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Military Technology and Conventional Weapons Export Controls: The Wassenaar Arrangement

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Summary

This report provides background on the Wassenaar Arrangement, which was formally established in July 1996 as a multilateral arrangement aimed at controlling exports of conventional weapons and related dual-use goods and military technology. It is the successor to the expired Coordinating Committee for Multilateral Export Controls (COCOM). This report focuses on the current status, features, and issues raised by the establishment and functioning of the Wassenaar Arrangement. It will be updated only if warranted by notable events related to the Arrangement.

Background

For some 45 years, the primary international organization for coordinating restrictions on dual-use exports was COCOM, the Coordinating Committee For Multilateral Export Controls.¹ COCOM was formed in 1949 to limit military-related transfers to Communist countries. At the time of its termination at the end of March 1994, it consisted of 17 industrial countries, including all members of NATO — except Iceland — and Japan and Australia. COCOM operated on the basis of “consensus,” and functioned without the existence of a treaty or specific international legal authorization. In reality, COCOM “consensus” gave any member — and that member was most likely to be the United States — a veto over the export by any other member of a controlled good or technology.

The day-to-day operations of COCOM involved meetings of a Secretariat in Paris at which the members agreed upon the technical specifications of the dual-use items that were being considered for export to Eastern Europe, the former Soviet Union, and the People’s Republic of China. The Secretariat also decided whether to allow exceptions to

¹ Dual-use exports are those commodities, processes, or technologies created primarily for civilian purposes which can also be used to develop or enhance the capabilities of military equipment.

agreed-upon restrictions. Irregular COCOM “High Level” meetings set or enunciated overall policy for the members. To provide guidance, COCOM created three lists of controlled items: an International Industrial List, an International Atomic Energy List, and an International Munitions List. The export control organizations of the member countries then incorporated some variant of the listed items. In the United States, the Export Administration Regulations contained the U.S. version of the items on the COCOM lists.

Since COCOM had no independent legal existence, implementation of COCOM decisions depended upon the effectiveness of the export control laws and bureaucracies of each of the individual members. It was the responsibility of COCOM member countries to pass and enforce adequate laws and regulations to control exports. The comprehensiveness of the member countries’ export control regimes, the degree of high level attention given to export controls, and the effectiveness of the export control bureaucracies varied considerably. In almost every instance, the United States was the most active in pursuing COCOM limitations on exports, while its major trading partners — especially France, the United Kingdom, and West Germany — often seemed more concerned about facilitating exports. After the dissolution of the Soviet Union, COCOM members agreed, in November 1993, to disband COCOM, replace it with a new entity, and to move to “national discretion” in export licensing decisions as of January 1994. National discretion meant that each country, not COCOM as an entity, would determine what should be exported, and no country could veto the export decisions of another.

The Wassenaar Arrangement²

Beginning in November 1993, Clinton Administration representatives undertook a major effort to create a “broadly based” replacement accord for COCOM which, as initially conceived would include the formerly COCOM-proscribed countries. It was initially hoped that this successor accord would be in place by the time that COCOM was disbanded on March 31, 1994. That deadline was not met. This effort resulted in the establishment of initial elements of the Wassenaar Arrangement, by 28 nations at the Hague on December 19, 1995, subject to the approval of their governments. After meetings in early April and mid-July 1996, the Secretariat of the Arrangement was established in Vienna in 1996.³

Initially called the “New Forum”, the Wassenaar Arrangement has as its primary focus two basic areas: (1) conventional weapons exports and, (2) sensitive dual-use items

² This section is based on: testimony of Clinton Administration witnesses before the Senate Banking Subcommittee on International Finance and Monetary Policy on Feb. 24, 1994, and Sept. 21, 1995; Clinton Administration Press statement on “New Multilateral Export Control Arrangement”, Sept. 11 and 12, 1995; *Washington Post*, Sept. 20, 1995, p. A15; *Defense News*, Sept. 25-Oct. 1, 1995, p.8; *Export Control News*, various issues, 1994-1995; Wassenaar Arrangement: Fact sheet and Final Declaration, Dec. 19, 1995; Address by Under Secretary of State for Arms Control and International Security Affairs, Lynn E. Davis, “The Wassenaar Arrangement,” Jan. 23, 1996, delivered at the Carnegie Endowment for International Peace; Reuters Transcript of Under Secretary of State Lynn E. Davis’ News Conference, Jan. 23, 1996.

