

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

MAR 11 10:54

March 11, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN

THE PRESIDENT HAS SEEN

3/12/96

SUBJECT: Export Control Reform

The attached Lake/Tyson memo seeks your approval of an interagency consensus on three export control issues, whose resolution will pave the way for a new Export Administration Act, completing your agenda for export control reform. (You have already removed outdated controls on computers, issued an Executive Order to streamline dual-use licensing, and led the effort to establish a post-Cold War export control regime.) The House bill, with Sen. Roth leading the charge, includes provisions on these issues that would interfere with Administration discretion, but Roth is prepared to drop the provisions, provided we resolve them internally. **Because Roth's markup is scheduled for Wednesday, NSC is seeking your approval before you leave for Egypt.**

Civil Communications Satellites and Hot-Section Technology. The issue here is whether these items ("hot-section" technology involves jet aircraft engines) should be licensed through the dual-use, Commerce system (traditionally favored by industry) or the munitions system (traditionally favored by those concerned about keeping a tight grip on technologies that contribute to America's military edge). *Commerce, State and Defense now agree on licensing these items through the dual-use system, subject to some new control procedures.* A new regulation would provide the President with broad authority to control transfers for these two sectors on national security and foreign policy grounds; and a modification to your December E.O would make the initial licensing determination subject to a majority vote of the reviewing agencies. Industry should like dealing with the dual-use, Commerce system; at the same time, individual components on the munitions list, including encryption, will continue to be subject to munitions licensing, by State. Some in Congress will criticize this approach as favoring business over security, but DOD's support should blunt such attack.

Procedures for resolving jurisdictional disputes. Tony and Laura attach a proposed procedure (Tab B) for resolving disputes over whether a product should be on the munitions or dual-use list. The proposal requires a cooperative, transparent procedure among State, Defense and Commerce with a 90-day escalation through a State-chaired process up to the President. The agencies all concur on the text of the proposal.

Approve licensing proposal <input checked="" type="checkbox"/>	Disapprove <input type="checkbox"/>	Discuss <input type="checkbox"/>
Approve dispute procedure <input checked="" type="checkbox"/>	Disapprove <input type="checkbox"/>	Discuss <input type="checkbox"/>

~~CONFIDENTIAL~~

1455

THE WHITE HOUSE
WASHINGTON

March 8, 1996

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
LAURA TYSON

SUBJECT: Export Control Reform

DECLASSIFIED
PER E.O. 13526
2016-0560-M (01)
03102/2020 KDE

Issue

To decide (a) whether certain jet engine hot-section technology and communications satellites will be handled as munitions or dual-use items and (b) the procedures under which the Administration will resolve such issues in the future.

Background

You have already done much to streamline U.S. export controls, while preserving their ability to curb the proliferation of weapons of mass destruction and the missiles that deliver them. You have relieved tens of billions of dollars of computer exports from outdated controls, issued Executive Order 12981 (Tab A) to impose deadlines and accountability in our dual-use licensing procedures while assuring all agencies of the opportunity to review any license request, and led multilateral efforts to establish post-Cold War arrangements for export controls on conventional arms and related dual-use technology. The still-evolving "Wassenaar Arrangements" (named after the town near The Hague where they were negotiated) became negotiable with our European allies only after you and the Vice President secured commitments from Yeltsin and Chernomyrdin to curb Moscow's arms sales to Iran.

This year we have an opportunity to complete your agenda for export control reform. The centerpiece would be a new Export Administration Act, rewritten to reflect the post-COCOM era -- preserving Presidential authority to use unilateral controls while providing greater discipline on their use, including clearer rules to allow industry relief against unfair impact of certain export controls and providing stronger penalties against violators of our export control laws. Congressman Toby Roth, chair of the House subcommittee responsible for the EAA, has made

~~CONFIDENTIAL~~

Reason: 1.5(b) (c) (d)
Declassify on: 03/07/96

cc: Vice President
Chief of Staff

A003335
002225

~~CONFIDENTIAL~~

passing a new Act -- thereby ending years of reliance on emergency Presidential authority to apply U.S. export controls -- a key legislative objective. Roth has assured us that he has secured commitments from House National Security Committee Chairman Floyd Spence and Speaker Gingrich to cooperate in passing the EAA in the House; Roth has also sought the support of his Senate counterpart, Kit Bond.

We have been working closely with Hill staff toward a bill that both the Administration and the House majority can support and are very close to agreement. Our support, however, depends on Roth dropping EAA provisions that would interfere with Administration discretion in addressing three knotty issues: communications satellites, jet engine hot-section technology and the "commodity jurisdiction" procedures by which the Administration decides internally whether an item is a munition or dual-use. We have always maintained that these issues of sector-specific controls and internal procedures should be decided by the Administration, not the Congress. Roth is now willing to drop these issues from his draft EAA, provided that we have settled them.

