

Statement
of
Vann H. Van Diepen
Acting Deputy Assistant Secretary of State
for Nonproliferation Controls

Before the
U.S.-China Commission

January 17, 2002

Members of the Commission:

Thank you for the opportunity to provide the views of the Department of State on export controls and China.

Our relationship with China continues to be one of the most complex foreign policy issues facing this Administration. We have been encouraged by the level of cooperation that we have received from China on fighting terrorism since September 11. However, this does not mean that we have diminished in any way our commitment to pursue our objectives in areas where key differences exist between us, such as nonproliferation and human rights. To this end, I believe that existing export controls play a crucial role in safeguarding U.S. national security and foreign policy interests while also upholding important U.S. political and economic interests in responsible trade with China.

China is a focus of our export control policy because it is a growing regional military power and because Chinese entities have been involved in proliferation-related activities. The Administration applies strong export controls on both dual-use items and munitions with the goal of not contributing to nuclear, missile, CBW and other military programs of concern in China or elsewhere.

Before I elaborate on the controls in the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), it is important to comment on China as a market. U.S. industry has rightly identified China as the largest potential market of the

coming century. Now is a critical time when our companies are jockeying for position in the market with competitors from Europe and Asia. First entry is often the difference between success and failure. When the business relationship involves controlled dual-use items, these realities require export control policy and individual licensing decisions that strike an appropriate balance between traditional security concerns and U.S. economic security. This can be particularly problematic in our relationship with China, where it is often difficult to identify the line between the public and private sectors and between military and civil end-users.

Ultimately, however, when there is a conflict between economic and traditional security concerns, export controls must uphold U.S. national security and foreign policy. This is particularly clear in the case of munitions exports.

Munitions exports

Exports to China of items on the U.S. Munitions List (USML), which currently includes satellites and many satellite components, are prohibited by the sanctions imposed following the 1989 Tiananmen Square massacre. The sanctions allow for a Presidential waiver if an export is deemed to be in the U.S. national interest. Several waivers have been granted over the years to allow the launch of satellites from China (including those under Commerce control pursuant to a separate provision of the Tiananmen sanctions), as well as for encryption equipment when it was on the USML. But the overall number of munitions-list exports to China since 1989 has been extremely small.

Exports of satellites and components for launch from China have sometimes been prohibited because of Chinese missile proliferation activities, and there have been periods where we would not consider such waivers or satellite licenses because of proliferation concerns.

For example, as a matter of policy the U.S. decided in February 2000 not to approve satellite licenses or waivers for China until it had addressed our missile proliferation concerns. In November 2000, the Chinese made certain missile nonproliferation commitments to us that made it possible for us to resume normal processing of licenses for

the launch of U.S. satellites on Chinese boosters. We reviewed cases that had been submitted and were considering whether to recommend waivers of Tiananmen sanctions to the President. However, because of subsequent exports to Pakistan by Chinese entities that were inconsistent with the November 2000 U.S.-China missile nonproliferation arrangement, the U.S. in September 2001 sanctioned a Chinese entity, and, by extension, certain activities of the Chinese government. These missile sanctions preclude for two years approval of new export licenses for the export to China of any items on the Missile Technology Control Regime (MTCR) Annex (which, in USML terms, would include satellites containing Annex items) and present another barrier, in addition to the Tiananmen sanctions, to the export of U.S. satellites, or foreign satellites containing USML components, to China.

We have discussed this issue with China, including at senior levels, and remain open to further dialogue. The key to moving forward on this issue is in China's hands. China must take steps to resolve our concerns regarding implementation of its November 2000 missile nonproliferation commitments -- including putting in place comprehensive missile-related export controls -- before we can consider waiving the September 2001 missile sanctions and recommending to the President that he waive Tiananmen sanctions for satellite projects.

