Deregulating Dual-Use Exports to Russia: Is U.S. National Security at Risk?

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Abstract

This Note examines whether the current initiatives to deregulate export controls on computer and telecommunications to Russia pose threats to U.S. national security. Part I reviews the development of unilateral and multilateral controls that prevented the exportation of dual-use commodities to the former Soviet Union. Part II describes the current political and economic situation in Russia. Part II then discusses recent deregulation and pending legislation in the U.S. Congress that would further reduce the controls on computer and telecommunications exports to Russia. Part II also sets forth the arguments for and against deregulation. Part III argues that the instability in Russia warrants the continued restriction of dual-use technology to Russia in order to protect U.S. surveillance efforts and prevent the Russian government from using the technology for military purposes. This Note concludes that the United States must devise an export policy toward Russia that balances the need to eliminate export controls that are hindering U.S. economic competitiveness with U.S. security interests.
BEGIN EXTRACT

DEREGULATING DUAL-USE EXPORTS TO RUSSIA: IS U.S. NATIONAL SECURITY AT RISK?

Rochelle M. Tarlowe*

INTRODUCTION

During the Cold War,¹ in order to protect its security interests, the United States sought to restrict exports of dual-use commodities² to the Soviet Union.³ To further this objective, the United States and its allies⁴ formed the Coordinating Committee for Multilateral Export Control ("COCOM").⁵ Each COCOM member nation implemented COCOM's regulations through its own export control system.⁶ In the United States, export controls are governed by the Export Administration Act ("EAA").⁷

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1. See KARL W. RYAVEC, UNITED STATES-SOVET RELATIONS 46 (1989). The Cold War was a period of rivalry between the United States and the Soviet Union during which each nation attempted to weaken the other without waging an outright war. Id. The term is broadly used to define U.S.-Soviet Relations. Id. at 47.

2. See Philip H. Oettinger, Comment, National Discretion: Choosing COCOM's Successor and the New Export Administration Act, 9 AM. J. INT'L L. & POL'y 559, 567 (1994). Dual-use commodities are items that have civilian uses but also have military applications. Machine tools, computers, telecommunications, lasers, electronics equipment, and aerospace equipment are examples of controlled dual-use commodities. 15 C.F.R. § 799.1 (Supp. 1 1994).


4. 15 C.F.R. § 770.2 (1994). The members of the Coordinating Committee for Multilateral Export Controls were Australia, Belgium, Canada, Denmark, France, Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States. Id.

5. See WILLIAM J. LONG, U.S. EXPORT CONTROL POLICY: EXECUTIVE AUTONOMY VS. CONGRESSIONAL REFORM 17 (1989). COCOM was founded in 1949 as an international effort to control the transfer of defense technologies the by member states to potential enemy nations. Id. COCOM was not established through any formal treaty. Cecil Hunt, COCOM and Other International Cooperation in Export Control, in COPING WITH EXPORT CONTROLS 1988, at 109, 112 (PLI Comm. L. & Practice Course Handbook Series No. 458, 1988). Export controls are implemented subject to unanimous consent by all COCOM members. Id. COCOM controlled strategic exports to the Soviet Union, Hungary, Bulgaria, Czechoslovakia, Poland, East Germany, Romania, Albania, North Korea, Mongolia, Vietnam, and the People's Republic of China. Id. at 112-13.


The fall of the Soviet government in December 1991 prompted U.S. technological industries to criticize controls on dual-use exports such as computers and telecommunications equipment to Russia. Supporters of U.S. business interests asserted that eliminating export restrictions to the former Soviet Union would create investment opportunities while assisting in the development of democracy and capitalism in the region. Furthermore, they argued, controls did not protect U.S. security interests because the controlled exports were available to Russia from sources other than the United States.

With the disbanding of COCOM in March 1994, former members were free to regulate export controls unilaterally. U.S. President Bill Clinton thereafter modified licensing requirements to permit exports of certain telecommunications and computer equipment previously prohibited for export to Russia.

The EAA subjects exports to licensing requirements. INTERNATIONAL TRADE, supra note 6, at 422. Pursuant to the EAA the Department of Commerce issues control lists for restricted exports. Id. In addition to the EAA, the Arms Export Control Act limits the export of military technology. Id.; 22 U.S.C. § 2778 (1988 & Supp. V 1993).


10. Telecommunications Hearings, supra note 9, at 13-16; see Shahid Alam, Restructuring the United States' Export Legislation for the Post-Cold War Era, 18 FLECHER F. WORLD AFF. 137, 143 (1994) (stating United States should respond to Russian President Boris Yeltsin's request to obtain Western technology).


In addition, members of the U.S. Congress seek to amend the EAA to eliminate many of the remaining controls on dual-use exports to Russia.

While U.S. businesses support legislation to deregulate export controls on dual-use technology to Russia, critics of deregulation argue that relaxing export controls will harm U.S. security interests. After the collapse of the Soviet Union, the Russian government has experienced difficulties in maintaining economic and political stability. Meanwhile, Russia still possesses a vast nuclear arsenal. Opponents of deregulation assert that exporting advanced computer and telecommunications equipment will hinder the ability of the United States to monitor Russia while providing a potential ultra-nationalist Russian

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13. Id. President Clinton eliminated controls on all but the most sophisticated telecommunications equipment and certain computer equipment. Id. The deregulations were implemented through the creation of the "GLX," a new general license. 15 C.F.R. § 771.20 (1994).


15. See, e.g., EAA Hearings, supra note 9, at 107 (testimony of Boyd McKelvian, Senior Manager for International Trade Regulation, International Law and Policy, General Electric Company) (complementing legislators who have proposed bills to eliminate export controls on telecommunications and computers).


19. See Christopher A. Padilla, The Telecommunications Core List: A Study in Dual Personality, in COPING WITH EXPORT CONTROLS 1992, at 111, 116 (PLI Comm. L. & Practice Course Handbook Series No. 606, 1992) [hereinafter Dual Personality] (stating U.S. National Security Agency has been opposed to exporting telecommunications technology to Russia because modernized network would make it more difficult to gather intelligence through wiretapping).
leader with the technologies to enhance Russia's military capabilities.\textsuperscript{20}

This Note examines whether the current initiatives to deregulate export controls on computer and telecommunications to Russia pose threats to U.S. national security. Part I reviews the development of unilateral and multilateral controls that prevented the exportation of dual-use commodities to the former Soviet Union. Part II describes the current political and economic situation in Russia. Part II then discusses recent deregulation and pending legislation in the U.S. Congress that would further reduce the controls on computer and telecommunications exports to Russia. Part II also sets forth the arguments for and against deregulation. Part III argues that the instability in Russia warrants the continued restriction of dual-use technology to Russia in order to protect U.S. surveillance efforts and prevent the Russian government from using the technology for military purposes. This Note concludes that the United States must devise an export policy toward Russia that balances the need to eliminate export controls that are hindering U.S. economic competitiveness with U.S. security interests.

\section{I. EXPORT CONTROLS ON DUAL-USE ITEMS FROM THE COLD WAR UNTIL THE FALL OF THE SOVIET UNION}

Prior to the Cold War, modern day export controls only existed during wartime.\textsuperscript{21} The decline of U.S.-Soviet relations following World War II\textsuperscript{22} led the United States to implement exten-
sive peacetime export restrictions. Beginning in 1949, the United States limited the flow of goods and technology to the Soviet Union and, in conjunction with its allies, established export controls on a multilateral level. Since 1949, U.S. export laws were revised on repeated occasions. In 1991, the United States and COCOM responded to the fall of communism in Eastern Europe by revising the list of controlled commodities and controlled destinations.

A. The Establishment of Cold War Export Restrictions

In 1949, the U.S. Congress passed the Export Control Act ("ECA"), the first comprehensive export law enacted in the United States to restrict the exportation of commercial goods and technology. The ECA was primarily instituted to control exports to the Soviet Union and other communist nations that might harm U.S. security interests. Although the ECA was

United States sought to contain the Soviet threat through unifying the Western countries. Id.


24. Export Control Act, ch. 11, 63 Stat. 7 (1949) (codified as amended at 50 U.S.C. §§ 2021-2023 (expired 1969)). The Export Control Act gave the President the authority to "prohibit or curtail the exportation from the United States, its Territories, and possessions, of any articles, materials, or supplies, including technical data except under such rules and regulations as he shall prescribe." Id.

25. See supra note 4 (listing members of COCOM).

26. L.J. KUTTEN & B.C. MURPHY, AN OVERVIEW OF UNITED STATES EXPORT CONTROLS 4 (1989) [hereinafter OVERVIEW OF EXPORT CONTROLS]. In the 1950's the United States and its allies established COCOM to control exports to communist countries. Id.

27. See id. at 4-5 (enumerating amendments to Export Administration Act during 1970's and 1980's).


30. OVERVIEW OF EXPORT CONTROLS, supra note 26, at 3-4.

31. Id. "The Congress hereby declares that it is the policy of the United States to use export controls to the extent necessary . . . to exercise the necessary vigilance over export from the standpoint of their significance to the national security." Export Con-
drafted to expire in 1951,32 Congress repeatedly renewed the ECA until 1969.33

To prevent strategic exports from reaching the Soviet Union on a multilateral level, the United States, with its allies, organized COCOM in 1949.34 Based in Paris, COCOM operated as an informal trade control coordinating mechanism.35 Each member nation provided representation at weekly COCOM meetings.36 COCOM representatives established the criteria for the controls, developed embargo lists, and coordinated enforcement efforts among the member nations.37

One of COCOM's central purposes was to devise export controls for dual-use commodities, software, and technical data to the Soviet Union and its allies.38 COCOM's Industrial List served to restrict exports of such commodities that had both military and civilian applications.39 The Industrial List was then incorporated into each COCOM member nation's own export control system.40

B. The Export Administration Act and Regulatory Provisions

In the United States, dual-use exports are governed by the Export Administration Act ("EAA") of 197941 and its subsequent amendments.42 The EAA of 1979 evolved from the ECA of

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32. Ch. 11, 63 Stat. 7, 9.
34. LONG, supra note 5, at 17.
35. Hunt, supra note 5, at 112. COCOM was not organized or governed by any formal treaty or international agreement. Id.
36. Id.
37. Id.
39. Id. at 2.
40. Id.
1995. Pursuant to the EAA, the U.S. Department of Commerce issues and enforces export controls.

