the contents of DTSI have been subjected to various forms of criticism for its uniqueness.

A major argument over DTSI concerns congressional oversight authority. The critics have argued that its premise of advancing defense cooperation with greater efficiency in export controls would weaken Congressional influence on export control policy. On May 29, 2000, five days after the initiative was released, the U.S. House of Representatives Committee on International Relations passed a resolution that required special measures (referred to as "language" in the resolution) for agreements on arms transfer exemptions to be legally binding. These measures include the adoption of agreements following Congressional debate and are presumably meant to control expansion of export control exemptions under DTSI.[33] Congress is evidently concerned that giving the executive branch unrestricted authority in negotiations that may lead to the uncontrolled circulation of defense equipment and technology among NATO allies, Japan, Australia and other countries would undermine its authority in arms transfer oversight.

Debate on this issue also unfolded domestically between groups stressing the importance of export control to national security and groups focusing on arms control and disarmament. Those focusing on arms control and disarmament expressed concern about the weakening of U.S. arms transfer controls under DTSI. In an open letter to the U.S. Defense and State

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[31] "Meeting the Nonproliferation Challenge," Ambassador Norman Wulf, Remarks to the Transshipment Enforcement Conference for Middle East States, Barcelona, Spain, May 20, 2002. Wulf was the United States representative to the Preparatory Committee Meeting for the 2005 NPT Review Conference held in April 2002.

[32] In the *Quadrennial Defense Review* (QDR) issued in September 2001 and the *Nuclear Posture Review* (NPR), the Bush administration underscores a capacity-based national security policy as a crucial turning point in U.S. military strategy. Greater interoperability through DTSI proves to be an important pillar to U.S. strategy when considered within a policy framework of maintaining U.S. defense capabilities, while at the same time avoiding total dependency on the ability to contain an enemy, expanding offensive abilities through conventional weaponry, and looking to concerted operations with U.S. allies as another link in this chain.

[33] "Congress Hikes Defense, Eyes Export Reforms," *Aerospace America* (October 2000), p. 11.

departments, the British American Security Information Council (BASIC) notes this concern. The BASIC Arms Transfer Working Group suggests that enforcing DTSI while the Framework Agreement Concerning Measures to Facilitate the Restructuring and Operation of the European Defense Industry (referred to below as the Framework Agreement), signed in August 2000 by the defense ministers of France, Germany, Italy, Sweden, Spain and the United Kingdom, is in place would effectively undermine the efficacy of export controls. Their assertion is based on the assumption that export controls in European nations are to be standardized at a minimal level under the Framework Agreement. Critics therefore believe that, if the ITAR exemptions set forth in DTSI were to be expanded, the U.S. government would be forced to lower export controls to European levels in order to ensure the international competitiveness of U.S. companies. Accordingly, BASIC asserts that the shift toward a strong tendency, particularly since the end of the Cold War, toward expansion of ITAR exemptions based on an agreement among allied nations to increase defense cooperation will gradually erode even the fundamental policy of tightening controls over technologies of vital importance.[34] The U.S. Congress responded strongly on this point, with the leaders of both parties expressing skepticism about defense industrial cooperation.

In addition to these objections, there is also criticism of the excessively strong leadership role the United States will take under DTSI. These critics are skeptical of a U.S. attempt to establish global standards in defense production and export control in the name of globalization in the same way that Coca Cola and McDonalds have set global standards for popular culture.[35] The skepticism of DTSI, which argues that it is part of a strategy to establish U.S. dominance through its enforcement, is not unrelated to the current worldview of the U.S. – the view of the United States as a threat to the world based on the frustration over the widening gap between it and the rest of the world. The intention to establish U.S. supremacy is also evident in the work done by the Department of Defense on the revision of the United States Munitions List (USML). The U.S. Defense Department also makes clear in *Joint Vision 2020* that it considers the U.S. defense industry's total system integration technologies, rather than its hardware, to be the key to its superiority. Since the export of this technology and expertise would increase interfacing between the militaries of importing countries and the U.S. arms control systems, the Department of Defense necessarily has incentive to ease relevant export control. This department is reportedly searching for ways to lower customs inspection priority either by removing products and technologies designated on the USML during list revision work or by transferring these items to the Commodity Control List (CCL), which is under the jurisdiction of the Department of Commerce.[36]

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[34] BASIC, "Letter From the Arms Transfer Working Group (ATWG) to U.S. Officials," August 8, 2000.

[35] Tamar Gabelnick and Anna Rich, "Globalized Weaponry," *Foreign Policy In Focus*, Vol. 5, No. 16 (June 2000); Bruce Oddessey, "Transatlantic Export Control Initiative Likely to Continue," *Washington File*, December 7, 2000.