³ For background on other control regimes see CRS Report 97-343, *Proliferation Control Regimes: Background and Status*, by Robert D. Shuey, et.al.

and technologies with military end uses. The Clinton Administration viewed the new accord as the “centerpiece” of its efforts to promote “multilateral restraint” in conventional arms sales and transfers of sensitive military technologies.⁴ The Clinton Conventional Arms Transfer Policy, set out in February 1995, was a restatement of a policy approach that has guided U.S. arms transfers since the Reagan Administration.

The Wassenaar Arrangement (formally titled the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies) does not appear to break any new ground in the multilateral conventional arms control area. Previous attempts to achieve regional conventional arms sales agreements — most notably the effort in 1991-1992 by the George H.W. Bush Administration aimed at securing restraint on Middle East arms sales by the five permanent members of the U.N. Security Council — failed due to the lack of consensus among the parties regarding which weapons could be sold and to whom. Elements of the Wassenaar Arrangement dealing with conventional weapons transfers depend for their success on securing the agreement of other weapons suppliers to forego activities that might otherwise be to their political or financial benefit.

There are four major areas of policy concern within the Wassenaar Arrangement. These areas are membership, target countries, materials to be controlled, and organization/operational procedures.

Membership. The initial negotiations on the successor accord among the 17 COCOM members were expanded to include, in addition to the original members, several new European countries and New Zealand as participants. Then at the January 1994 Moscow summit, Secretary of State Christopher and Russian Foreign Minister Kozyrev issued a joint statement welcoming the decision to establish a new multilateral regime and indicating Russia’s wish to join. In the spring of 1994, State Department officials stated that they would oppose the accession of Russia to the new regime as long as it continued weapons sales to Iran. The Russian decision to sell nuclear power reactors to Iran further complicated matters. By early 1995, the United States still was unwilling to agree to Russian participation in the formation of the new regime, while other members of COCOM were unwilling to start the new regime without the Russians. The matter was resolved in June 1995 at a Gore-Chernomyrdin meeting when the Russians agreed not to make any new weapons contracts with Iran or to sell nuclear reprocessing equipment.

The “agreed membership criteria” under the Wassenaar Arrangement are that participants have adequate export controls, adhere to the major existing nonproliferation regimes — the Missile Technology Control Regime, Australia Group, and Nuclear Suppliers Group — and have “responsible” export control policies toward the so-called pariah countries: Iran, Iraq, Libya, and North Korea. According to Clinton Administration officials, China has not been invited to join the new regime because of concerns by the United States and its allies regarding Chinese weapons exports to Iran, Pakistan, and other shortcomings in meeting membership criteria.⁵

⁴ See White House statement made on February 17, 1995, in CRS Report 95-639, *Conventional Arms Transfers: President Clinton’s Policy Directive*, by Richard F. Grimmett, pp. 8-10.

⁵ Statement of Thomas McNamara, Assistant Secretary of State for Political-Military Affairs, in U.S. Congress, Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on (continued...)

