

Government Spying for Commercial Gain

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With the end of the Cold War, the roles and missions of US intelligence organizations are under scrutiny. Assumptions that presuppose the primacy of economic competitiveness in the post-Cold War era are spurring a reevaluation of the traditional view that the US Government should not use its intelligence assets to give US companies competitive advantages over foreign firms. Analysis of the concept of such government-sponsored industrial spying, however, reveals numerous potential problems. These include legal issues, limited cost effectiveness, multinational corporations and, potentially, an increased risk of international conflict if such actions are pursued aggressively. Nevertheless, other countries are doing it, US companies are victims of it, and the US Government has to decide what to do about it.

For the US, the options range from maintaining current policies to enacting drastic measures, including high import tariffs or economic sanctions, against those countries whose governments spy on US businesses. A more reasonable alternative would be the establishment of one or more international agreements between the US and its allies—and possibly other countries—that would restrict governments from using their intelligence capabilities to spy for commercial gain.

Other Categories of Economic Intelligence

Before examining problems and alternatives, however, it is important to distinguish between different categories of economic intelligence. These other categories should not be confused with a government's use of its intelligence assets to spy on foreign businesses and the passage of their information to national commercial enterprises for competitive advantage.

“Traditional” Economic Intelligence. What could be termed the “traditional” approach is one in which US intelligence organizations collect and analyze economic data on behalf of US Government decision-makers. Unlike government-sponsored industrial spying, the traditional approach does not provide intelligence to private individuals or corporations to enhance their competitive status. Instead, the main objective is to supplement political and military data on target countries to obtain the best possible assessment of current conditions and indicators of future trends.

The traditional approach is perhaps best depicted by Sherman Kent in his classic text, *Strategic Intelligence for American World Policy*, first published in 1949. Regarding economic intelligence, Kent asserts that intelligence reporting has to be aware of new economic doctrines and track national policies and economic developments in other countries.¹ Kent continues:

. . . it must watch for new crops and the development of new methods of agriculture, changes in farm machinery, land use, fertilizers, reclamation projects, and so on. It must follow the discovery of new industrial processes, the emergence of new industries, and the sinking of new mines. It must follow the development of new utilities and the extensions of those already established. It must follow changes in the techniques and implement of distribution, new transport routes and changes in the inventory of the units of transportation . . .²

This is the brunt of Kent's view of economic intelligence. He shows that the scope of “traditional” economic intelligence is broad, but nowhere does he mention support for private commercial interests.

Advocates of government spying for commercial gain might point out that Kent deliberately deals only with “high-level foreign positive intelligence” in his book and that this restriction necessarily precludes industrial spying. Kent states, however, that intelligence is “the knowledge upon which we base our high-level national policy toward the other states of the world.”³ This does, indeed, exclude support to private commercial enterprises. The absence throughout the book of any reference to such commercial support implies that Kent did not believe government industrial spying should be used for commercial gain.

Traditional economic intelligence is still important today. During his April 1992 testimony to Congress, then Director of Central Intelligence Robert Gates summarized some of the results of National Security Review 29, signed by President Bush in March 1992. According to Gates, “financial and trade issues and technological developments that could adversely affect the United States were considered of major importance.”⁴ Gates also noted that “policymakers identified new requirements . . . indicating that the Intelligence Community has a wider range of customers than ever with interests that extend beyond traditional natural [sic] security concerns.”⁵ Despite the importance of economic issues and the expansion of traditional national security concerns, however, Gates did not advocate that the US Intelligence Community supply US businesses with intelligence data on foreign industries.

Business Intelligence. Business intelligence does include spying to support commercial interests; in fact, that is the whole point. While a great deal of business “intelligence” involves overt acquisitions of data, spying does occur. As noted in a 1991 business magazine article on corporate spying:

Trade-secret laws bar acquiring data through “improper means” such as theft. But the line between what companies legally may do and what they ethically should avoid is fuzzy. Questionable tactics include posing as a reporter to get into a rival’s boardroom or hiring a plane to look over its plant . . .⁶

The difference between this category of economic intelligence and that of government spying for commercial gain, however, is that business intelligence does not involve government.

Gray Areas. There are gray areas in which businessmen may provide information to their country’s intelligence service regarding foreign competitors or clients. Conversely, defense contractors or other national security-related businesses may be provided government intelligence data because they are required for a special project, such as the development of a weapon system. But in both of these cases, intelligence is being used for national security purposes and not for commercial gain. In the case of a defense contractor, the contract and, hence, profit, has already been obtained. The intelligence information is simply being used to improve the characteristics of a given system being produced by the contractor.