[36] Enforcement of the Arms Export Control Act (AECA) has brought items on the USML under greater scrutiny during customs screenings, and significant punishments are handed down for AECA violations. With the enforcement of export control law, however, the items on the CCL are subject to less severe regulations

The ITAR exemptions, however, are limited under DTSI to declassified technologies and equipment and protect U.S. dominance in the area of cutting-edge technology, veritably ensuring that this gap will widen. European defense industries are therefore not guaranteed fair treatment within the United States, despite the increased access for the countries to cutting-edge technology through joint production with the U.S. The reason behind this lies in the DTSI premise that production and development cooperation would be conducted between individual corporations. The end result is that, while the latest technologies will flow unrestricted among the increasingly consolidated European defense industries, cutting-edge U.S. technology would not flow into Europe through joint production in the United States.[37] This creates a situation in which European nations would be forced to purchase American-made weapons in order to ensure the interoperability hoped for by the U.S. Department of Defense. This aspect of DTSI makes it impossible to dispute charges that the initiative is in fact policy designed to curb European protectionism and promote the sale of U.S. weapons.

B. Multilateral Security Cooperation and Nonproliferation

Considered in this light, a basic policy of increasing interoperability by advancing DTSI and pursuing partnership in weapons production within a limited group of allied nations would inevitably create friction in terms of the interlinking various policies related to the transfer of arms. Easing export controls in response to the increasing multinational nature of arms production brought about by globalization, for example, would increase the proliferation of arms and technology, significantly affecting nonproliferation policy. By contrast, tightening export controls would isolate the United States from the trend in Europe and other areas toward greater international cooperation in the defense industry. This would make it more likely that the United States would be shut out from the European arms market, and at the same time, this could also reduce the U.S. share in the world market.[38]

The concern generated by this friction is also evident in a basic DTSI principle, namely that the transfer of arms provides incentive for individual countries to tighten export control. Generally, U.S. insistence on the preparation of export control systems or the establishment of systems to control third-party transfers as a precondition for executing FMS and other sales increases the cost involved in receiving weapons for diplomatic or national security reasons. If severe collateral conditions are stipulated, recipient countries will instead look for alternative

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than under the AECA. "Under Attack: U.S. Arms Export Controls Targeted on All Fronts," *Arms Sales Monitor*, No. 45 (May 2001), pp. 1-3.

[37] Alex Ashbourne, "Opening the U.S. Defence Market," *Centre for European Reform, Working Paper*, pp. 14-15.

[38] The United States is concerned that consolidation of the European defense industry could result in a policy of isolationism in the region's defense industry and has been studying ways in which to ensure that the U.S. industry continues to participate in Europe's defense industry as it undergoes consolidation. GAO, *Defense Trade: European Initiatives to Integrate the Defense Market*, GAO/NSIAD-98-6 (November 1997), pp. 2-3.

suppliers or look to procure arms on the market. As is evidence, however, by the collision of the U.S. EP-3E spy plane and the Chinese fighter plane in the airspace over Hainan Island in April 2001, vigorous enforcement by the United States of its own laws beyond its borders does not effectively prevent third-party transfers from taking place. The video made public after this incident included footage that revealed the Chinese fighter plane was equipped with Israeli-made *Phython* missiles, exposing the fact that missiles made by Israel based on U.S. technology had been exported to China. The Center for Strategic and International Studies (CSIS), which works on re-export issues, has proposed that items with a parts ratio higher than 25% for American-made parts should be subject to re-export regulations. It indicates that the difficulty of completely suppressing re-exports of American-made products down to the parts from which they are made is generally acknowledged.[39] Under these conditions, it is difficult for the country to expect the prospect of compatibility in transferring arms under advantageous terms to nations whose diplomatic and security interests differ, while at the same time demanding stiffer export control measures.

There is, however, widespread demand for multilateral measures to prevent these frictions from leading into a collision course. *A Blueprint for Action* issued by the American Institute of Aeronautics and Astronautics (AIAA) recommends reclassifying export licenses, and revising the export control system to allow for technology sharing U.S. allies.[40] The Sam Nunn Policy Forum: 2000, the DSB report, and a research report jointly compiled by CSIS and the Henry L. Stimson Center all advocate the application of a multilateral export control framework.[41] A common thread in each of these reports is an awareness of the problem posed by a lack of policy flexibility in existing multilateral export control systems. This awareness is also backed by an understanding of the fact that, whether a policy of easing or tightening export control is pursued, problems will arise as long as the export control system currently in place is tacitly premised on the theory that all technology "arises from a single source."