After extensive interagency debate, agencies have now agreed on how to proceed on all three of these issues.

These decisions will be closely watched by industry and the Congress. Strong sentiments exist in Congress on all sides of these questions. Free traders and promoters of America's high-tech industry (e.g., Senator Feinstein and the Connecticut and California delegations) favor greater reliance on the dual-use system. Those committed to preserving America's military edge by keeping a tight grip on technologies that could, if misused, be turned against our interests (e.g., the national security committees) are very protective of the munitions licensing system.

The balance of this paper describes the specific issues for decision.

Civil Communications Satellites and Hot-Section Technology

Jurisdiction over commercial communications satellites and hot-section technologies associated with commercial aircraft engines is currently divided between State's munitions list and Commerce's dual-use list. Satellites that meet any of nine criteria related to military and intelligence concerns are controlled by State under the munitions list. All agencies agree that military and intelligence satellites should remain subject to munitions controls.

A 003336

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

3

Hot-section technology -- the most critical element to an aircraft engine's survivability, lethality, reliability and sustainability -- vitally affects our national security by preserving our technological lead in military aircraft. It is also common to both civil and military engines. For years, agencies have disputed the degree to which this technology should be licensed under the dual-use or the munitions list. Under its 1993 National Export Strategy, the Administration committed to review this issue in order to clarify jurisdiction.

Industry estimates the international market for large commercial aircraft at \$180 billion through the year 2015. Facing reduced margins and greater competition for global markets (both military and commercial), industry must enter into joint ventures overseas to generate capital for new product development and to gain market penetration through technology and production sharing.

Agencies have long disagreed over the degree to which comsats and hot-section technology should be shifted from the munitions to the dual-use list. Commerce, Defense and State have now agreed to a single general approach for licensing civil comsats and hot-section technology for commercial aircraft. Under this approach, all commercial communications satellites and hot-section technologies associated with commercial aircraft engines would be controlled on the dual-use list, under new control procedures. This would require expanding the regulatory basis for control under the dual-use system for these sectors. A new regulation would be cleared interagency and issued within thirty days of a Presidential decision, providing broad authority under the Export Administration Act to control transfers for these two sectors to any destination on both national security and foreign policy grounds. The Executive order you signed in December on dual-use licensing that provided for 90 day decision-making in most cases would also be modified to make the first level license determination for these two sectors subject to a majority vote of reviewing agencies; otherwise the E.O. process would remain unchanged. Under this approach, commercial communications satellites will be licensed under the dual use system, even if they include individual munitions list components or technologies; in all other cases, munitions list components or technologies themselves will continue to be controlled on the U.S. Munitions List, subject to State licensing.

This approach would fulfill the Administration's commitment to rationalize controls and help U.S. industry compete overseas, while remaining technological leaders in these cutting-edge fields. Industry should like the fact that they will deal with the more "user friendly" Commerce system under prescribed timetables set forth in your executive order. At the same time, this approach would also keep encryption -- except when embedded

A 003337

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

in a civil comsat -- on the munitions list, a key priority for NSA.

On the other hand, since this approach would require notification to the Congress that these items were being shifted off the munitions list, some in Congress will likely criticize the decision for favoring business over security. That criticism, however, will be blunted by the support for this approach by DOD as well as by many other members of Congress.

Commodity Jurisdiction (CJ)

The long-standing disputes over comsats and hot-section technology reflect a broader need to establish transparent internal procedures, with deadlines and accountability, to decide whether a given product should be on the munitions list or the dual-use list, when agencies disagree.

Agencies have developed an approach to the CJ process modeled on the successful administration effort to develop an executive order to govern dual-use license processing. The proposal requires State and Commerce to refer matters to one another in accordance with their respective jurisdiction; requires transparency in commodity jurisdiction and commodity classification requests among State, Defense and Commerce; establishes a 90-day escalation through the State-chaired process up to the President; relies on ITAR definitions; imposes a "default to decision" mechanism; and requires agencies to review the procedures after four months.

After months of discussion, agencies have finally reached agreement on a specific text implementing that approach (Tab B).

RECOMMENDATIONS

That you approve the licensing of all commercial communications satellites and hot-section technologies associated with commercial aircraft engines on the dual-use system, under the conditions outlined above.

Approve _____ Disapprove _____

That you approve the proposed commodity jurisdiction procedure at Tab B.