Some Problems

Distinguishing between these different categories of economic intelligence is important because the traditional and business categories do not pose the problems that government spying for commercial gain does. The difficulties in resolving these problems support the argument that the US Government should not use its intelligence assets to collect intelligence for private commercial interests, even if other countries do.

Legal Issues. Even if one ignores problems arising from violations of international trade and patent laws—because they are essentially unenforceable—domestic legal issues will have to be addressed. For example, like any government resource, intelligence assets are funded with tax dollars. Would it be legal—and fair—for the government to use taxpayer-provided resources to benefit private corporations directly and, hence, private citizens? Is it constitutional for most citizens to pay the government so that a select few can profit from it?

The argument can be made that industries and technologies “critical” to US national security should be given special treatment by the government, especially when foreign governments are using their own intelligence assets to undermine US businesses. This would, however, require an extremely liberal interpretation of the Constitution’s provision that the government promote the “general welfare.”

A more difficult issue, if the above argument is accepted, would be that of determining exactly which industries and businesses would receive intelligence assistance. One former US intelligence official was quoted in a 1992 newspaper article as asserting:

... that intelligence agencies believe it would be impossible to distribute such data fairly among US companies and that it might lead foreign intelligence agencies to retaliate by stepping up their spying on US companies abroad.⁷

Another legal question would be deciding who would have the authority to determine which companies could receive intelligence data. What would be the legal basis for this authority? Moreover, what would be the legal precedent for government support to private business outside the intelligence arena?

The answers are not clear. Any attempt to distribute intelligence would be complex. And issues of fairness would most likely lead to lawsuits and costly court battles in which companies vie for "national security" status and, thus, intelligence privileges.

One possible solution to the legal questions of distribution would be to give all US companies intelligence privileges. This, however, would be a logistic nightmare, particularly from a security perspective, and the financial costs would be enormous.

Cost Effectiveness. Some estimates state that spending for the current "traditional" approach to intelligence was about \$19.2 billion in 1990.⁸ Expanding intelligence support beyond government consumers would likely prove to be even more expensive. This calls into question the cost-effectiveness of any program in which the government supplies intelligence to US companies.

There is no guarantee that government-supplied intelligence would enable US companies to compete successfully against foreign companies. As noted in a *Business Week* article on the subject, "economic intelligence isn't a silver bullet that will magically improve US competitiveness. Careful attention to quality, management, and the market count, too."⁹ Furthermore, such intelligence support could actually damage long-term US competitiveness by discouraging

innovation and creating a dependence on foreign firms. Although difficult to prove, precedent for this may be found in other countries.

The former Soviet Union, for example, had a long history of successful spying on Western industries, yet it was not able to keep up with the pace of Western technology. Nonetheless, Russian intelligence still touts the value of industrial espionage.¹⁰

France also spies on US companies, and one press article claims that "a secret CIA report recently warned of French agents roaming the United States looking for business secrets."¹¹ The value of such intelligence operations is unclear, however, especially when balanced against operating expenses and the political costs of possible discovery. The same article noted that the French intelligence budget was increased by 9 percent for 1992—despite the end of the Cold War—and that the FBI delivered protests to Paris after French intelligence was found to be operating against IBM and Texas Instruments.¹² It is hard to determine just how much the French have truly gained from their "intelligence-for-profit" activities, and whether or not the gains have exceeded the costs incurred.

A former trade negotiator, Michael B. Smith, claims that "other countries have active intelligence programs directed against our companies to give their companies a leg up. We ought to emulate them."¹³ Stansfield Turner, a former Director of Central Intelligence, appears to agree. He argues that, "We steal secrets for our military preparedness. I don't see why we shouldn't stay economically competitive."¹⁴

The Soviet and French examples, however, call into question the validity of this argument that US intelligence should spy on behalf of US companies just because other countries engage in the practice. It would be difficult, if not impossible, to perform an accurate cost-benefit analysis. There is a strong possibility, however, that the additional money spent on such intelligence collection might produce better results if it were spent on improvements in education, research and development, or other areas which could, in the long term, help to increase US economic competitiveness.

Multinational Corporations. The problems associated with legal issues and cost-effectiveness are aggravated when dealing with multinational corporations. In drafting legislation to allow government intelligence collection on behalf of US companies, how would multinational corporations be handled? Would it be cost-effective for the government to collect and give intelligence data to a US-based multinational corporation, only to have the US headquarters pass the information along to its divisions abroad? But if multinationals are excluded, would not their US divisions then be put at a competitive disadvantage by their own government? Moreover, what are the legal implications of, for example, the CIA spying on a foreign-based division of the Ford Motor Company?