Closely related to the question of Russian participation, has been the participation of the other members of the former Soviet Union. The export control system that existed in the Soviet Union was centralized in Moscow. The countries that had been part of the Soviet Union had few responsibilities for controlling exports. Since 1991, the amount of attention paid by these newly independent countries to developing adequate export controls has varied greatly. Even now, a high level of uncertainty continues to exist as to the export control capabilities and the willingness of leaders of these countries to support export controls generally, and an association such as the Wassenaar Arrangement specifically.⁶

Target Countries. A second major area of policy concern relates to countries against which the new Arrangement is to be targeted. From the outset, the United States has wanted to target “countries of concern,” specifically identified as Iran, Iraq, Libya, and North Korea. However, most of the countries participating in the negotiations have preferred setting a general objective of promoting security and stability and then letting each member country determine its export control policies and target countries. As currently constructed, Wassenaar “will not, however, be directed against any state or group of states; impede *bona fide* civil transactions; nor interfere with the rights of states to acquire legitimate means with which to defend themselves.” France, Germany, and Russia, in particular, are opposed to a U.S. proposal to require advance notification of arms sales to regions of concern. However, former Under Secretary of State Lynn Davis noted that participants in the Wassenaar Arrangement have national policies banning arms and related exports to Iran, Libya, Iraq, and North Korea. Secretary Davis also noted the U.S. will continue to insist that prospective new members adhere to such policies.⁷ Based on discussions at the December 1996 plenary session, Secretary Davis said that no participating country was currently transferring arms or ammunition to Afghanistan in keeping with a recent U.N. Security Council resolution.

Materials To Be Controlled. Under the Wassenaar Arrangement, member states have agreed to control exports or retransfers of items and technologies contained on an agreed basic list of Dual-Use Goods and Technologies, and a separate Munitions List. Information on transfers of more than 100 sensitive dual-use goods and technologies on the agreed list are to be shared by members of the Arrangement. Arms transfer reporting is currently confined to the categories of major weapons systems used for the CFE (Conventional Forces, Europe) Treaty and the United Nations Arms Register.

⁵ (...continued)

International Finance and Monetary Policy, Sept. 21, 1995 and *Washington Post*, Sept. 20, 1995, p. A15. *Lynn Davis Carnegie Statement*, Reuters transcript, Jan. 23, 1996.

⁶ The 28 states that signed the Final Declaration establishing the Wassenaar Arrangement on December 19, 1996 were: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Russian Federation, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. At the July 11-12, 1996 meeting, Argentina, Bulgaria, Romania, South Korea, and Ukraine joined the Arrangement, bringing its current membership to 33 states.

⁷ McNamara statement, *Washington Post*, and Lynn Davis statement, op cit.

Regime Organization and Operations. Related to the questions concerning which items should be controlled is the issue of regime organization and operations. None of the participants in the process appears to favor the types of strong controls — and U.S. dominance — that existed under COCOM. National discretion with coordination is the most rigorous procedural option that emerged from the negotiations. Indeed, American officials have publicly acknowledged that only the United States favors prior notification of transfers, and this procedure is not part of the new regime. During plenary sessions and working group discussions, under Wassenaar, member governments are to share information on potential threats to peace and stability. They are to examine closely dubious weapons or technology acquisition trends. Specific information regarding global transfers to non-participating countries of arms in the seven categories, including model and type, (and technology) is to be made available in this manner, as are notices of denials of transfers of specific items on the lists established by the Wassenaar Arrangement. Members will regularly review the dual-use and Munitions List to reflect technological advancements and experience gained.⁸

The Arrangement envisions “more intensive consultations and more intrusive information sharing” among 6 major weapons suppliers: the United Kingdom, the U.S., France, Russia, Germany, and Italy. Through transparency of national activities involving weapons and technology transfers, it is hoped that dangerous acquisition patterns can be detected and halted before they become problematic.