1. The Export Administration Act of 1979 and its Legislative Antecedents

In 1969, the U.S. Congress passed the first Export Administration Act. Promulgated during a period of detente between the United States and the Soviet Union, the Export Administration Act of 1969 sought to control only exports that could make strategic military contributions thereby harming national security. In addition, the Export Administration Act of 1969 recognized that overbroad export controls impair the interests of U.S. businesses to export their goods abroad.

In 1976, the relaxation of export controls to the Soviet Union was countered by the Department of Defense Science Board through its release of the Bucy Report. In order to control the diminishing technological advantage of the United States over communist countries, the Bucy Report urged the relevant provisions of the EAA and its Legislative Antecedents to be revised. The Department of Commerce, under the supervision of the Secretary of Commerce, is responsible for promoting international trade, U.S. competitiveness in the world economy, and technological advancement. The Department of Commerce is part of the executive branch of the U.S. government, with the Secretary of Commerce serving as a member of the President's cabinet.


Overview of Export Controls, supra note 26, at 4. The relaxation of export controls was also motivated by other COMCON nations feeling less threatened by the Soviets. Waldmann, supra note 21, at 1139.

tention of U.S. export controls over technology, recommending strict controls over costly research and manufacturing information. The Bucy Report also introduced the concept of military critical technologies.

The EAA of 1979 replaced the Export Administration Act of 1969 as the primary export control legislation. As documented in the Export Administration Act of 1969, the policy of the United States was to consider the effect of export controls on U.S. businesses, limiting only exports that were essential to U.S. security. Meanwhile, the United States sought to prevent communist countries from gaining access to sophisticated technology. To address the competing objectives of increasing technological exports to promote economic growth and the desire to restrict communist access to advanced technologies, the EAA of 1979 required the Department of Defense to establish a specialized control list entitled the Military Critical Technologies List.


To implement the EAA, the Department of Commerce issued the Export Administration Regulations ("EAR"). Within

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51. Id. at 47-48. The report stressed that exporting technological designs and manufacturing expertise pose the greatest security concerns. Id. at 51.

52. Id. at 50-64. The report recommended the retention of export controls to maintain U.S. lead time in the development of strategic capabilities. Id. at 64.


55. Swan, supra note 53, at 621.

56. See supra notes 46-49 and accompanying text (noting Export Administration Act of 1969 recognized negative impact export controls has on U.S. businesses).


58. Swan, supra note 53, at 622.

59. Id.

60. 50 U.S.C. app. § 2404(d). In establishing the Military Critical Technologies list, the Secretary of Commerce is required to consult the Secretary of Defense. Id. § 2404(d)(1). The Secretary of Defense is primarily responsible for determining if particular item is a military critical technology, placing emphasis on arrays of design, manufacturing know-how, keystone design, and keystone equipment. Id. § 2404(d)(2). The Military Critical Technologies list is then integrated into the Commerce Control List. Id. § 2404(d)(4).

the Department of Commerce, the Bureau of Export Administration ("BXA") maintains and enforces the EAR.\footnote{62} The central provision of the EAR is the Commerce Control List ("CCL").\footnote{63} The CCL includes all commodities controlled by the Department of Commerce and indicates whether, and to what extent, a commodity is controlled.\footnote{64} The CCL regulates exports by categorizing dual-use commodities,\footnote{65} establishing country groups,\footnote{66} and indicating the reason for the control.\footnote{67}

Based on the CCL categorization, an export may require either a general or a validated license, issued by the BXA.\footnote{68} A general license does not require written authorization.\footnote{69} Conversely, a validated license\footnote{70} requires documentation.\footnote{71} In addition, an exporter must apply for a validated license.\footnote{72}

\begin{footnotesize}
\footnote{7} The EAR focus on transactions involving the actual shipping of goods or technology from the United States to another country. \textit{Id.}

\footnote{62} Kimberly S. Dyslin, Reform of the Multilateral Export Control Mechanism For the Twenty-First Century: Redefining "The Enemy" and "War", 10 B.U. Int'l L.J. 1, 14 (1992). The BXA maintains the Commerce List which incorporates all items subject to export controls. 15 C.F.R. § 799.1(a).

\footnote{63} 15 C.F.R. § 799.1 (Supp. 1). The Commerce Control List was formerly called the Commodity Control List. McKenzie, supra note 3, at 3. Unlike the Commodity Control List, the new Commerce Control List integrated all the commodities, software, and technical data that are subject to export controls. \textit{Id.}

\footnote{64} \textit{Overview of Export Controls, supra note 26, at 11.} The CCL corresponded with the COCOM's Industrial List. \textit{International Trade, supra note 6, at 422.} The CCL, however, was much more extensive than the Industrial List. Oettinger, supra note 2, at 571.

\footnote{65} 15 C.F.R. § 799.1 (Supp. 1). The CCL is divided into ten categories: (1) Materials; (2) Materials Processing; (5) Electronics; (4) Computers; (5) Telecommunications and Cryptography; (6) Sensors; (7) Avionics and Navigation; (8) Marine Technology; (9) Propulsion Systems and Transportation Systems; and (10) Miscellaneous Items. \textit{Id.} § 799.1.

\footnote{66} \textit{See The Commerce Control List and How to Use It, 15 C.F.R. § 799.1 (explaining how country's are divided into groups represented by the letters Q, S, T, V, W, Y, Z). Russia is represented by the letter Y. \textit{Overview of Export Controls, supra note 26, at 11.}}

\footnote{67} 15 C.F.R. § 799.1(d)(1)(iii). Controls may be implemented for national security, foreign policy, short supply, and other purposes. \textit{Id.} Two letter symbols are used to indicate the reason for the control. \textit{Id.} For example, "NS" indicates a commodity is controlled for national security purposes. \textit{Id.}

\footnote{68} Dyslin, supra note 62, at 15.

\footnote{69} 15 C.F.R. § 771.1.

\footnote{70} \textit{Id.} § 772.2. Validated licenses may be granted for a specific export, project, distribution, or chemical or biological equipment. \textit{Id.} § 772.2(b).

\footnote{71} \textit{Id.}

\footnote{72} 15 C.F.R. § 772.4. Applications for validated licenses require detailed disclosure. \textit{Id.}}
then reviews each application, granting a validated license on a case by case basis.\textsuperscript{75}

3. Subsequent Amendments to the EAA of 1979

In 1985, the Export Administration Amendments Act\textsuperscript{74} amended the EAA to eliminate export controls on goods freely available from sources outside the United States.\textsuperscript{75} In determining the level of availability of a particular commodity from non-U.S. sources, the foreign availability provision of the EAA\textsuperscript{76} requires the Secretary of Commerce to consider cost, quantity, quality, durability, and reliability in obtaining the commodity from other sources.\textsuperscript{77} Three options are available if it is determined that the prohibited export is available from sources outside the United States: the license requirement may be dropped, the President may maintain the control notwithstanding availability from non-U.S. sources, or the President may submit the matter to COCOM for multilateral review.\textsuperscript{78} The President’s power to retain the export restriction is contingent on the President actively pursuing negotiations with the appropriate nations to eliminate such availability.\textsuperscript{79} If negotiations are not successful within six months, the commodity will no longer require a validated license absent a presidential extension, up to twelve months, which is granted based on progress in the negotiations and the detriment to national security.\textsuperscript{80}

\textsuperscript{73} Malloy, supra note 11, at 852.
\textsuperscript{75} 50 U.S.C. app. § 2403(c). This section states:
In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology with he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States so as to render the controls ineffective in achieving their purposes, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States.
\textsuperscript{Id.}
\textsuperscript{76} Id. § 2404(f).
\textsuperscript{77} Id. § 2404(f)(3)(A).
\textsuperscript{78} Id. § 2404(f)(3)(B).
\textsuperscript{79} Id. § 2404(f)(4)(A).
\textsuperscript{80} Id. § 2404(f)(4)(B).
The Omnibus Trade and Competitiveness Act of 1988\textsuperscript{81} ("OTCA") further liberalized export controls under the EAA.\textsuperscript{82} OTCA eliminated authorization requirements for exports to COCOM countries and countries with export control practices comparable to COCOM nations.\textsuperscript{83} OTCA also refined the procedure for determining if a controlled commodity was available for sources outside the United States.\textsuperscript{84} Moreover, OTCA restricted imposing export controls on a product solely because it contains parts or components subject to control so long as the part is essential to the function of the product, the part was incorporated in the product when it is sold, and the part comprises twenty-five percent or less of the product's value.\textsuperscript{85}

C. Enforcement of Export Controls

U.S. enforcement mechanisms were effective in limiting dual-use exports to Russia.\textsuperscript{86} Other COCOM nations, however, failed to prevent critical technology from reaching the former Soviet Union.\textsuperscript{87} Despite these deviations, multilateral export controls, for the most part, impaired the Soviet Union's ability to obtain advanced dual-use technologies.\textsuperscript{88}


\textsuperscript{82}See Swan, supra note 53, at 624-25 (discussing how OTCA relaxed export controls).

\textsuperscript{83}50 U.S.C. app. § 2404(b)(2).


\textsuperscript{85}Id. § 2422, 102 Stat. at 1358 (amending 50 U.S.C. app. § 2404(m)). If the part would make a significant contribution to the military potential of a controlled country, a license could be required. Id.

\textsuperscript{86}See Long, supra note 5, at 2 (explaining how licensing requirements have prevented goods and technology from reaching nations whose national security policies are adverse to those of United States in addition to controlling exports of goods and technology to allied nations).