Approve _____ Disapprove _____

A 003338

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

5

Attachments

Tab A

Executive Order 12961

Tab B

Proposed Commodity Jurisdiction Procedures

A 003339

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

March 11, 1996

MAR 11 4:54

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN

SUBJECT: Export Control Reform

THE PRESIDENT HAS SEEN

3/12/96

The attached Lake/Tyson memo seeks your approval of an interagency consensus on three export control issues, whose resolution will pave the way for a new Export Administration Act, completing your agenda for export control reform. (You have already removed outdated controls on computers, issued an Executive Order to streamline dual-use licensing, and led the effort to establish a post-Cold War export control regime.) The House bill, with Sen. Roth leading the charge, includes provisions on these issues that would interfere with Administration discretion, but Roth is prepared to drop the provisions, provided we resolve them internally. **Because Roth's markup is scheduled for Wednesday, NSC is seeking your approval before you leave for Egypt.**

Civil Communications Satellites and Hot-Section Technology. The issue here is whether these items ("hot-section" technology involves jet aircraft engines) should be licensed through the dual-use, Commerce system (traditionally favored by industry) or the munitions system (traditionally favored by those concerned about keeping a tight grip on technologies that contribute to America's military edge). *Commerce, State and Defense now agree on licensing these items through the dual-use system, subject to some new control procedures.* A new regulation would provide the President with broad authority to control transfers for these two sectors on national security and foreign policy grounds; and a modification to your December E.O would make the initial licensing determination subject to a majority vote of the reviewing agencies. Industry should like dealing with the dual-use, Commerce system; at the same time, individual components on the munitions list, including encryption, will continue to be subject to munitions licensing, by State. Some in Congress will criticize this approach as favoring business over security, but DOD's support should blunt such attack.

Procedures for resolving jurisdictional disputes. Tony and Laura attach a proposed procedure (Tab B) for resolving disputes over whether a product should be on the munitions or dual-use list. The proposal requires a cooperative, transparent procedure among State, Defense and Commerce with a 90-day escalation through a State-chaired process up to the President. The agencies all concur on the text of the proposal.

Approve licensing proposal Disapprove Discuss
Approve dispute procedure Disapprove Discuss

~~CONFIDENTIAL~~

1455

THE WHITE HOUSE
WASHINGTON

March 8, 1996

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
LAURA TYSON

SUBJECT: Export Control Reform

DECLASSIFIED
PER E.O. 13526

2016-0360-M(1.02)
0310212020 KDF

Issue

To decide (a) whether certain jet engine hot-section technology and communications satellites will be handled as munitions or dual-use items and (b) the procedures under which the Administration will resolve such issues in the future.

Background

You have already done much to streamline U.S. export controls, while preserving their ability to curb the proliferation of weapons of mass destruction and the missiles that deliver them. You have relieved tens of billions of dollars of computer exports from outdated controls, issued Executive Order 12981 (Tab A) to impose deadlines and accountability in our dual-use licensing procedures while assuring all agencies of the opportunity to review any license request, and led multilateral efforts to establish post-Cold War arrangements for export controls on conventional arms and related dual-use technology. The still-evolving "Wassenaar Arrangements" (named after the town near The Hague where they were negotiated) became negotiable with our European allies only after you and the Vice President secured commitments from Yeltsin and Chernomyrdin to curb Moscow's arms sales to Iran.

This year we have an opportunity to complete your agenda for export control reform. The centerpiece would be a new Export Administration Act, rewritten to reflect the post-COCOM era -- preserving Presidential authority to use unilateral controls while providing greater discipline on their use, including clearer rules to allow industry relief against unfair impact of certain export controls and providing stronger penalties against violators of our export control laws. Congressman Toby Roth, chair of the House subcommittee responsible for the EAA, has made

~~CONFIDENTIAL~~

Reason: 1.5(b) (c) (d)
Declassify on: 03/07/06

cc: Vice President
Chief of Staff

A003335
100225

~~CONFIDENTIAL~~

passing a new Act -- thereby ending years of reliance on emergency Presidential authority to apply U.S. export controls -- a key legislative objective. Roth has assured us that he has secured commitments from House National Security Committee Chairman Floyd Spence and Speaker Gingrich to cooperate in passing the EAA in the House; Roth has also sought the support of his Senate counterpart, Kit Bond.

We have been working closely with Hill staff toward a bill that both the Administration and the House majority can support and are very close to agreement. Our support, however, depends on Roth dropping EAA provisions that would interfere with Administration discretion in addressing three knotty issues: communications satellites, jet engine hot-section technology and the "commodity jurisdiction" procedures by which the Administration decides internally whether an item is a munition or dual-use. We have always maintained that these issues of sector-specific controls and internal procedures should be decided by the Administration, not the Congress. Roth is now willing to drop these issues from his draft EAA, provided that we have settled them.