These problems regarding legal issues, cost-effectiveness, and the special case of multinational corporations indicate that implementing a government "intelligence-for-profit" program would be an arduous task of questionable merit. Another problem with government commercial spying that is broader in scope and more difficult to define may be the most important: the danger of increasing the risk of international conflict.

The Prospect of International Conflict. Competition among businesses is good, but among countries it is not necessary. Indeed, government involvement in commercial competition can be dangerous. If they cannot compete, companies can reduce their size or go out of business, but countries cannot. Furthermore, unlike companies, countries have the ability to tax and to raise armies. This presents two potential problems: taxation to subsidize government-backed commercial interests can incite anger in other countries and foreign companies, with retaliatory subsidies angering the original subsidizer; and countries, because they cannot simply declare bankruptcy and go out of business, could resort to armed conflict if they fear a significant failure in the realm of commercial competition. Add to these the uncertainties associated with political leaders—whose egos might not allow them to consider relinquishing power just because of economic woes—and the danger of "business-induced" international conflict becomes readily apparent.

Government intelligence collection for commercial gain is a high-risk strategy because it only encourages such national economic rivalries. If it is pursued vigorously, it could lead to international conflict. The US has the opportunity to lead the international community away from such conflict and toward those free market principles that prevailed over socialism during the Cold War. A truly free international market will probably not be achieved in the near future, but it is an admirable goal.

If the US were to adopt an "intelligence-for-profit" approach, it would be sending potentially antagonistic signals to its allies and all of the other members of the international community. Still, the problem of *other* countries using this approach remains.

Gates, for example, has warned that nearly 20 foreign governments are carrying out economic intelligence gathering that harms US interests.¹⁵ In addition, R. Patrick Watson of the FBI has said that "we're finding intelligence organizations from countries we've never looked at before who are active in the US."¹⁶ Gates adds that foreign intelligence agencies of traditionally friendly countries "are trying to plant moles in American high-tech companies [and] search briefcases of American businessmen traveling overseas."¹⁷

For now, the US does not appear to be willing to engage in such practices, but it will take defensive measures. According to an April 1992 press report concerning Gates's testimony before a Congressional panel:

Some members of the panel pressed Gates to help US companies by seeking out commercial secrets of foreign competitors. But in his testimony Gates ruled that out, saying the CIA would limit itself to helping US companies safeguard themselves against foreign intelligence operations.¹⁸

There are several alternative options to Gates's approach, however, that the US can take, including more active measures.

Alternative Approaches

It is reasonable to argue that Gates's defensive approach is wise, especially for the short term. But counterintelligence measures merely combat the problem without removing its cause. In the long term, the US would benefit if it could develop a more substantial solution to eliminate the cause of the problem.

Retaining Traditional Measures. This does not mean that traditional economic intelligence or defensive measures should be dropped. As Gates noted in a December 1991 speech, US intelligence has:

...long assessed key aspects of international trade and economics, with special focus on foreign technological developments as well as on countries or governments that try to steal our technology or seek unfairly or illegally to disadvantage American business. These economic challenges to the United States will grow, and we in intelligence must play our appropriate role in helping the government to meet them.¹⁹

This "role" for US intelligence in the economic sphere is a reasonable one. It can be carried out without providing select private individuals or businesses with intelligence that would give them a competitive advantage. The US could stop here, which would essentially mean maintaining the status quo as far as economic intelligence is concerned. If the role of US intelligence should stop at this traditional level, however, what alternatives are there outside of the intelligence arena to constrain other countries from pursuing government-sponsored industrial spying for commercial gain?

Economic Reprisals. One possible way to deter other countries from using their intelligence resources for industrial espionage against the US is to pursue some form of economic reprisal against offending states. A somewhat obvious difficulty would be determining, and then publicly proving, that a suspected country's intelligence service was spying on US companies for commercial gain.

Even if such activity could be proved, choosing an appropriate response might be difficult. Would high import tariffs be appropriate? Under some

circumstances, the imposition of such tariffs by the US might spur retaliatory tariffs by the offending country and possibly its allies, and prove to have a detrimental effect on US exports to those countries. In short, would the "cure" of high tariffs be worse than the overall "affliction" of foreign spying on US business?

More extreme measures, including economic sanctions, might increase the risk of international conflict even more than industrial spying. Economic reprisals, then, do not appear to be a practical alternative to government spying for commercial gain. The problems associated with these reprisals, however, do demonstrate the increased potential for conflict caused by "intelligence-for-profit" pursuits by highlighting the frustration that can be faced by a country that is being victimized.

International Agreements. International agreements might be a more acceptable alternative to government-backed commercial spying. The US could pursue such agreements in a number of ways. One would be a single treaty that any country could sign if it so desired, with each signatory pledging not to use its intelligence services to spy on any of the others for commercial gain. Other approaches could include bilateral or multilateral agreements, particularly between the US and its strongest allies.