Indeed, the Euro-Atlantic export control initiative takes the form of collaboration at the international level under the NPT, the Chemical Weapons Convention (CWC), the Missile Technology Control Regime (MTCR), the Wassenaar Arrangement, and other arrangements. Although these regimes play a role to a certain extent in preventing proliferation at the level of major munitions, the results from regulations on the technologies and products used to manufacture these weapons have been less satisfactory than the consequences. In addition, the United States executes unrestricted arms transfers under the particular conditions noted above, while simultaneously pointing to greater cooperation in defense production with European states, Japan and other nations. If the conditions above were met at the same time, an establishment of a quasi-regime among developed nations could be a solution for amending U.S. export control policy, and at the same time, it could promote deregulation among

[39] CSIS, *Technology and Security in the Twenty-First Century: U.S. Military Export Control Reform*, (Washington D.C.: CSIS, 2001).

[40] AIAA Defense Forum 2001, "A Blueprint for Action," p.v.

[41] The Henry L. Stimson Center and CSIS Study Group on Enhancing Multilateral Export Controls for U.S. National Security, *Final Report* (April 2001).

developed countries in the direction advocated under DTSI. This amounts to nothing more than a revival of the policy of "building a high wall around a small number of items" pursued in the early 1990s.

In order to adopt this approach, the participating country must accept the premise that the proliferation of arms and manufacturing technologies is unavoidable. It is also necessary to create a greater sense of threat that all nations within the alliance can agree upon by focusing on a smaller number of nations deemed threatening, rather than letting common security interests surface naturally. In fact, the acceleration of arms transfers is a by-product that must be accepted in adopting DTSI. Moreover, as measures to mitigate the incidental impact on changes to the premise on which export control is based, the basic policies advocated by the United States of "capability-focused defense planning" and "revitalizing security cooperation among allies" actually reinforces consistency throughout government policy. Therefore, the U.S. thinks that the threat to national security related to the proliferation of arms is controlled by enhancing one's capacity to inflict punitive repercussions through the increased military capability gained in cooperation with allies. The Quadrennial Defense Review (QDR) published in September 2001 also explicitly advocates this type of policy, which can presumably be understood as being consistent within the theme of striking the revision of an offensive-defensive balance. It is extremely interesting that support for multilateral measures from the defense industry, private think tanks, and the Department of Defense and other governmental bodies is opposed by NGOs and other groups that have long been interested in the issue of arms transfers and related topics, with their skeptical opinions about this policy. This dissent is presumably based on a sense of the danger inherent in basing export control on the presumption of arms and technology proliferation.

IV. Implications for Japan

The implications of DTSI extend beyond the areas of export control and defense industrial cooperation to include the future of multilateral regimes and military cooperation through improved interoperability among allied nations, as well. The possible impact of this initiative on Japanese national security policy is therefore undoubtedly significant.

Although Japan is included among the countries with which the United States would negotiate under DTSI, no concrete steps in this direction have yet been taken. The Department of Defense insisted on concluding negotiations with the United Kingdom and Australia, the nations given precedence under DTSI, before the end of the Clinton administration's second term, but no rush was made to negotiate with other countries. To put this difference in context, it should be noted that the United States was attempting to apply pressure to other NATO allies by establishing cooperation with the United Kingdom first. Similarly, the precedence given to Australia was significant in the sense that it laid the cornerstone for security cooperation in the Asia-Pacific region. During a November 1999 visit to Japan, however, U.S. Deputy Secretary of Defense John Hamre said in a speech to the Keidanren Defense

Production Committee that, as U.S.–Japan cooperation on defense equipment and technologies are transformed by globalization, the two countries must work to increase joint operations as we move further into the post-Cold War era and improve purchasing efficiency as acquisition budgets shrink.[42] These remarks from Hamre, who is the main DTSI liaison, were taken to indicate that cooperation in export control is to be part of the agenda between the United States and Japan in the future.

Analysis of the U.S.–U.K. and U.S.–Australia negotiations and of the debate surrounding DTSI suggests that Japan will face several issues. The first issue is about Japan's Three Principles on Arms Export. From the U.S. standpoint, the three principles and subsequent guidelines in place now offer both major benefits and significant problems. As long as it continues to uphold the three principles banning the export of arms, Japan will not participate in the international market as an independent arms exporting nation. Moreover, there is no need for concern for the U.S. over third-country transfers of U.S. weapons or technologies received by Japan. These same principles, however, represent a major roadblock to the multilateral production and development of the defense industry and the acquisition sharing that the United States is advocating. In this respect, the principles pose problems in terms of the difficulties they create for the participation of Japanese companies in multilateral projects, as well as for the export by the United States to other countries of the products developed through joint U.S.–Japan projects or the multilateral utilization of systems created from these products. Moreover, in the case that Japan would develop and utilize its own independent technologies, these principles could undeniably compromise interoperability if Japan were to participate in joint military operations with other countries, while maintaining its technological independence.