After extensive interagency debate, agencies have now agreed on how to proceed on all three of these issues.

These decisions will be closely watched by industry and the Congress. Strong sentiments exist in Congress on all sides of these questions. Free traders and promoters of America's high-tech industry (e.g., Senator Feinstein and the Connecticut and California delegations) favor greater reliance on the dual-use system. Those committed to preserving America's military edge by keeping a tight grip on technologies that could, if misused, be turned against our interests (e.g., the national security committees) are very protective of the munitions licensing system.

The balance of this paper describes the specific issues for decision.

Civil Communications Satellites and Hot-Section Technology

Jurisdiction over commercial communications satellites and hot-section technologies associated with commercial aircraft engines is currently divided between State's munitions list and Commerce's dual-use list. Satellites that meet any of nine criteria related to military and intelligence concerns are controlled by State under the munitions list. All agencies agree that military and intelligence satellites should remain subject to munitions controls.

A 003336

~~CONFIDENTIAL~~

Hot-section technology -- the most critical element to an aircraft engine's survivability, lethality, reliability and sustainability -- vitally affects our national security by preserving our technological lead in military aircraft. It is also common to both civil and military engines. For years, agencies have disputed the degree to which this technology should be licensed under the dual-use or the munitions list. Under its 1993 National Export Strategy, the Administration committed to review this issue in order to clarify jurisdiction.

Industry estimates the international market for large commercial aircraft at \$180 billion through the year 2015. Facing reduced margins and greater competition for global markets (both military and commercial), industry must enter into joint ventures overseas to generate capital for new product development and to gain market penetration through technology and production sharing.

Agencies have long disagreed over the degree to which comsats and hot-section technology should be shifted from the munitions to the dual-use list. Commerce, Defense and State have now agreed to a single general approach for licensing civil comsats and hot-section technology for commercial aircraft. Under this approach, all commercial communications satellites and hot-section technologies associated with commercial aircraft engines would be controlled on the dual-use list, under new control procedures. This would require expanding the regulatory basis for control under the dual-use system for these sectors. A new regulation would be cleared interagency and issued within thirty days of a Presidential decision, providing broad authority under the Export Administration Act to control transfers for these two sectors to any destination on both national security and foreign policy grounds. The Executive order you signed in December on dual-use licensing that provided for 90 day decision-making in most cases would also be modified to make the first level license determination for these two sectors subject to a majority vote of reviewing agencies; otherwise the E.O. process would remain unchanged. Under this approach, commercial communications satellites will be licensed under the dual use system, even if they include individual munitions list components or technologies; in all other cases, munitions list components or technologies themselves will continue to be controlled on the U.S. Munitions List, subject to State licensing.

This approach would fulfill the Administration's commitment to rationalize controls and help U.S. industry compete overseas, while remaining technological leaders in these cutting-edge fields. Industry should like the fact that they will deal with the more "user friendly" Commerce system under prescribed timetables set forth in your executive order. At the same time, this approach would also keep encryption -- except when embedded

~~CONFIDENTIAL~~

in a civil comsat -- on the munitions list, a key priority for NSA.

On the other hand, since this approach would require notification to the Congress that these items were being shifted off the munitions list, some in Congress will likely criticize the decision for favoring business over security. That criticism, however, will be blunted by the support for this approach by DOD as well as by many other members of Congress.

Commodity Jurisdiction (CJ)

The long-standing disputes over comsats and hot-section technology reflect a broader need to establish transparent internal procedures, with deadlines and accountability, to decide whether a given product should be on the munitions list or the dual-use list, when agencies disagree.

Agencies have developed an approach to the CJ process modeled on the successful administration effort to develop an executive order to govern dual-use license processing. The proposal requires State and Commerce to refer matters to one another in accordance with their respective jurisdiction; requires transparency in commodity jurisdiction and commodity classification requests among State, Defense and Commerce; establishes a 90-day escalation through the State-chaired process up to the President; relies on ITAR definitions; imposes a "default to decision" mechanism; and requires agencies to review the procedures after four months.

After months of discussion, agencies have finally reached agreement on a specific text implementing that approach (Tab B):

RECOMMENDATIONS

That you approve the licensing of all commercial communications satellites and hot-section technologies associated with commercial aircraft engines on the dual-use system, under the conditions outlined above.

Approve _____ Disapprove _____

That you approve the proposed commodity jurisdiction procedure at Tab B.