At the July 11-12, 1996 meeting in Vienna, the 33 Wassenaar states approved the “Initial Elements” to govern the Arrangement, and set November 1, 1996, as the date to launch both the control aspects of the agreement and the information exchange. Under the Arrangement, twice a year Participating States report all **transfers or licenses issued** for sensitive dual-use goods or technology (items in Annex 1 which is a subset of the Dual-Use list) — currently for transfers in the seven U.N. categories. In the case of conventional arms transfers, a biannual data exchange among participants gives details of arms **deliveries**. Twice a year, Participating States also report **denials** of licenses to transfer items on the Dual-Use list to non-member states. When a Participating State denies an export license for sensitive dual-use items, it is to notify other participants on an early and timely basis (preferably within 30 days, but definitely within 60 days). The Arrangement does not prohibit a participating country from making an export to a particular destination that has been denied by another participant (this practice is called “undercutting”). But participants are required to notify other participants within 60 days, and preferably within 30 days, after they approve a license for an export of sensitive dual-use goods that are essentially identical to those that have been denied by another participant during the previous three years.⁹

⁸ Lynn Davis Carnegie statement, Jan. 23, 1996.

⁹ Details relating to the Initial Elements of the Wassenaar Arrangement, setting out the procedures and other undertakings agreed to by member states may be found in two unclassified documents available from the U.S. State Department: The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Initial Elements, as adopted by the Plenary of 11-12 July 1996; and Final Version of the Initial Elements List of Dual-Use Goods and Technologies and Munitions List. The latter, dated August 1, 1996, is a 194-page document detailing all dual-use and munitions items covered by the Arrangement. These key documents can also be found at the internet site for the Wassenaar Arrangement, (continued...)

At the December 1-3, 1999 plenary session of Wassenaar Arrangement members, the U.S. team proposed reporting on specific exports rather than aggregated reporting, reporting on exports of all listed items (not just the sensitive and very sensitive items), extensive pre-export reporting, and a “no undercut rule” which would ban exports by a Wassenaar partner of goods already denied by another partner. Russian and Ukrainian delegates reportedly blocked these reforms and the primary accomplishment was a joint statement of the importance of strong enforcement based on national laws.¹⁰ Beginning with the plenary session in December 2000, member states have reaffirmed their concern regarding the threats posed by the illicit possession and use of Man Portable Air-Defence Systems (MANPADS) and agreed on elements of export controls on such weapons. At the December 2001 plenary session, member states reaffirmed their commitment to prevent the acquisition of conventional arms and dual-use goods and technologies by terrorist groups and organizations and by individual terrorists. To make this commitment explicit, they agreed to add a paragraph setting that out to the Initial Elements (paragraph 5 of Part I, “Purposes”). At the December 2002 plenary session, member states agreed to a document setting out detailed “best practice” guidelines and criteria for small arms and light weapons (SALW) exports. At the December 2003 plenary session Participating States also agreed to impose strict controls on the activities of those who engage in the brokering of conventional arms by introducing and implementing adequate laws and regulations based on agreed Elements for Effective Legislation on Arms Brokering.

Issues for Congress

Compliance With Membership Criteria. The agreed membership criteria of the Wassenaar Arrangement basically rely upon statements by members that they will abide by fairly general standards. Since the Russian export control system and those of other NIS countries lack substantial transparency, what steps can be taken to ensure that the membership criteria will be complied with by these states and others with traditions of weak export control systems?

Mechanisms to Induce Higher Standards of Evaluation. Is there an effective means by which the United States can induce acceptance of higher standards for evaluating sensitive technology transfers by other participating states? Is legislation sanctioning nations that continue to transfer weapons and technology to aggressive nations in regions of tension such a mechanism? Would a greater emphasis on use of oversight mechanisms in U.S. law, such as the Arms Export Control Act, or the reauthorization of the Export Administration Act provide the United States with a more effective means of achieving some of the fundamental goals it has been pursuing through the Wassenaar Arrangement?

⁹ (...continued)

which provides current official news releases and other background material relating to Wassenaar, as well as a variety of information about individual members export policies. This site is found at [<http://www.wassenaar.org>].

¹⁰ *Inside U.S. Trade*, Vol. 17, No. 3, Jan. 22, 1999; *The Export Practitioner*, Jan. 2000, pp. 17-19. Details of decisions at all annual meetings are found at [<http://www.wassenaar.org>].