\textsuperscript{87}See Oettinger, supra note 2, at 577-80 (highlighting events of the Toshiba-Kongsberg affair where goods and technology shipped from Japan and Norway to Soviet Union enabled Soviet Union to advance its nuclear submarine capabilities); see also Christopher K. Davis, Export Controls: New COCOM Measures on High-Technology Exports, 29 Harv. Int'l L.J. 547, 548 (1988) (commenting that United States received little support from Western European nations and Japan in controlling exportation of sensitive technology to Soviet Union).

\textsuperscript{88}Gary K. Bertsch & Steven Elliott-Gower, Introduction to Export Controls in Transition 1 (1992). In 1992, Western nations estimated to be ten years ahead of the former Soviet Union in technological developments. Id.
1. U.S. Enforcement Mechanisms

In the United States, once the BXA issues a license, the licensee is strictly accountable for the use. Every person involved with the export transaction is responsible for effecting the export and properly using the terms and conditions of the license. A licensee may not: (i) act with knowledge to deceive; (ii) intend to export illegally; (iii) misrepresent facts; (iv) alter or modify an export license or permit its unauthorized use; or, (v) traffic or advertise the export control document. Any violation of the EEA or its regulations can trigger civil penalties. A licensee who knowingly or willfully violates export regulations may be subject to criminal punishment.

2. Multilateral Enforcement

Unlike the United States, COCOM lacked the legal basis to enforce controls. As COCOM was not established through a formal treaty or agreement, even when COCOM members agreed unanimously to a specific control, the control required ratification by each nation to gain legal effect. In the process of ratification, each nation was permitted to act in accordance with its domestic policy.

COCOM, however, did have some mechanisms of enforcement. Primarily, the Import Certificate/Delivery Verification ("IC/DV") attempted to ensure that exports between COCOM

89. 15 C.F.R. § 787.9 (1994).
90. 15 C.F.R. § 772.1(c).
91. OVERVIEW OF EXPORT CONTROLS, supra note 26, at 68.
92. 15 C.F.R. § 787.1(b)(3) (1991). Civil penalties up to US$10,000 may be administered for general violations. Id. Violations of national security controls is subject to penalties of up to US$100,000. Id.
93. Id. § 787.1(a). A person who knowingly violates the EAA or any regulation is subject to a fine up to five times the value of the exports involved or US$50,000 which every is greater, or imprisonment up to five years or both. Id. § 787.1(a)(i). A person who willfully violates any provision of the EAA is subject to fines five times the value of the export up to US$1 million (US$250,000 for an individual), or up to ten years of imprisonment, or both. Id. § 787.1(a)(ii).
94. See Hunt, supra note 5, at 118 (stating that COCOM was structured so that each member nation was responsible for enforcing export controls).
95. Id. at 112.
96. Id.
98. See Hunt, supra note 5, at 116 (noting COCOM members attempted to prevent diversions of technology through implementing Import Certificate/Delivery Verification system).
nations were not diverted to controlled countries. Under the IC/DV system, an importer government was required to issue a statement that the goods would not be diverted to another country without approval. After the export took place, the importer government then released a delivery verification.

COCOM members, nevertheless, failed to harmonize export controls among its member nations. Finding the U.S. restrictions over protective in relation to the threat of communism, Japan and Western European countries permitted the export of certain dual-use technologies to the Soviet Union which were prohibited for export in the U.S. The competing views between the United States and its COCOM allies caused U.S. businesses to lose financial opportunities without preventing certain technology from reaching communist nations.

3. The Toshiba-Kongsberg Incident and the U.S. Response

COCOM's weakness in controlling high-technology exports to the Soviet Union was highlighted by the Toshiba-Kongsberg incident. In 1982 to 1984 the Toshiba Machine Company of Japan sold computerized milling machines to the Soviet

99. Id. at 116. In the United States, the IC/DV verification procedure was incorporated into the EAR. 15 C.F.R. § 775 (1994).
100. Id. § 775.3(a)(1).
101. Id. § 775.3(a)(2).
102. Oettinger, supra note 2, at 576. The lack of harmonization was due to the diverging view between the United States and other COCOM nations regarding trade with the Soviet Union and its allies. Davis, supra note 87, at 547-48. The United States viewed export controls as a means of limiting economic development in Soviet Union while Western European nations sought to establish an economically beneficial trade relationship with the Soviet Union. Id.
103. Oettinger, supra note 2, at 576.
104. Id. at 576-77. Many COCOM members other than the United States found restrictions on dual-use commodities unreasonable because the products had primarily civilian applications. Id. Since the fall of communism in the Soviet Union, Japan and European nations have exported dual-use technologies to the former Soviet Union more frequently than the United States. Alam, supra note 10, at 145.
105. Oettinger, supra note 2, at 576-77. For example, in 1979, Cyril Bath, a U.S. company, lost a contract to the Soviet Union because the United States complied with COCOM standards while France deviated from COCOM standards and provided the Soviet Union with the controlled commodity. See id. at 580 (describing Cyril Bath incident).
Union\textsuperscript{107} while the Soviets obtained the numerical controller for the machines from the Kongsberg Trading company of Norway.\textsuperscript{108} Both of these exports to the Soviet Union violated COCOM regulations.\textsuperscript{109} The combined purchase enabled the Soviet Union to enhance the capabilities of its nuclear submarines to evade radar.\textsuperscript{110} This COCOM violation cost the United States billions of dollars to match the advances of the Soviets.\textsuperscript{111}

In response to the Toshiba-Kongsberg incident, the U.S. Congress enacted the Multilateral Export Control Enhancement Amendments Act of 1988\textsuperscript{112} ("MECEAA") as an addition to the EAA.\textsuperscript{113} Pursuant to the MECEAA, a person who violates a multilateral export restriction, which results in the substantial enhancement\textsuperscript{114} of a controlled country's capabilities, is subject to sanctions for a two to five year period.\textsuperscript{115} Even if the violation does not meet the substantial enhancement test, the President is granted the discretion to impose sanctions for up to five years.\textsuperscript{116} Another provision of MECEAA provides the United States with a

\textsuperscript{107} Clyde Haberman, Japan Fines Toshiba Unit for Sales to Soviet, N.Y. TIMES, Mar. 23, 1998, at D14.


\textsuperscript{109} Oettinger, supra note 2, at 578. Both Japan and the Toshiba Company were largely responsible for this COCOM violation. \textit{Id}. Toshiba misrepresented the capacity of the milling machines to obtain the license from the Japan's Ministry of International Trade and Industry ("MITI"). \textit{Id}. Due to the large volume of export applications, MITI did not question the transaction. \textit{Id}. Following this incident both Norway and Japan established more stringent export control regulations. \textit{Id}. at 579.


\textsuperscript{114} 50 U.S.C. app. § 2410a(a)(2). A substantial enhancement is determined by the President, on the advice of the National Security Council. \textit{Id.}

\textsuperscript{115} Id. § 2410a(a). The sanctions bar the violating company from selling to any U.S. federal agency and prohibit importing into the United States. \textit{Id.} § 2410a(b).

\textsuperscript{116} Id. § 2410a(h).
civil remedy for damages for the cost of enhancing the U.S. military to match the advances of nations threatening U.S. security interests.\textsuperscript{117}

D. The Commerce Control List of 1991

In 1990, responding to the fall of communism in Eastern Europe,\textsuperscript{118} COCOM nations relaxed export controls of dual-use commodities such as computers and telecommunication equipment to the Soviet Union and Eastern European countries.\textsuperscript{119} In 1991, COCOM members enacted a new Industrial List ("Core List") enumerating the commodities, software and technical data that remained subject to export controls.\textsuperscript{120} The United States adopted the Core List in the form of amendments to the EAR and the CCL.\textsuperscript{121}

The new list instituted various changes.\textsuperscript{122} In contrast to earlier controls, Poland, Hungary, and Czechoslovakia were granted favorable consideration for all controlled exports.\textsuperscript{123} COCOM members concluded that the development of democratic political systems and market economies in these countries, in addition to the severance of military ties with the Soviet Union, diminished the need to deny them access to Western technology.\textsuperscript{124} Under the new CCL, however, export controls to the former Soviet Union on high technology equipment re-

\textsuperscript{117} Id. § 2410a(i)(k).


\textsuperscript{119} McKenzie, supra note 3, at 2. These relaxation of export controls were then implemented in the United States. 15 C.F.R. §§ 776, 778, 779, 799 (1994). These changes relaxed export controls on computers above the level of personal computers and mass-marketed software. John F. McKenzie, Relaxation of U.S. Controls on Computer and Software Exports, Computer Law., Sept. 1990, at 17, 18.

\textsuperscript{120} Id. at 2-3.

\textsuperscript{121} 15 C.F.R. § 799.1 (Supp. 1); see McKenzie, supra note 3, at 2-3 (stating United States adopted COCOM's new Core List).

\textsuperscript{122} McKenzie, supra note 3. The Industrial List was restructured, dividing controlled dual-use commodities into ten categories and then subdividing them into five separate product groups. Id. at 4-5. In addition, a new measure of computer performance was introduced. Id. at 8.

\textsuperscript{123} Id. at 7.

\textsuperscript{124} Id. Poland, Czechoslovakia, and Hungary were granted these deregulations because these countries were deemed to have made the most progress toward establishing capitalist, democratic governments. Id.
II. THE IMPLEMENTATION AND PENDING LEGISLATION TO DECONTROL DUAL-USE EXPORTS TO RUSSIA

Following the fall of the Soviet Union in December 1991, the United States continued to impose controls on exports to Russia. In April 1994, coinciding with the disbanding of COCOM, President Clinton eliminated the validated license requirement for most telecommunication and certain computer exports to Russia. In order to implement further deregulation, members of the U.S. Congress seek to amend the EAA to prohibit controls on computer and telecommunication exports to Russia. Support for this legislation rests on the economic opportunities in Russia and the reduced threat Russia poses to U.S. security interests. Critics of this legislation, however, argue that decontrolling dual-use exports invite threats to national security.