Approve _____ Disapprove _____

A 003338

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

5

Attachments

Tab A

Executive Order 12961

Tab B

Proposed Commodity Jurisdiction Procedures

A 003339

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

COMM 11 03:54

March 11, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN *TS*
SUBJECT: Export Control Reform

THE PRESIDENT HAS SEEN
3/12/96

The attached Lake/Tyson memo seeks your approval of an interagency consensus on three export control issues, whose resolution will pave the way for a new Export Administration Act, completing your agenda for export control reform. (You have already removed outdated controls on computers, issued an Executive Order to streamline dual-use licensing, and led the effort to establish a post-Cold War export control regime.) The House bill, with Sen. Roth leading the charge, includes provisions on these issues that would interfere with Administration discretion, but Roth is prepared to drop the provisions, provided we resolve them internally. **Because Roth's markup is scheduled for Wednesday, NSC is seeking your approval before you leave for Egypt.**

Civil Communications Satellites and Hot-Section Technology. The issue here is whether these items ("hot-section" technology involves jet aircraft engines) should be licensed through the dual-use, Commerce system (traditionally favored by industry) or the munitions system (traditionally favored by those concerned about keeping a tight grip on technologies that contribute to America's military edge). *Commerce, State and Defense now agree on licensing these items through the dual-use system, subject to some new control procedures.* A new regulation would provide the President with broad authority to control transfers for these two sectors on national security and foreign policy grounds; and a modification to your December E.O would make the initial licensing determination subject to a majority vote of the reviewing agencies. Industry should like dealing with the dual-use, Commerce system; at the same time, individual components on the munitions list, including encryption, will continue to be subject to munitions licensing, by State. Some in Congress will criticize this approach as favoring business over security, but DOD's support should blunt such attack.

Procedures for resolving jurisdictional disputes. Tony and Laura attach a proposed procedure (Tab B) for resolving disputes over whether a product should be on the munitions or dual-use list. The proposal requires a cooperative, transparent procedure among State, Defense and Commerce with a 90-day escalation through a State-chaired process up to the President. The agencies all concur on the text of the proposal.

Approve licensing proposal Disapprove ___ Discuss ___
Approve dispute procedure Disapprove ___ Discuss ___

~~CONFIDENTIAL~~

1455

THE WHITE HOUSE

WASHINGTON

March 8, 1996

CONFIDENTIAL

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
LAURA TYSON

DECLASSIFIED
PER E.O. 13526
2016-0360-M (1.03)
03102/2020 KDC

SUBJECT: Export Control Reform

Issue

To decide (a) whether certain jet engine hot-section technology and communications satellites will be handled as munitions or dual-use items and (b) the procedures under which the Administration will resolve such issues in the future.

Background

You have already done much to streamline U.S. export controls, while preserving their ability to curb the proliferation of weapons of mass destruction and the missiles that deliver them. You have relieved tens of billions of dollars of computer exports from outdated controls, issued Executive Order 12981 (Tab A) to impose deadlines and accountability in our dual-use licensing procedures while assuring all agencies of the opportunity to review any license request, and led multilateral efforts to establish post-Cold War arrangements for export controls on conventional arms and related dual-use technology. The still-evolving "Wassenaar Arrangements" (named after the town near The Hague where they were negotiated) became negotiable with our European allies only after you and the Vice President secured commitments from Yeltsin and Chernomyrdin to curb Moscow's arms sales to Iran.

This year we have an opportunity to complete your agenda for export control reform. The centerpiece would be a new Export Administration Act, rewritten to reflect the post-COCOM era -- preserving Presidential authority to use unilateral controls while providing greater discipline on their use, including clearer rules to allow industry relief against unfair impact of certain export controls and providing stronger penalties against violators of our export control laws. Congressman Toby Roth, chair of the House subcommittee responsible for the EAA, has made

~~CONFIDENTIAL~~

Reason: 1.5(b) (c) (d)
Declassify on: 03/07/06

cc: Vice President
Chief of Staff

A003335

~~CONFIDENTIAL~~

passing a new Act -- thereby ending years of reliance on emergency Presidential authority to apply U.S. export controls -- a key legislative objective. Roth has assured us that he has secured commitments from House National Security Committee Chairman Floyd Spence and Speaker Gingrich to cooperate in passing the EAA in the House; Roth has also sought the support of his Senate counterpart, Kit Bond.

We have been working closely with Hill staff toward a bill that both the Administration and the House majority can support and are very close to agreement. Our support, however, depends on Roth dropping EAA provisions that would interfere with Administration discretion in addressing three knotty issues: communications satellites, jet engine hot-section technology and the "commodity jurisdiction" procedures by which the Administration decides internally whether an item is a munition or dual-use. We have always maintained that these issues of sector-specific controls and internal procedures should be decided by the Administration, not the Congress. Roth is now willing to drop these issues from his draft EAA, provided that we have settled them.