Such agreements would be preferable to unconstrained government-sponsored commercial spying not only for the US but also for all signatory countries. They do not entail the moral, legal, financial, and logistic difficulties associated with this particular type of spying and with the distribution of the intelligence, once it has been collected.

In addition, such agreements would limit the potential for conflict by providing a formal and predetermined means of response if one of the signatory countries is suspected of such spying. This would eliminate the need for unexpected antagonistic economic reprisals. Such agreements also would provide assurances to otherwise potential economic rivals that governments would not use their intelligence resources to achieve competitive advantage.

Moreover, these agreements could include statements acknowledging the role of traditional economic intelligence. This could be seen as a loophole, however, so the signatories might prefer not to mention it at all, leaving it with the status of an unspoken assumption. But any government probably would not be willing to give up its capability to assess the economic status of other countries for its own national security (noncommercial) purposes.

The agreements could contain provisions for cooperative defense measures to be taken against non-signatories that use their intelligence services against the businesses of one or more of the signatory countries. These measures could include "tip-offs"—or more substantial intelligence sharing—regarding offending countries and retaliatory actions, including joint diplomatic protests or trade restrictions. For agreements to be effective, however, these additional provisions would not be absolutely necessary.

It could be argued that intelligence collected by businesses would pose a problem for such agreements. This would be especially true concerning any agreement involving the Japanese, who purportedly do most of their economic spying using business assets.²⁰ Strictly speaking, this type of intelligence would not have to be addressed in these agreements.

The issue of businesses providing intelligence to their respective governments, however, would be a contentious one. Signatory governments could agree, perhaps, that such intelligence would be allowed as long as it is not redistributed to other companies.

This might be especially difficult for Japan, given the purpose of its Ministry for International Trade and Industry (MITI). As a result, Japan might have to limit its participation in such agreements or reassess the purpose and functions of MITI. Overall, though, the issue is resolvable, as long as the countries engaged in the process are sincere in their efforts to restrict government involvement in industrial spying.

Conclusions

While current US policy, as recommended by Gates, does not include providing private business with government intelligence data for commercial gain, the question is apparently still open. It is a valid

question and not simply a search for new missions by intelligence organizations seeking to preserve their budgets.

Nevertheless, the problems associated with legal issues, cost-effectiveness, multinational corporations, and the increased risk of international conflict indicate that government-sponsored spying for commercial gain is not worth the effort. Defensive counterintelligence policies aimed at combating foreign intelligence in the economic arena are worth continuing, but they are not a true long-term solution to the problem.

The formulation of one or more multinational agreements is, perhaps, the most reasonable long-term approach to take. Just as countries have developed treaties to reduce the dangers associated with military rivalry, so too can they develop mutual understanding and agreements regarding economic rivalry. Such agreements, if taken seriously, could foster an international environment in which economic competition would not be the harbinger of conflict among nations but would instead be the stimulus for business innovation and improved living standards worldwide.

NOTES

1. Sherman Kent, *Strategic Intelligence for American World Policy* (Princeton, NJ: Princeton University Press, 1949), p. 34.
2. Kent, pp. 34-35.
3. Kent, p. 3.
4. Robert Gates, testimony before the Senate Select Intelligence Committee and the House Permanent Select Intelligence Committee Hearing on "Intelligence Reorganization Legislation," 1 April 1992 (from a *Reuters* news transcript, 1 April 1992).
5. *Ibid.*
6. Michele Galen, Joseph Weber, and Stephanie Anderson, "These Guys Aren't Spooks. They're 'Competitive Analysts,'" *Business Week*, 14 October 1991, p. 97.

7. John Burgess and John Mintz, "CIA, FBI Chiefs Warn Panel Over Economic Espionage," *The Washington Post*, 30 April 1992, section B., p. 13.
8. Amy Borrus, et al., "Should the CIA Start Spying for Corporate America?" *Business Week*, 14 October 1992, p. 96.
9. *Ibid.*
10. Alexander Chernyak, "Agents Tout Value of Industrial Espionage," *Pravda*, 28 February 1992, pp. 1 and 3.
11. Douglas Waller, "The Open Barn Door," *Newsweek*, 4 May 1992, p. 7.
12. *Ibid.*
13. Borrus, et al., p. 7.
14. *Ibid.*
15. Burgess and Mintz, sec. B., p. 11.
16. Waller, p. 7.
17. *Ibid.*
18. Burgess and Mintz, sec. B., p. 11.
19. Robert Gates, "The Future of American Intelligence" (A speech to the Intelligence Community), 4 December 1991.
20. Borrus, et al., p. 96.