A. The Current Political and Economic Situation in Russia

Central to the debate over deregulating exports is the current political and economic situation in Russia. Russia has exhibited positive signs toward the development of capitalism and democracy, but there are growing anti-democratic factions in

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125. See Dual Personality, supra note 19, at 114 (stating new core list failed to liberalize controls on high-technology export to Russia).


127. See U.S. Lifts Curbs, supra note 12, at 530 (reporting on disbanding COCOM on March 31, 1994 and elimination of certain dual-use U.S. export restrictions to Russia).

128. See supra note 14 (listing bills seeking to amend the EAA to decontrol export restrictions on dual-use technology to Russia and other nations).

129. See Alam, supra note 10, at 143 (advocating that demise of Russian threat should yield increase in technological trade between United States and Russia).

130. Morillo, supra note 16, at 1120. President Clinton has been criticized for emphasizing increasing exports to create jobs at the expense of national security, especially with regard to the relaxation of dual-use exports such as computers and telecommunications. Id.

131. See Alam, supra note 10, at 143 (stating that rationale for controlling exports to Russia should be revised in light of political and economic developments in Russia).

132. See Adi Ignatius, The Russian Market Takes on New Luster, WALL ST. J., July 11,
the Russian Parliament. In addition, the Russian government continue to experience economic instability and wide-spread corruption.

1. Encouraging Developments in Post-Soviet Russia

The new Russian government has made significant steps toward establishing a democracy. Elections, held on December 12, 1993, created a Russian Parliament, establishing a genuine political system in Russia for the first time in one hundred years. In order to further the transition to a democratic government, members of the Russian Parliament are participating in a cooperation program with their counterparts in the U.S. Congress to learn more about the democratic process.

The transition from a communist to a capitalist economy is also progressing. In 1991, the Russian government established a legal basis for private businesses in Russia. Since then, the Russian government has implemented legislation that encourages the development of private business. As of January 1994, at A1 (reporting on progress in stabilizing Russian economy and decision of Russian President Boris Yeltsin to continue economic reforms).

133. See Policy Toward NS, supra note 17, at 1 (statement of Hon. Lee H. Hamilton) (noting that Ultra-Nationalist Party is largest party bloc in Russia).
134. See Dimitri K. Simes, The Cold Peace, WASH. POST, July 17, 1994, at C05 (reporting Russia continues to face declining production and rising trade deficit).
137. Policy Toward NS, supra note 17, at 43 (statement of Hon. Strobe Talbott, Ambassador-at-Large and Special Advisor to the Secretary of State for the New Independent States).
138. Id. at 49 (prepared statement of Hon. Strobe Talbott).
139. Id.
141. Id. at 3.
142. Id. at 3-4. In December 1992, it became possible to register a business enter-
ary 1994, forty percent of the Russian economy was privatized, and one-forth of the labor force was employed in the private sector. In addition, the Russian economy is beginning to stabilize. Price controls were freed on more than ninety percent of goods and services, thereby decreasing shortages and stabilizing the ruble. Inflation has also dropped significantly. Moreover, the increasing number of U.S. companies willing to pursue business ventures in Russia exhibits Russia's positive investment climate. Russia has also pursued external policies that comply with U.S. interests. Pursuant to a request by the U.S. government, the Russian government rescinded a sale of ballistic missile rockets to India. The Russian government is also working with President Clinton to establish the Partnership for Peace, a post-cold war security structure in Europe.

2. Political and Economic Concerns in Today's Russia

Despite the positive steps toward democracy and capitalism, political and economic instability persists in Russia today. In addition to the constant opposition from ultra-nationalists and...
defiant communists, few and fewer Russian democrats are offering Yeltsin their support. Yeltsin's policies have caused many Russians to be fearful of democracy and a free-market economy. Since Yeltsin declared war on the Republic of Chechnya, his approval rating has decreased to eight percent. Due to the war with Chechnya, Yeltsin also lost the support of two key Russian democratic leaders.

Many Russians view Yeltsin as an authoritarian leader who has preserved the Soviet ruling class. Because many Yeltsin appointees are also fearful of losing power, division within his inner-circle has grown over how to handle his unpopularity. One faction is pushing for early elections in the hope that the opposition will not find support behind one leader, while the other faction suggests Yeltsin should reject implementing a democratic government and become an authoritarian leader. After refusing to hold elections in 1994, Yeltsin is looking for ways to postpone the elections scheduled for 1996. The extent of the political instability is highlighted by the popularity of ultra-nationalist Vladimir V. Zhirinovsky. In the

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154. Cohen, supra note 17. Ultra-nationalists see Yeltsin as a puppet of the United States who plotted the breakup of Soviet Union. Id.
155. Id. Since the Russian armed response in the sucessionary republic of Chechnya, Yeltsin's support from liberals has dwindled. Fred Hiatt, Yeltsin Faces a Risky Road to Recovery, WASH. POST, Jan. 22, 1995, at A20.
156. Id.
158. Hiatt, supra note 155, at A20. Even prior to the war in Chechnya, Yeltsin was only preferred by 14-20% of those Russians surveyed. Cohen, supra note 17, at 373.
159. Lee Hockstader, Ex-Allies See Yeltsin Jumping Democracy's Foundership, WASH. POST, Jan. 1, 1995, at A28. Former acting prime minister, Yegor Gaidar, and former finance minister, Boris Fyodorov, both key officials in furthering economic reform, ceased to support Yeltsin following his decision to send troops to Chechnya. Id.
160. Cohen, supra note 17, at 373.
161. Id.
162. Id.
163. Id. Yeltsin's ally, Vladimir Shumeiko, chair of the Russian parliament's upper chambers, suggests the tenure of both the legislature and the president should extend until 1998. Simes, supra note 134, at CO5.
164. Policy Toward NIS, supra note 17, at 1 (statement of Hon. Lee Hamilton).
December 1993 elections, Zhirinovsky's Ultra-Nationalist Party emerged as the largest bloc in the Russian government.\textsuperscript{165} Zhirinovsky's agenda includes eliminating Western investment in Russia and rebuilding Russia's defense industry.\textsuperscript{166}

In addition, remnants of the communist regime remain in Russia.\textsuperscript{167} Although the KGB\textsuperscript{168} was dismantled following the failed coup against former Soviet leader Mikhail Gorbachev in 1991, Russia's new Ministry of Security is run by many of the same people who headed the KGB.\textsuperscript{169} Like the KGB, the Ministry of Security intends to perform counter-surveillance activities.\textsuperscript{170} Moreover, former KGB officers are involved in building the Russian economy.\textsuperscript{171} Through their ties to the Russian economy, ex-KGB agents pursuing commercial ventures can travel freely in Western countries.\textsuperscript{172}

Continuing economic instabilities also open doors for ultranationalists and extremists to gain control.\textsuperscript{173} Industrial production continues to decline, nearly twenty-six percent in 1994,\textsuperscript{174} and although there are more products in the stores, most are produced outside Russia.\textsuperscript{175} According to Central Bank Director Victor Geraschenko, Russia's enormous trade deficit is the real

\textsuperscript{165} Id.


\textsuperscript{167} See Jeffery Trimble, New Act, Old Tricks: Dismantled After the Failed Soviet Coup, the KGB is Flourishing in Boris Yeltsin's Russia, U.S. News & World Rep., Feb. 8, 1993, at 42 (reporting on KGB influence remaining in Russia).

\textsuperscript{168} See Gordon B. Smith, Soviet Politics Continuity and Contradiction 163 (1988). The KGB was one of the three "uniformed services" in the Soviet political system responsible for weapons and intelligence gathering technology, and controlling information that was vital to the Soviet government. Id. The KGB performed domestic and international intelligence activities. Id. at 170-71. There were several hundred thousand KGB employees working as guards, informants, officer workers, and border troops. Id. at 171.

\textsuperscript{169} Trimble, supra note 167, at 42.

\textsuperscript{170} Id. In the 1993 December Congress, People's Deputies Security Minister Victor Barannikov stated that his ministry will thwart "subversive activities of Western secret services." Id.

\textsuperscript{171} Id.

\textsuperscript{172} Id.

\textsuperscript{173} See Policy Toward NIS, supra note 17, at 54 (prepared statement of Hon. Strobe Talbott) (urging U.S. government to continue to aid in developing Russia's economy because economic stability is necessary to produce political stability and counter antidemocratic political movements).

\textsuperscript{174} Simes, supra note 134, at CO5.

\textsuperscript{175} Id.
threat to the Russian economy. In 1993, foreign investment in Russia totalled less than US$1.5 billion, while Russian capital abroad totalled US$10 to US$15 billion.

Further instabilities exist because the Russian economy is increasingly influenced by organized crime. Corruption developed in Russia as a result of the economic crisis that followed the fall of the Soviet Union. Seventy percent of Russian businesses are connected in some way to organized crime. Corrupt activities have created a society where street gangs, extortion, private armies, and armed guards are prevalent. In addition, major U.S. companies are hesitant to invest in Russia as organized crime threatens the security of U.S. capital and personnel.