The second national security issue that emerges with regard to DTSI is about its relationship with China. It is widely known that one point of debate between the United States and Europe on multilateral export control under DTSI is the countries' relations with China. In some respects, this issue resembles the U.S.–European debate centering on Chincom (a COCOM regime that deals separately with China) during the Cold War. If each of the countries involved were to develop a common export control system under DTSI, the United States would push strongly for allied nations to fall into step with their regulations regarding China. European countries, however, do not perceive China to be as great a threat as the United States, feel their interests lie in participating in the Chinese market, and see no great benefit in containing China by regulating technology transfers.[43] Japan does share some national interests with the United States in terms of its policy on China. At the same time, however, in light of the historical relationship between the two neighbors, Japan is hesitant to enforce regulations specifically targeting China. For this reason, unlike with the Chincom

[42] "U.S.–Japan Defense Industry Cooperation in an Era of Globalization," Remarks as Prepared for Delivery by Deputy Secretary of Defense John J. Hamre, Keidanren Defense Production Committee, Tokyo, Japan, November 26, 1999.

[43] Joan Johnson-Freese, "Becoming Chinese? Or—How the U.S. Satellite Export Licensing Process Threatens National Security," *Space Times*, Vol. 40, No. 1 (January – February, 2001).

issue, differences between Japan and the United States in terms of national interest would be expected to emerge.[44]

Beyond these factors, there is also the definite possibility that the surfacing of an agenda of promotion of export control policy and defense cooperation under DTSI would serve as a reminder in Japan of the FSX issue, arousing calls for autonomous Japanese defense production. Given the sharp divisions in the past between those who argued for the development of domestic production in the defense industry and those pushing for the import of foreign products, it is entirely conceivable that a debate would rage that effectively ignores the impact of globalization on this issue.[45] It is also conceivable that this debate would transcend traditional political party lines, unfolding to encompass the issues surrounding the Japanese constitution and anti-globalization arguments. If avoiding this debate proves difficult, the most crucial aspect of political policy in this area would be to immediately begin developing arguments regarding the future of the defense industry in order to soften the impact of this polemic.

Conclusion

While DTSI holds significant potential, the initiative is also weighted down by various problems. The policy offers such advantages as an inclusive approach to the defense industry, arms exports and export control, and the introduction of a new policy based on a different premise from theories advanced in the past. The importance of this policy will increase as more and more countries come to recognize the significant threat the proliferation of weapons poses to their national security. On the other hand, DTSI foresees an international community committed to building a new world order by promoting unity among the former Western bloc nations, and as such, a comprehensive view of this initiative cannot avoid the criticism that DTSI accomplishes nothing more than resurrecting the system building undertaken during the Cold War. The initiative also provides sufficient material for critics who see the systematic application of export controls in individual countries in line with the framework put forth in DTSI working to strengthen the U.S. defense industry and contribute to the aggressive pursuit of arms transfers, thereby preserving U.S. primacy on the world stage.

It would appear that DTSI has lost momentum since the Bush administration took office. Europe has, however, advocated a shift in U.S.-European industrial cooperation focus to the

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[44] The supercomputer issue, which emerged as a problem in the mid 1990s, constituted a difference of opinion between the United States, which was pushing for deregulation, and Japan, which advocated maintaining regulation. With the United States advocating deregulation in the context of the supercomputer debate, the bilateral conflict did not touch on matters of national security. The United States would most likely be offended, however, if Japan were to proceed with deregulation in this case.

[45] Michael J. Green, *Arming Japan: Defense Production, Alliance Politics, and the Postwar Search for Autonomy* (New York: Columbia University Press, 1995); Neil Renwick, *Japan's Alliance Politics and Defense Production*, (New York: St. Martin's Press, 1995).

DCI initiatives. Despite the September 11 terrorist attacks, however, neither the problems facing the defense industry, nor the attention given to the current use of export control as a tool to complement or replace arms control or disarmament has changed significantly. Since September 11, recognition of the threat posed by dual-use technology and products has, of course, increased. This growing perception is based on the increasingly wide-held belief that, since U.S. military primacy is so powerful, the only remaining option is to eliminate this threat using inconsistent methods to inflict damage on the United States. It is therefore highly likely that, even if, for example, attempts to adopt DTSI were frustrated at this point, a similar initiative would again be proposed later.

It is crucial that Japan give thought to its official response to such an endeavor. Although one aspect of DTSI is increased security cooperation among allied nations, by adopting this initiative, the countries involved risk forfeiting their independence. Redefining U.S.-Japan relations in the area of security cooperation from the perspective of export control is necessary, and the new parameters must be based on an analysis of the merits and demerits of the policy direction advocated by the United States.