Dual-use Goods

By definition, dual-use items pose fewer national security risks than items under munitions controls. Decisions on dual-use exports, therefore, must be more sensitive to the economic consequences while still upholding U.S. national security. Therefore, the Administration continues to maintain a system of dual-use controls, including on China, that focuses on evaluating the appropriateness of the proposed export to the civil needs of the end-user and the risk of diversion.

The Commerce Department under the EAR maintains dual-use controls that include China in the following areas of proliferation and military concern: National Security (NS), Nuclear Nonproliferation (NP), Missile Technology (MT), and Chemical and Biological Weapons (CB). The NS-control specifically outlines a policy of extended review or denial for China if the item makes a "direct and

significant" contribution to electronic and anti-submarine warfare, intelligence gathering, power projection or air superiority. The NP-control includes a policy of extended review or denial for items to China that make a "direct and significant" contribution to nuclear weapons and their delivery systems. The MT-control includes a policy of denial for items deemed to make a "material contribution" to missile proliferation; various restraint and denial criteria also are required by U.S. commitments under the Missile Technology Control Regime (MTCR). Furthermore, the National Defense Authorization Act for FY1999 requires that any export of MTCR-controlled items to China be preceded by a Presidential certification that the export is not detrimental to the U.S. space launch industry and will not "measurably improve" Chinese missile or space-launch capabilities. The CB-control includes a policy of denial for those items deemed to make a "material contribution" to CBW programs. The Administration also continues to enforce those aspects of the Tiananmen sanctions that prohibit export of items controlled for crime control from the U.S. to China without a license.

Another key component of our export controls generally is the ability to control items based on the end-use and end-user. EAR "catch-all" controls require a license to export or reexport any item subject to the EAR that the exporter or reexporter knows will be used for WMD- or missile-related activities in certain countries, including China. The catch-all controls also prohibit certain activities of U.S. persons in support of certain nuclear, missile, chemical or biological end-uses regardless of whether that support involves the export or reexport of items subject to the EAR. In addition, agencies involved in dual-use export control have placed a number of end-users of concern (including Chinese end-users) on the Commerce Department Entity List because of an unacceptable risk that items going to these entities would be used in, or diverted to, proliferation activities. By further focusing China controls on not only the item to be exported but also the ultimate end-use and on certain end-users, we have created a system that is both efficient and effective.

It is also of great importance that our export controls are not undermined by other countries. The U.S. therefore works closely within the multilateral regimes and individually with regime partner countries to ensure that U.S. security is not undercut by foreign sales. The MTCR,

Nuclear Suppliers Group (NSG) and Australia Group all have "no undercut" policies in place. Certain categories of items controlled by the Wassenaar Arrangement are subject to post-facto undercut reporting, albeit not a true "no undercut" policy. We believe that these regimes, in addition to our discussions with and demarches to the major potential supplier nations of sensitive exports, have helped preserve the integrity of our export controls -- including vis-a-vis China.

Conclusion

Are these U.S. export controls enough? That question has been posed by some concerned about what they see as a growing Chinese military threat. Are the controls too extensive? Just as loudly, some in industry question the utility of limiting access to a lucrative market. While it may be ultimately unsatisfying to all sides, the reality is somewhere in between -- which is par for the course in export control. Our policy on export controls to China, as in the case of export controls more generally, must continue to balance national security concerns and other foreign policy concerns with economic concerns.

U.S. export control policy on China allows us to implement stringent sanctions on end-users of concern and prohibit specific military- or proliferation-related exports, relying on the U.S. government's thorough reviews of applications and the extensive license conditions imposed to take national security concerns into account. Our policy also allows us to treat flexibly areas where the technology is widely available as commodity items or physically impractical to control, such as low-level computers or encryption, thus helping U.S. companies to compete in China on a level playing field. The Administration continually reviews export control policies for China and other countries in an effort to take into account the realities of the market and technology.

In conclusion, it is important that we continue to maintain an active dialogue on and with China. The State Department welcomes the opportunity to discuss these crucial issues with members of Congress and the Commission.