Organized crime has also penetrated Russian politics by financing elections and undermining the electoral process. Corrupt officials have slowed the adoption of anti-corruption and banking laws. The rise in criminal activities has also led some of the Russian people to favor an authoritarian form of government as Russia was virtually crime free before the attempt

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176. Id.
177. Id.
178. CRIME AND CORRUPTION IN RUSSIA, supra note 135, at 4 (statement of Dr. Louise Shelley of American University Department of Justice, Law, and Society).
179. Michael A. Leeden, With Today’s Outlook, Aid Won’t Help Russia, INSIGHT ON THE NEWS, Sept. 26, 1994, at 20. The political upheaval eliminated the Russian banks’ abilities to conduct international business, as they could not make hard-currency transfers in a timely fashion because the ruble was not freely convertible. Id. This caused the Russian economy to become a primitive cash system in which the Ruble became the currency for launderers in exchange for Russians gaining a more stable currency. Id. Later criminals from Western countries began purchasing raw materials in large volumes in exchange for hard currency. Id.
180. CRIME AND CORRUPTION IN RUSSIA, supra note 135, at 12 (statement of Stephen Handelman, Associate Fellow at the Harriman Center of Columbia University). Small bankers and retailers cannot operate without being connected to the Mafa. Simes, supra note 134, at CO5. Due to the volume of criminal activity, the figures indicating the rise in privatization in Russia are not reflective of a genuine restructuring. Id. In many cases, Russians who have received privatization rights have been forced to surrender their property rights to organized crime gangs. CRIME AND CORRUPTION IN RUSSIA, supra note 135, at 6 (statement of Dr. Louise Shelly).
181. Leeden, supra note 179, at 20.
182. CRIME AND CORRUPTION IN RUSSIA, supra note 135, at 4 (statement of Dr. Louise Shelly).
183. Id. at 3. In 1993 more than 1500 Russian government officials were charged with serious corruption and another 4500 cases were brought to trial. Id. at 11 (statement of Stephen Handelman).
184. Id. at 9 (statement of Dr. Louise Shelly).
to transform to a democratic political system began.\textsuperscript{185}

Yeltsin has also asserted a nationalistic external policy that is at odds with U.S. interests.\textsuperscript{186} In early 1994, Russia declared its opposition to Eastern European countries joining NATO.\textsuperscript{187} Furthermore, Yeltsin has stressed the desire to have Russian defense contractors market their products abroad,\textsuperscript{188} to control peacekeeping in the former Soviet territories,\textsuperscript{189} and to defend ethnic Russians living in former Soviet republics such as the Baltic States and Kazakhstan.\textsuperscript{190} Russian Foreign Minister, Andrei Kozyrev, stated that the assertive Russian foreign policy is merely rhetoric to satisfy the increasingly nationalist opinion.\textsuperscript{191} At the same time, the Kremlin has expressed to the Russian people that the West, while not an enemy, is not a friend either.\textsuperscript{192}

**B. U.S. Decontrol Initiatives Since the Fall of COCOM**

Despite the current political and economic instabilities in Russia,\textsuperscript{193} export deregulations were implemented by the Commerce Department through the issuance of unrestricted licenses for exports to the former Soviet Union.\textsuperscript{194} Pursuant to the EAA, the Executive Branch has the power to administer these regulatory changes without amending the EAA or subjecting control modifications for congressional review.\textsuperscript{195} In conjunction with

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\textsuperscript{185} Id. at 5-6.


\textsuperscript{187} Id.

\textsuperscript{188} Id.

\textsuperscript{189} Id.

\textsuperscript{189} Id. According to Alexei Pushkov, deputy editor of the Moscow News, Russia “represents not just a regional . . . but a truly Eurasian superpower with considerable opportunities to influence the situation in nearby regions, including the Balkans, the Middle East, and the Korean peninsula.” Simes, \textit{supra} note 184, at C05.

\textsuperscript{191} Id.

\textsuperscript{192} Id.

\textsuperscript{193} See \textit{supra} notes 153-92 and accompanying text (enumerating barriers limiting development of capitalism and democracy in Russia).

\textsuperscript{194} 15 C.F.R. § 771.20 (1994). This provision established the “GLX,” a license that permits the exportation of previously proscribed commodities to Russia without prior approval by the BXA. \textit{Id.} This license is also available for exports to Eastern European countries and China. \textit{Id.}

\textsuperscript{195} See \textit{LONG}, \textit{supra} note 5, at 10-11 (discussing how Congress, pursuant to the EAA, left implementation of export controls to President and Department of Commerce); see also 50 U.S.C. app. § 2403(b) (1988 & Supp. V 1993) (delegating responsibility of maintaining control lists to Secretary of Commerce).
the reduction of export controls, the Clinton Administration has pursued an agenda that seeks to establish an entirely new export policy toward Russia.196

1. Regulatory Changes in Export Controls

In April of 1994, the Department of Commerce issued a new general license197 ("GLX"), which enables U.S. exporters to ship previously restricted telecommunications equipment to Russia without the need for prior approval by the U.S. government.198 The GLX encompasses commodities currently listed in the advisory notes of the CCL that indicate a likelihood of approval for export to the former Soviet Republics.199 The GLX, however, is not available for items subject to missile technology, nuclear proliferation, or foreign policy controls and only encompasses exports to civil end users200 for civilian uses.201

The GLX also enables U.S. companies to export high-speed digital computers to Russia with a composite theoretical performance202 ("CTP") of up to 1000 million theoretical opera-

196. See Morillo, supra note 16, at 1113 (discussing September 1993, Trade Promotion Committee Report, which revealed President Clinton's new export strategy, which included eliminating export controls to revive national economy). In addition, the Deputy Assistant Secretary of State for Export Controls said the United States would like Russia to become a founding member of the new multilateral export regime. Export Controls: U.S., Allies Set to Launch New Regime, but Russian Membership Still Uncertain, 11 Int'l Trade Rep. (BNA) No. 42, at 1694 (Oct. 26, 1994) [hereinafter Launching New Regime]. Furthermore, the United States signed a memorandum of understanding with Russia to work toward establishing a global information system. High Technology: U.S. Signs Understanding with Russia on Global Information Infrastructure, 11 Int'l Trade Rep. (BNA) No. 32, at 1249 (Aug. 10, 1994) [hereinafter GIF Memorandum].


198. AT&T Big Winner as White House Lifts Telecom Export Bans, Rep. on AT&T, Apr. 11, 1994, available in Westlaw, Allnews Database. The GLX is a blanket license that enables all but the most sophisticated telecom hardware to be exported to Russia. Id.

199. 15 C.F.R. § 799.1 (Supp. 1).

200. See H.R. 3937, 103d Cong., 2d Sess. § 116, at 227 (1994) (defining end user as person located outside United States who is true party in interest in actually receiving export for intended use of item as represented by export license applicant).

201. 15 C.F.R. § 799.1 (Supp. 3).

202. See id. § 799.1 (Supp. 3). The composite theoretical performance of a computer measures the speed at which a computer performs computational operations in terms of million of theoretical operations per second. Id.
tions per second ("MTOPS").

Previously, computers with a CTP greater than sixty-seven MTOPS were restricted for export to Russia. In addition, the definition of a supercomputer was amended. Supercomputers require a validated license for shipment to any destination. Formerly, a supercomputer was any computer with a CTP of 195 or more MTOPS, but the term was amended to include only computers with 1500 or more MTOPS.

2. Recent U.S. Policies Toward Russia

In addition to licensing deregulations, the United States has exhibited a willingness to include Russia as a member of the new multilateral control regime to replace COCOM. Prior to the dissolution of COCOM, the member nations agreed to form a new multilateral export control regime. As COCOM's successor has yet to form, negotiations over control lists and targeting particular countries continue, but the greatest obstacle in-

203. TRADE PROMOTION COORDINATING COMMITTEE, NATIONAL EXPORT STRATEGY, ANNUAL REPORT TO THE U.S. CONGRESS 30-31 (1994) [hereinafter TPCC REPORT].

204. Commerce Publishes Regulations Implemented Further Computer Decontrols, U.S. DEPT. OF COMMERCE NEWS, Feb. 24, 1994, at 1 [hereinafter Commerce Report]. Earlier in 1994, computers with a CTP of up to 260 MTOPS were eligible for a general license for export to Russia. Id.

205. Id.

206. 15 C.F.R. § 776.11.

207. Commerce Report, supra note 204.

208. 15 C.F.R. § 776.11(a).

209. Launching New Regime, supra note 196, at 1694. Martha C. Harris, Deputy Assistant Secretary of State for Export Controls, seeks to include Russia as a founding member of the new multilateral export control regime. Id.

210. Export Controls: U.S., Allies Still at Odds Over Substance of New Post-COCOM Regime, Official Says, 11 Int'l Trade Rep. (BNA) No. 5, at 175-76 (Feb. 2, 1994). Like COCOM, the new regime will prevent the proliferation of sensitive dual-use technology but the new regime will not focus on a static set of enemies. Id. at 176. The new regime will be called the New Multilateral Export Control Arrangement. Export Controls: U.S., Allies Fail to Agree on Bringing Russia Into New Export Control Regime, 12 Int'l Trade Daily (BNA) No. 1, at 5 (Jan. 4, 1995) [hereinafter Russia in New Regime]. Countries such as Poland, Romania, and Czech Republic are expected to join the new regime. Id. at 6.

211. See id. (indicating negotiations among countries establishing new export control regime will continue in 1995 and that no deadline for forming organization has been set).

212. Export Controls: U.S. Allies Firm Up List of Exports To Be Curbed Under Post-COCOM Regime, 11 Int'l Trade Rep. (BNA) No. 49, at 1922 (Dec. 14, 1994) [hereinafter Allies Firm Up List]. The United States and its allies have tentatively agreed on a list of commodities that will be controlled under the new regime. Id. Allies are also close to an agreement on how to prohibit exports to 'pariah' countries. Id. at 1922-23.
volves Russian membership in the new regime. While the United States would like to have Russia to join the regime, U.S. President Clinton has indicated Russian membership is contingent on Russia rescinding a weapon sales contract with Iran dating back to 1988.

A further indication of change in the U.S.-Russia export relationship was exhibited in July 1994, when the United States and Russia signed a Memorandum of Understanding on the Development of the Global Information Infrastructure ("GII") and also agreed on a work plan for future cooperation on telecommunication policy and technical assistance. The objective of the GII is to integrate local, national, and regional networks to facilitate a global sharing of information, creating a global information marketplace. The GII memorandum expresses the intentions of the United States and Russia to achieve a global information infrastructure through the mutual exchange of information on objectives. Deregulating export controls on information technology is necessary to bring the GII to fruition.