After extensive interagency debate, agencies have now agreed on how to proceed on all three of these issues.

These decisions will be closely watched by industry and the Congress. Strong sentiments exist in Congress on all sides of these questions. Free traders and promoters of America's high-tech industry (e.g., Senator Feinstein and the Connecticut and California delegations) favor greater reliance on the dual-use system. Those committed to preserving America's military edge by keeping a tight grip on technologies that could, if misused, be turned against our interests (e.g., the national security committees) are very protective of the munitions licensing system.

The balance of this paper describes the specific issues for decision.

Civil Communications Satellites and Hot-Section Technology

Jurisdiction over commercial communications satellites and hot-section technologies associated with commercial aircraft engines is currently divided between State's munitions list and Commerce's dual-use list. Satellites that meet any of nine criteria related to military and intelligence concerns are controlled by State under the munitions list. All agencies agree that military and intelligence satellites should remain subject to munitions controls.

A 003336

~~CONFIDENTIAL~~

Hot-section technology -- the most critical element to an aircraft engine's survivability, lethality, reliability and sustainability -- vitally affects our national security by preserving our technological lead in military aircraft. It is also common to both civil and military engines. For years, agencies have disputed the degree to which this technology should be licensed under the dual-use or the munitions list. Under its 1993 National Export Strategy, the Administration committed to review this issue in order to clarify jurisdiction.

Industry estimates the international market for large commercial aircraft at \$180 billion through the year 2015. Facing reduced margins and greater competition for global markets (both military and commercial), industry must enter into joint ventures overseas to generate capital for new product development and to gain market penetration through technology and production sharing.

Agencies have long disagreed over the degree to which comsats and hot-section technology should be shifted from the munitions to the dual-use list. Commerce, Defense and State have now agreed to a single general approach for licensing civil comsats and hot-section technology for commercial aircraft. Under this approach, all commercial communications satellites and hot-section technologies associated with commercial aircraft engines would be controlled on the dual-use list, under new control procedures. This would require expanding the regulatory basis for control under the dual-use system for these sectors. A new regulation would be cleared interagency and issued within thirty days of a Presidential decision, providing broad authority under the Export Administration Act to control transfers for these two sectors to any destination on both national security and foreign policy grounds. The Executive order you signed in December on dual-use licensing that provided for 90 day decision-making in most cases would also be modified to make the first level license determination for these two sectors subject to a majority vote of reviewing agencies; otherwise the E.O. process would remain unchanged. Under this approach, commercial communications satellites will be licensed under the dual use system, even if they include individual munitions list components or technologies; in all other cases, munitions list components or technologies themselves will continue to be controlled on the U.S. Munitions List, subject to State licensing.

This approach would fulfill the Administration's commitment to rationalize controls and help U.S. industry compete overseas, while remaining technological leaders in these cutting-edge fields. Industry should like the fact that they will deal with the more "user friendly" Commerce system under prescribed timetables set forth in your executive order. At the same time, this approach would also keep encryption -- except when embedded

~~CONFIDENTIAL~~

in a civil comsat -- on the munitions list, a key priority for NSA.

On the other hand, since this approach would require notification to the Congress that these items were being shifted off the munitions list, some in Congress will likely criticize the decision for favoring business over security. That criticism, however, will be blunted by the support for this approach by DOD as well as by many other members of Congress.

Commodity Jurisdiction (CJ)

The long-standing disputes over comsats and hot-section technology reflect a broader need to establish transparent internal procedures, with deadlines and accountability, to decide whether a given product should be on the munitions list or the dual-use list, when agencies disagree.

Agencies have developed an approach to the CJ process modeled on the successful administration effort to develop an executive order to govern dual-use license processing. The proposal requires State and Commerce to refer matters to one another in accordance with their respective jurisdiction; requires transparency in commodity jurisdiction and commodity classification requests among State, Defense and Commerce; establishes a 90-day escalation through the State-chaired process up to the President; relies on ITAR definitions; imposes a "default to decision" mechanism; and requires agencies to review the procedures after four months.

After months of discussion, agencies have finally reached agreement on a specific text implementing that approach (Tab B).

RECOMMENDATIONS

That you approve the licensing of all commercial communications satellites and hot-section technologies associated with commercial aircraft engines on the dual-use system, under the conditions outlined above.

Approve _____ Disapprove _____

That you approve the proposed commodity jurisdiction procedure at Tab B.