In addition, the policy of the United States since 1992 has been to encourage U.S. trade and investment in Russia through

213. Russia in New Regime, supra note 210, at 5.
214. Launching New Regime, supra note 196, at 1634. The United States and Russia, however, are working toward an agreement on this issue. See Russia in New Regime, supra note 210, at 5. Russia agreed to forego future arms sales to Iran, but the United States is concerned about the 1988 contract between Iran and Russia, which is still in effect. Id.
216. GII Memorandum, supra note 196, at 1249. The GII was first outlined by U.S. Vice-President Al Gore in March 1994 at the World Telecommunications Development Conference in Buenos Aires. Id.
217. Id.
218. Id. The Memorandum also acknowledges the principles of the GII: private investment, competition, open access to the network, appropriate regulation, and universal service. Id.
219. See Broadcasting & Telecommunications Russia and USA Sign Memorandum on Information Resources, Russia Express-Perestroika, Sept. 12, 1994, available in Westlaw, Allnews Database (stating that dissolution of COCOM and removal of export controls were necessary to provide Russia with necessary equipment and databases to further U.S.-Russia agreement). All these exports are necessary to develop Russia's information highway, as Russia is currently relying on 1950's technology. Cold War Controls, supra note 126, at 290.
the U.S.-Russia Business Development Committee.\textsuperscript{220} U.S. agencies such as the Overseas Private Investment Corporation\textsuperscript{221} ("OPIC") help U.S. firms develop business in Russia.\textsuperscript{222} In 1994, OPIC issued US$10 million in political risk insurance to enable U.S. West, a U.S. telecommunications firm, to invest in upgrading telephone services in Russia.\textsuperscript{223}

\section*{C. Pending Legislation}

Members of the U.S. Congress have also sought to revise U.S. export laws toward Russia.\textsuperscript{224} Several bills introduced in the House of Representatives\textsuperscript{225} and the Senate\textsuperscript{226} seek to amend the EAA to deregulate export controls on dual-use equipment and technology beyond what the Clinton Administration has already instituted.\textsuperscript{227} This legislation has received much attention as President Clinton and the U.S. Congress are committed to amending the Export Administration Act in 1995.\textsuperscript{228}

\subsection*{1. Telecommunication and Computer Export Control Amendments}

In August of 1993, Representative Ron Wyden [D-OR] introduced House Bill \textsuperscript{229}2912\textsuperscript{222} to amend the control list provision

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\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{220} TPCC REPORT, supra note 203, at 80-81. The Business Development Committee interacts with more than twenty U.S. government agencies, in addition to the business community, to establish programs and activities to increase trade with Russia. \textit{Id.}
\item \textsuperscript{221} INTERNATIONAL TRADE, supra note 6, at 252. The Overseas Private Investment Corporation ("OPIC") is a quasi-independent U.S. government corporation that supports international economic undertakings. \textit{Id.} OPIC primarily insures U.S. investments in developing countries. \textit{Id.}
\item \textsuperscript{222} TPCC REPORT, supra note 203, at 81.
\item \textsuperscript{223} \textit{Id.} U.S. West also constructed a cellular communications network in St. Petersburg that is expected to generate exports. \textit{Id.}
\item \textsuperscript{224} \textit{See supra} note 14 (listing legislation in Congress seeking to revise EAA to deregulate controls on dual-use technology to Russia and other nations).
\item \textsuperscript{226} S. 1617, 103d Cong., 1st Sess. (1993); S. 1820, 103d Cong., 2d Sess. (1994); S. 1838, 103d Cong., 2d Sess. (1994).
\item \textsuperscript{227} \textit{See e.g.}, H.R. 3431, 103d Cong., 1st Sess. (1993) (seeking to eliminate controls on computer equipment to virtually all to Russia and all other countries not subject to U.S. embargo).
\item \textsuperscript{228} Export Controls: Roth Says President is Committed to Working With Congress on EAA Bill, 12 Int'l Trade Rep. (BNA) No. 5, at 228 (Feb. 1, 1995).
\item \textsuperscript{229} H.R. 2912, 103d Cong., 1st Sess. (1993). This bill is entitled "a bill to liberalize controls on the export of telecommunications equipment and technology in order to
in the EAA\textsuperscript{230} to further deregulate exports of telecommunications equipment and technology\textsuperscript{281} to Russia, China, and Eastern Europe.\textsuperscript{282} Representative Wyden’s bill was subsequently introduced in the U.S. Senate in 1994.\textsuperscript{283} House Bill 2912 would amend the EAA to require the Secretary of Commerce to propose to the multilateral export control regime the elimination of controls on telecommunications exports for civil end uses to Rus-

\begin{itemize}
  \item[(i)] the term ‘telecommunications equipment’ includes-
    \begin{itemize}
      \item[(I)] telephone switching systems and stored program controlled communications switching systems, including related features and components that provide services and management of telecommunications networks;
      \item[(II)] telecommunications transmission equipment;
      \item[(III)] microwave, light wave, and other radio relay, transmitting, or test equipment, and related components and accessories;
      \item[(IV)] telecommunications cables and components, including optical fibers and optical fiber cables;
      \item[(V)] equipment containing frequency synthesizers when used in land-based mobile communications systems;
      \item[(VI)] equipment described in any of subclauses (I) through (V), or any other telecommunications equipment, that contains lasers;
      \item[(VII)] computer hardware and application specific software which are related to any of the items described in clauses (I) through (VI) and are required for data communications; and
      \item[(VIII)] all spare parts, components, and measuring or test equipment related to any of the items described in subclauses (I) through (VII);
    \end{itemize}
  \item[(ii)] the term ‘telecommunications technology’ means technology related to telecommunications equipment, including technology for the production, development, and use of telecommunications equipment;
  \item[(iii)] the term ‘telecommunications networks’ includes local area, intracity, intercity, and international telecommunications networks; and
  \item[(iv)] the term ‘telecommunications’ means voice, video, and data communications over any public or private network or broadcasting system, and service related to such communications.
\end{itemize}

\textsuperscript{Id.}

\textsuperscript{230} 50 U.S.C. app. § 2404(c) (1988 & Supp. V 1993). This section requires the Secretary of Commerce to maintain a control list of commodities subject to export controls for national security purposes. \textsuperscript{Id.}

\textsuperscript{231} H.R. 2912 § 2, at 3-5.

\textsuperscript{232} \textsuperscript{Id.}

\textsuperscript{233} The Eastern European countries included in this bill are Poland, the Czech Republic, Slovakia, Bulgaria, Romania, Albania, Estonia, Lithuania, and Latvia. \textsuperscript{Id.}

\textsuperscript{234} S. 1838, 103d Cong., 2d Sess. (1994). S. 1838 has a 21% chance of passing in the Senate Committee on Banking, Housing, and Urban Affairs. \textsuperscript{Billcast} (103d Cong. 1993-94), \textit{available in Westlaw, BC Database}. 

\textsuperscript{Id.}
sia and the other nations included under this Bill.234

In addition, two proposals are pending in both the House and Senate to amend Section 4 of the EAA235 to deregulate exports of computer equipment and technology.236 Although this legislation does not mention Russia specifically, these amendments to the EAA would ultimately deregulate much of the equipment currently prohibited for export to Russia.237 House Bill 3534,238 proposed in the Senate as Senate Bill 1820,239 would require the Secretary of Commerce to conduct yearly reviews240 of export controls of computer equipment and technology241 for each country for which a validated license is required.242 House Bill 3534 would also require the Secretary of Commerce to report to Congress indicating the reasons for each control.243 If the purpose of control is to defer the development of a specific capability in a particular country, the Secretary of Commerce

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234. H.R. 2912 § 2, at 2-3. The bill also eliminates the requirement of re-export authorization for re-exports to the former Soviet Republics, China, and certain Eastern European nations. Id.

235. 50 U.S.C. app. § 2403. Section 4 is the General Provisions section of the EAA that discusses types of licenses, delegation of authority, notification to the public, and fees. Id.


237. See H.R. 3534, H.R. 3431 (seeking to deregulate exports to countries where validated license is required for computer exports). A validated license is required to export most computer equipment and technology to Russia. 15 C.F.R. § 799.1 (Supp. 1 1994).

238. H.R. 3534, 103d Cong., 1st Sess. (1993). The short title of this bill is the “Computer Equipment and Technology Export Control Reform Act.” Id. at 1. There is a 35% chance this bill will pass the House Committee on Foreign Affairs. BILLCAST (103d Cong. 1993-94), available in Westlaw, BC Database.

239. S. 1820, 103d Cong., 2d Sess. (1994). This bill has only an eight percent chance of passing through the Senate Committee on Banking, Housing, and Urban Affairs. BILLCAST (103d Cong. 1993-94), available in Westlaw, BC Database.

240. H.R. 3534 § 2, at 2-4. In reviewing the existing controls the Secretary must consider: (1) the compatibility with U.S. policy objectives toward the target country; (2) the quantity and performance of the computer systems; (3) the availability of the controlled export from other sources; and (4) the economic costs of the controlled export. Id.

241. Id. at 2. Computer equipment and technology includes computer hardware, software, computer communications equipment, networking equipment, and related technology. Id.

242. Id. at 2-7. After the review is completed, House Bill 3534 would require the Secretary of Commerce to increase the export controls thresholds if warranted by the findings in the review. Id. at 4-5.

243. Id. at 2-3.
must indicate the period of time the controls are expected to
defersuch capability. In an attempt to balance the need for
revising export controls with national security concerns, House
Bill 3534 would require the Secretary of Commerce to identify
and publish proliferation end users and the specific validated
license requirement for that end user.

House Bill 3431, proposed by Representative Donald
Manzullo [R-IL], would implement even broader deregulation
of computer equipment and technology exports than House Bill
3534. By adding a provision to Section 4 of the EAA, House
Bill 3431 seeks to eliminate the requirement of a validated li-
cense for the export of computers, telecommunications equip-
ment, and certain semiconductors except to: (i) a terrorist coun-
try; (ii) a country subject to an embargo by the United Nations
which the U.S. is participating in; or (ii) any product to which
missile technology controls apply. Because Russia is neither

244. Id. House Bill 3534 would also remove controls on computer systems valued
at less than US$5,000. Id. § 3, at 7. In addition, House Bill 3534 seeks to decontrol
exports of mass-market computer equipment. Id. § 4, at 8.

For purposes of this subsection, the term 'mass-market computer equipment'
means any computer system, computer networking equipment, peripheral to a
computer system, part or subassembly of a computer system, or combination
thereof, on which export controls are in effect under this Act, and which will
have been installed for end-use outside the United States in a quantity exceed-
ing 100,000 units over a 12-month period,

Id. at 8.

245. Id. § 5, at 10-11.

For purposes of this subsection, the term 'proliferation end-user' means any
entity that is engaged, directly or indirectly, in the design, development, or
production of nuclear, chemical or biological weapons or missiles and is lo-
cated in a country that is not party to a bilateral or multilateral agreement the
purpose of which is to limit the spread of such weapons and activities to which
the United States is a party.

Id.

246. Id. If the Secretary of Commerce fails to publish the proliferation end user,
however, exporters may assume that the end user is not a proliferation end-user. Id. at
11.

247. H.R. 3431, 103d Cong., 1st Sess. (1993). The short title of this bill is the
"Computer and Communications Trade Freedom Act." Id. at 1. House Bill, 3431, only
has a one percent chance of passing the House Committee on Foreign Affairs. BILL-
CAST (103d Cong. 1993-94), available in Westlaw, BC Database. House Bill 3431 was also
introduced in the Senate as the "High Technology Export Reform Act," S. 1617, 103d
Cong., 1st Sess. (1993). There is only a four percent chance S. 1617 will pass the Senate
Committee on Banking, Housing, and Urban Affairs. BILLCAST (103d Cong. 1993-94),
available in Westlaw, BC Database.

248. H.R. 3431 § 3, at 3-6.
labelled as a terrorist country\(^{249}\) nor subject to a U.S. embargo,\(^{250}\) this bill would dispose of the validated license requirement for the export of computers and telecommunications equipment to Russia.\(^{251}\)

2. Deregulation of Encryption Software

An additional bill pending to amend the EEA involves the deregulation of encryption software.\(^{252}\) Data encryption software allows a user to scramble a computer message into a form that prevents an unauthorized user from interpreting the contents of the message.\(^{253}\) Until the past decade, encryption software was only used for defense purposes,\(^{254}\) but as the need for security in commercial systems increased, cryptography became necessary for general uses.\(^{255}\)

Although some encryption exports are controlled by the Department of Commerce, through its maintenance of the CCL,\(^{256}\) encryption exports are also controlled under the U.S. Munitions List,\(^{257}\) which is regulated by the Department of State.\(^{258}\) The U.S. Munitions List was established under the Arms Export Con-


\(^{250}\) Telephone Interview with Rodger Caringan, Licensing Officer, U.S. Department of State, Economic and Business Bureau-Economic and Sanctions Policy (Mar. 7, 1994) (confirming that Russia is not subject to U.S. trade embargo nor is Russia subject to U.N. embargo in which United States is participating).

\(^{251}\) See H.R. 3491 § 3, at 3-6 (eliminating validated license requirement for all computer exports to all destinations that are not subject to embargo or labelled terrorist destination).


\(^{253}\) Ira S. Rubenstein, Export Controls on Encryption Software, in COPING WITH EXPORT CONTROLS 1994, at 177, 181 (PLI Comm. L. & Practice Course Handbook Series No. 705, 1994). Messages are scrambled through encryption and descrambled through decryption. \textit{Id.} at 182. Encryption algorithms, the mathematical function used for scrambling and descrambling messages, prevent unauthorized users from intercepting a confidential message. \textit{Id.}.

\(^{254}\) \textit{Id.} Cryptography aided the U.S. government in intelligence gathering and securing information. \textit{Id.}

\(^{255}\) \textit{Id.} With the growth of business computerized networks, encryption software has become a routine business precaution. \textit{Id.}

\(^{256}\) 15 C.F.R. § 799.1 (Supp. 1 1994).

\(^{257}\) 22 C.F.R. § 121.1. The U.S. Munitions List controls the exportation of defense materials such as bombs, grenades, missiles, tanks, aircraft and protective equipment. \textit{Id.} The Munitions List also controls cryptographic equipment and software. \textit{Id.}

\(^{258}\) 22 C.F.R. § 121.1.
trol Act ("AECA"). The AECA gives the President the power to control the import and export of defense articles and services.

In November 1993, Representative Maria Cantwell [D-WA] proposed House Bill 3627 to amend the EAA to prohibit the requirement of a validated license for encryption software that is generally available for commercial use. In addition, House Bill 3627 seeks to eliminate a validated license requirement for all other software that is generally available. Furthermore, this amendment would place encryption software under the exclusive control of the Department of Commerce although most encryption software is currently controlled under the Munitions List.

Deregulation of encryption software has yielded considerable response from Congress and the Clinton Administration. In early 1994, the Clinton Administration conducted an interagency review of encryption technology. Much of the review focused on the use of the key escrow chip ("clipper

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260. Id.
261. H.R. 3627, 103d Cong., 1st Sess. (1993). House Bill 3627 has only has a one percent chance of passing the House Committee on Foreign Affairs. BILLCAST (103d Cong. 1993-94), available in Westlaw, BC Database.
262. H.R. 3627 § 1, at 3.
263. Id. at 2-3.
264. Id. at 2.
265. Id. at 1-2. Under House Bill 3627, the Secretary of Commerce would not control encryption software used for military or intelligence purposes. Id. at 2.
267. See Statement of the Press Secretary, The White House Office of the Press Secretary, Feb. 4, 1994, at 2 (hereinafter Press Secretary) (discussing results of Administration's review on encryption).
268. Id. Much of the review involved the problems of encryption software in the United States and the fear that while cryptography helps U.S. businesses protect company secrets, it can also be used to further criminal activities. Id. at 2-3.
269. Id.
chip") a split-key encryption system that offers tamper-proof security for computer activity over phone lines. In an attempt to resolve the debate over exporting encryption software, the Clinton Administration proposes to permit the exportation of the clipper chip.

House Bill 3937 provides an alternative response to the increasing concerns over controls on encryption software. House Bill 3937 would require the U.S. President to perform an assessment of the encryption software market. In conducting the assessment, the President shall review the types, quality, and market penetration of encryption software produced outside the United States and consider the economic impact of encryption export controls on U.S. businesses. Legislators seek to use the President's findings to revise U.S. export policy on encryption software.

3. Proposal to Redraft the EAA in its Entirety

In addition to addressing exportation of encryption software, House Bill 3937 offers legislation that would fully revise the EAA. Primarily, House Bill 3937 seeks to improve multilateral cooperation for export controls on dual-use technology. House Bill 3937 would also amend the foreign availability provision of the EAA to require the Secretary of Commerce to conduct an annual review of controlled commodities. In addition, House Bill 3937 would require the Secretary of Com-

270. Rubenstein, supra note 253, at 217. The U.S. government intends to hold the "keys" for systems using the split key clipper chip. Id. at 217-18.
271. Press Secretary, supra note 267, at 2.
272. H.R. 3937, 103d Cong., 2d Sess. (1994). This bill has already passed the House Committee on Foreign Affairs and has a 98% chance of passing the House floor and a 94% chance of passing on the Senate floor. BILLCAST (103d Cong. 1993-94), available in Westlaw, BC Database.
274. Id.
275. Id. at 247-48.
278. Id. § 102, at 6. House Bill 3937 presumes that unilateral controls generally do not prevent controlled countries from obtaining controlled commodities. Id. House Bill 3937, therefore, seeks to increase the effectiveness of multilateral controls. Id. § 103, at 9.
280. H.R. 3937 § 105, at 47-49.
The responsibilities of the Secretary of Commerce would also include conducting periodic reviews of computer equipment and technology to determine when advances in computer technology make certain export controls obsolete.\textsuperscript{282}

**D. The Debate Over Deregulation of Exports to Russia**

The bills seeking to deregulate export controls on dual-use technology have yielded additional documentation highlighting the debate over decontrolling exports to Russia and other nations.\textsuperscript{283} Those with economic interests at stake, such as U.S. technological companies, favor decontrol.\textsuperscript{284} In contrast, those concerned with U.S. security interests, such as the National Security Agency\textsuperscript{285} ("NSA"), oppose deregulating controls on exports to Russia.\textsuperscript{286}

\textsuperscript{281} Id. at 45-46.
\textsuperscript{282} Id. at 50-56.
\textsuperscript{283} See, e.g., Telecommunications Hearings, supra note 9 (presenting arguments for and against deregulating export controls on telecommunications equipment to former Soviet Union); Export Control and High Technology: Hearing before the Subcomm. on Technology, Environment and Aviation of House Comm. on Science, Space and Technology, 103d Cong., 2d Sess. (1994) [hereinafter Technology Hearings] (describing benefits and national security concerns that arise due to deregulating high-technology export controls).
\textsuperscript{284} See, e.g., Telecommunications Hearings, supra note 9, at 13-16 (testimony of Robert Allen, Chairman of the Board and Chief Executive Officer, AT&T) (testifying that Cold War export controls will jeopardize millions of dollars in telecommunications sales to Russia).
\textsuperscript{286} See Dual Personality, supra note 19, at 116 (stating that NSA is opposed to deregulating telecommunications exports to Russia because developing Russia's communication networks makes it more difficult to monitor activities of Russian government); Telecommunications Hearings, supra note 9, at 16-18 (testimony of Lt. Gen. Lincoln Faurer (retired), Former Director of the National Security Agency) (stating that changes in export controls that weaken NSA's abilities to collect intelligence material are harmful to U.S. national interests, and that instability in Russia demands surveillance and gradual change in export controls).
1. The Economic Argument for Deregulation of Exports

The arguments in favor of deregulating export of dual-use items to Russia are presented in House Bill 2912 the bill to liberalize export controls on telecommunications to Russia and the former Eastern Bloc. According to the congressional findings section of this House Bill 2912, deregulation would enhance democratic initiatives in Russia, contribute to U.S. economic competitiveness, eliminate outdated export restrictions, and allow U.S. companies to export materials currently available from other sources.