Approve _____ Disapprove _____

A 003338

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

15

Attachments

Tab A

Executive Order 12961

Tab B

Proposed Commodity Jurisdiction Procedures

A 003339

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

THE WHITE HOUSE
WASHINGTON

MAR 11 10:54

March 11, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: TODD STERN

THE PRESIDENT HAS SEEN

3/12/96

SUBJECT: Export Control Reform

The attached Lake/Tyson memo seeks your approval of an interagency consensus on three export control issues, whose resolution will pave the way for a new Export Administration Act, completing your agenda for export control reform. (You have already removed outdated controls on computers, issued an Executive Order to streamline dual-use licensing, and led the effort to establish a post-Cold War export control regime.) The House bill, with Sen. Roth leading the charge, includes provisions on these issues that would interfere with Administration discretion, but Roth is prepared to drop the provisions, provided we resolve them internally. **Because Roth's markup is scheduled for Wednesday, NSC is seeking your approval before you leave for Egypt.**

Civil Communications Satellites and Hot-Section Technology. The issue here is whether these items ("hot-section" technology involves jet aircraft engines) should be licensed through the dual-use, Commerce system (traditionally favored by industry) or the munitions system (traditionally favored by those concerned about keeping a tight grip on technologies that contribute to America's military edge). *Commerce, State and Defense now agree on licensing these items through the dual-use system, subject to some new control procedures.* A new regulation would provide the President with broad authority to control transfers for these two sectors on national security and foreign policy grounds; and a modification to your December E.O would make the initial licensing determination subject to a majority vote of the reviewing agencies. Industry should like dealing with the dual-use, Commerce system; at the same time, individual components on the munitions list, including encryption, will continue to be subject to munitions licensing, by State. Some in Congress will criticize this approach as favoring business over security, but DOD's support should blunt such attack.

Procedures for resolving jurisdictional disputes. Tony and Laura attach a proposed procedure (Tab B) for resolving disputes over whether a product should be on the munitions or dual-use list. The proposal requires a cooperative, transparent procedure among State, Defense and Commerce with a 90-day escalation through a State-chaired process up to the President. The agencies all concur on the text of the proposal.

Approve licensing proposal

Disapprove

Discuss

Approve dispute procedure

Disapprove

Discuss

~~CONFIDENTIAL~~

1455

THE WHITE HOUSE

WASHINGTON

March 8, 1996

CONFIDENTIAL
20:01

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
LAURA TYSON

DECLASSIFIED
FER E.O. 13526
2016-0360-M (1.04)
03102/2000 KDE

SUBJECT: Export Control Reform

Issue

To decide (a) whether certain jet engine hot-section technology and communications satellites will be handled as munitions or dual-use items and (b) the procedures under which the Administration will resolve such issues in the future.

Background

You have already done much to streamline U.S. export controls, while preserving their ability to curb the proliferation of weapons of mass destruction and the missiles that deliver them. You have relieved tens of billions of dollars of computer exports from outdated controls, issued Executive Order 12981 (Tab A) to impose deadlines and accountability in our dual-use licensing procedures while assuring all agencies of the opportunity to review any license request, and led multilateral efforts to establish post-Cold War arrangements for export controls on conventional arms and related dual-use technology. The still-evolving "Wassenaar Arrangements" (named after the town near The Hague where they were negotiated) became negotiable with our European allies only after you and the Vice President secured commitments from Yeltsin and Chernomyrdin to curb Moscow's arms sales to Iran.

This year we have an opportunity to complete your agenda for export control reform. The centerpiece would be a new Export Administration Act, rewritten to reflect the post-COCOM era -- preserving Presidential authority to use unilateral controls while providing greater discipline on their use, including clearer rules to allow industry relief against unfair impact of certain export controls and providing stronger penalties against violators of our export control laws. Congressman Toby Roth, chair of the House subcommittee responsible for the EAA, has made

~~CONFIDENTIAL~~

Reason: 1.5(b) (c) (d)
Declassify on: 03/07/96

cc: Vice President
Chief of Staff

A003335
A 003335

~~CONFIDENTIAL~~

passing a new Act -- thereby ending years of reliance on emergency Presidential authority to apply U.S. export controls -- a key legislative objective. Roth has assured us that he has secured commitments from House National Security Committee Chairman Floyd Spence and Speaker Gingrich to cooperate in passing the EAA in the House; Roth has also sought the support of his Senate counterpart, Kit Bond.

We have been working closely with Hill staff toward a bill that both the Administration and the House majority can support and are very close to agreement. Our support, however, depends on Roth dropping EAA provisions that would interfere with Administration discretion in addressing three knotty issues: communications satellites, jet engine hot-section technology and the "commodity jurisdiction" procedures by which the Administration decides internally whether an item is a munition or dual-use. We have always maintained that these issues of sector-specific controls and internal procedures should be decided by the Administration, not the Congress. Roth is now willing to drop these issues from his draft EAA, provided that we have settled them.

After extensive interagency debate, agencies have now agreed on how to proceed on all three of these issues.

These decisions will be closely watched by industry and the Congress. Strong sentiments exist in Congress on all sides of these questions. Free traders and promoters of America's high-tech industry (e.g., Senator Feinstein and the Connecticut and California delegations) favor greater reliance on the dual-use system. Those committed to preserving America's military edge by keeping a tight grip on technologies that could, if misused, be turned against our interests (e.g., the national security committees) are very protective of the munitions licensing system.

The balance of this paper describes the specific issues for decision.

Civil Communications Satellites and Hot-Section Technology

Jurisdiction over commercial communications satellites and hot-section technologies associated with commercial aircraft engines is currently divided between State's munitions list and Commerce's dual-use list. Satellites that meet any of nine criteria related to military and intelligence concerns are controlled by State under the munitions list. All agencies agree that military and intelligence satellites should remain subject to munitions controls.

A 003336

~~CONFIDENTIAL~~

Hot-section technology -- the most critical element to an aircraft engine's survivability, lethality, reliability and sustainability -- vitally affects our national security by preserving our technological lead in military aircraft. It is also common to both civil and military engines. For years, agencies have disputed the degree to which this technology should be licensed under the dual-use or the munitions list. Under its 1993 National Export Strategy, the Administration committed to review this issue in order to clarify jurisdiction.

Industry estimates the international market for large commercial aircraft at \$180 billion through the year 2015. Facing reduced margins and greater competition for global markets (both military and commercial), industry must enter into joint ventures overseas to generate capital for new product development and to gain market penetration through technology and production sharing.

Agencies have long disagreed over the degree to which comsats and hot-section technology should be shifted from the munitions to the dual-use list. Commerce, Defense and State have now agreed to a single general approach for licensing civil comsats and hot-section technology for commercial aircraft. Under this approach, all commercial communications satellites and hot-section technologies associated with commercial aircraft engines would be controlled on the dual-use list, under new control procedures. This would require expanding the regulatory basis for control under the dual-use system for these sectors. A new regulation would be cleared interagency and issued within thirty days of a Presidential decision, providing broad authority under the Export Administration Act to control transfers for these two sectors to any destination on both national security and foreign policy grounds. The Executive order you signed in December on dual-use licensing that provided for 90 day decision-making in most cases would also be modified to make the first level license determination for these two sectors subject to a majority vote of reviewing agencies; otherwise the E.O. process would remain unchanged. Under this approach, commercial communications satellites will be licensed under the dual use system, even if they include individual munitions list components or technologies; in all other cases, munitions list components or technologies themselves will continue to be controlled on the U.S. Munitions List, subject to State licensing.

This approach would fulfill the Administration's commitment to rationalize controls and help U.S. industry compete overseas, while remaining technological leaders in these cutting-edge fields. Industry should like the fact that they will deal with the more "user friendly" Commerce system under prescribed timetables set forth in your executive order. At the same time, this approach would also keep encryption -- except when embedded

~~CONFIDENTIAL~~

in a civil comsat -- on the munitions list, a key priority for NSA.

On the other hand, since this approach would require notification to the Congress that these items were being shifted off the munitions list, some in Congress will likely criticize the decision for favoring business over security. That criticism, however, will be blunted by the support for this approach by DOD as well as by many other members of Congress.

Commodity Jurisdiction (CJ)

The long-standing disputes over comsats and hot-section technology reflect a broader need to establish transparent internal procedures, with deadlines and accountability, to decide whether a given product should be on the munitions list or the dual-use list, when agencies disagree.

Agencies have developed an approach to the CJ process modeled on the successful administration effort to develop an executive order to govern dual-use license processing. The proposal requires State and Commerce to refer matters to one another in accordance with their respective jurisdiction; requires transparency in commodity jurisdiction and commodity classification requests among State, Defense and Commerce; establishes a 90-day escalation through the State-chaired process up to the President; relies on ITAR definitions; imposes a "default to decision" mechanism; and requires agencies to review the procedures after four months.

After months of discussion, agencies have finally reached agreement on a specific text implementing that approach (Tab B).

RECOMMENDATIONS

That you approve the licensing of all commercial communications satellites and hot-section technologies associated with commercial aircraft engines on the dual-use system, under the conditions outlined above.

Approve _____ Disapprove _____

That you approve the proposed commodity jurisdiction procedure at Tab B.

Approve _____ Disapprove _____

A 003338

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

5

Attachments

Tab A

Executive Order 12961

Tab B

Proposed Commodity Jurisdiction Procedures

A 003339

~~CONFIDENTIAL~~