Further arguments for decontrol are enumerated in House Bill 3431. First, telecommunications and computer equipment and technology exports account for more than eighty-five percent of the value of exports controlled by the Department of Commerce under the EAA. Second, the computer and telecommunications industries account for 12.3% of all of the export trade in the United States and represent over 850,000 U.S. jobs. Third, the rapid pace of technological development has

288. Id. § 1, at 1-2.
289. Id.
(a) The Congress makes the following findings:
(1) The free exchange of ideas and information through modern, reliable telecommunications equipment fosters the development of democratic institutions, the promotion of free market economic reforms, and the facilitation of international commerce.
(2) Exports of advanced telecommunications equipment and technology contribute to United States economic competitiveness and high-skill, high wage jobs in the United States.
(3) Export restrictions on telecommunications equipment and technology are outdated, controlling the export of equipment and technology that is more than 10 years old and has over 15 times less capacity than similar equipment and technology in use today in the United States.
(4) Foreign availability of telecommunications equipment and technology exists both from countries that do not belong to or cooperate with the Coordinating Committee for Multilateral Export Controls, and from within countries to which export of such equipment and technology are controlled by the agreement of the Coordinating Committee.

290. H.R. 3431, 103d Cong., 1st Sess. (1993). House Bill 3431 seeks to eliminate the requirement of a validated license for computer and telecommunications exports to Russia and all other nations not subject to an embargo or repeatedly involved in acts of international terrorism. Id. § 3, at 3-5.
291. Id. § 2, at 1-2.
292. Id. at 2.
rendered export controls meaningless, and finally, the availability of controlled exports from COCOM and non-COCOM countries poses a great disadvantage to the U.S. technological industry, thereby damaging the U.S. economy.

These congressional findings are largely based on the testimony from representatives of U.S. technological industries who have appeared before Congress to encourage the U.S. government to change its policies on export controls. Companies such as AT&T assert that export controls on telecommunications equipment to Russia will effect millions of U.S. dollars in sales over the next five years as Russia is expected to be one of the world's largest telecommunications markets. AT&T claims this translates into U.S. jobs as they must increase revenues by five to ten percent yearly to maintain current employment levels. Similarly, producers of encryption software argue that the demand for encryption technology is so widespread that export controls could cost U.S. software companies billions in revenue.

In addition to the economic incentives, advocates of export deregulation argue that certain controls are meaningless as Russia can receive restricted U.S. technologies from non-U.S. sources. Most European countries do not regulate the export

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293. Id.
294. Id. at 2-3.
295. See EAA Hearings, supra note 9, at 17-39 (statements of Paul Freedenberg on behalf of Computers, Business Equipment and Manufacturer's Association, Richard Lehmann, IBM Corp.; Boyd Mc Kelvain, General Electric; and David Danjczek, Litton Industries); Technology Hearings, supra note 283, at 39 (testimony of Carol E. Henton, Manager, Corporate Export Administration Department, Varian Assoc., Inc., representing semi-conductor equipment); Telecommunications Hearings, supra note 9, at 13 (testimony of Robert E. Allen, Chairman of the Board and Chief Executive Officer, AT&T).
296. Id. at 14-15 (testimony of Robert E. Allen). In some areas of the former Soviet Union there are two telephone lines per 100 people, compared to the United States where on average there are 50 phone lines per 100 people. Id. at 15. Furthermore, Russian President Boris Yeltsin has expressed a strong interest in acquiring Western technology to revitalize the Russian economy. Alam, supra note 10, at 143.
297. Telecommunications Hearings, supra note 9, at 15 (testimony of Robert E. Allen).
298. Software Hearings, supra note 266, at 8 (testimony by Raymond Ozzie, IRIS Associates, representing the Business Software Association) (stating US$6-9 billion of revenue are at risk because of demands for controlled encryption software).
299. Cold War Controls, supra note 126, at 291. For example, Israel, which was not a member of COCOM, was legally able to sell advanced telecommunications equipment to China while the U.S. government prohibited U.S. companies from doing so. Id.
tation of encryption software.\textsuperscript{300} Since the fall of the Soviet Union, Japan and Western European countries have exported dual-use technologies to Russia more frequently and on a larger scale than the United States.\textsuperscript{301} With the dissolution of COCOM, U.S. high-technology companies are increasingly concerned that the United States will impose stricter controls than other former COCOM members, allowing restricted destinations to obtain the controlled commodities while hindering U.S. competitiveness in international markets.\textsuperscript{302}

Deregulation of dual-use technology exports is further supported by the fact that the threat of the Russian military's conventional forces has subsided.\textsuperscript{303} The declining defense budget has resulted in the reduction and relocation of Russian military forces.\textsuperscript{304} Budget cuts have also led to a drop in equipment modernization of conventional weapons by the Russian government.\textsuperscript{305}

Finally, proponents of deregulation assert that Russian access to technology aids democratic initiatives.\textsuperscript{306} Advanced telecommunications is a prerequisite for economic development in Russia\textsuperscript{307} and the free flow of information propels democratic movements.\textsuperscript{308} Proponents, therefore, argue that controlling exports to Russia actually hinders U.S. policy objectives to assist the evolving democratic, capitalist governments in the former Soviet

\textsuperscript{300} Encryption Foreign Availability: How Much Evidence Do You Need?, EXPORT CONTROL NEWS, July, 31, 1994, available in Westlaw, Allnews Database. The Software Publishers Association confirmed that encryption software programs are produced in 78 countries including Australia, Belgium, Finland, Germany, Israel, Switzerland, and the United Kingdom. \textit{Id.} Many of the companies in these countries export the encryption software throughout the world. \textit{Id.}

\textsuperscript{301} Alam, supra note 10, at 145.

\textsuperscript{302} See Technology Hearings, supra note 283, at 46-47 (statement of Carol Henton, Manager, Corporate Export Administration Department, Varian Assoc., Inc.) (stating that only multilateral export controls are effective and unilateral controls only harm U.S. industries).

\textsuperscript{303} Security Hearings, supra note 18, at 23 (prepared statement of Lt. Gen. James R. Clapper, Jr., USAF, Director, Defense Intelligence Agency).

\textsuperscript{304} \textit{Id.}

\textsuperscript{305} \textit{Id.}

\textsuperscript{306} See Cold War Controls, supra note 126, at 288 (stating that it is no coincidence that secure democracies have advanced telecommunication infrastructures).

\textsuperscript{307} Telecommunications Hearings, supra note 9, at 11 (testimony of Lawrence Eagleburger of Baker, Worthington, Corsley, Stansberry Law Offices, and former Acting Secretary of State).

\textsuperscript{308} \textit{Id.} at 14 (testimony of Robert E. Allen).
DUAL-USE EXPORTS TO RUSSIA

2. Supporting Export Controls: The National Security Argument

Despite the potential benefits of decontrolling the exportation of computer and telecommunication technology, others oppose deregulation based on national security concerns. This opposition is based on the presumption that Russia's economic and political instability requires the United States to retain a more restrictive export policy toward Russia. Although opponents of deregulation recognize various dual-use technologies are available from non-U.S. sources, they argue that the United States should not contribute to the proliferation of sensitive technology.

The ability to monitor other nations is a necessary part of U.S. security. As the NSA is responsible for decoding signals of foreign governments and collecting information for counterintelligence purposes, the NSA fears that advancing Russia's telephone network would make it more difficult to monitor them during times of peace and harder to disrupt the network during times of war or unrest. For example, advanced fiber-optic telecommunications could link Russia's government and defense installations and hamper U.S. surveillance efforts because coded transmissions over fiber cables cannot be moni-

309. Cold War Controls, supra note 126, at 288.

310. See Morillo, supra note 16, at 1120 (noting U.S. President Clinton has been criticized for emphasizing economic benefits of deregulating dual-use exports at expense of national security).

311. See Telecommunications Hearings, supra note 9, at 18 (testimony of Lt. Gen. Lincoln Faurer (retired), Former Director of the National Security Agency) (stating that political instability in Russia demands watchfulness and gradual deregulation of export controls); Nitze, supra note 20, at 483-84 (recognizing that political instability in Russia yields uncertainty as to whom will control its vast arsenal).

312. U.S. CONGRESSIONAL OFFICE OF TECHNOLOGICAL ASSESSMENT, 103D CONG. 2D SESS., EXPORT CONTROLS AND NONProliferation Policy 56 (1994). Supporters of unilateral export controls argue that deregulating controls simply because they are available from other sources is analogous to selling a gun to a criminal just because the criminal can buy it elsewhere. Id.

313. See Software Hearings, supra note 266, at 11 (testimony of Stephen T. Walker, President, Trusted Information Systems, Inc.) (stating that limiting availability of cryptography is necessary for United States to spy on adversaries).


315. Dual Personality, supra note 19, at 116.
The NSA is also opposed to the deregulation of encryption software as cryptography hinders the ability of the United States to monitor international communications. As the proliferation of software programs with advanced encryption algorithms increases, the NSA's ability to listen to communications of other governments decreases. Encryption software also enables U.S. adversaries, terrorists, and spies to keep communications secret from the NSA. Furthermore, the worldwide use of encryption enhances the ability to develop offensive weapons to attack U.S. communications systems.

Those concerned with national security have also asserted that the economic benefits of deregulation may only yield a short-term benefit that will be outweighed by increased military spending in the long run. High-speed computers, for example, which have numerous civilian uses, can also enhance nuclear weapon systems. Iraq is a prime example. In exporting U.S. dual-use items to civilian industries in Iraq, the United States enabled the Iraqi government to produce sophisticated weapons systems ranging from ballistic missiles to nuclear weapons. Because of these exports, the United States spent billions in defense dollars fighting the Gulf War. Similarly, opponents of deregulation are fearful that the Russian arsenal could benefit

317. See Software Hearings, supra note 266, at 1 (statement of Rep. Sam Gejdenson) (indicating NSA seeks to regulate exports on software that is mass-marketed in United States).
319. See Rubenstein, supra note 253, at 182. A cryptographic algorithm is the mathematical function used in encryption software. Id.
321. Id. at 487.
322. Id. at 488.
323. Morillo, supra note 16, at 1122.
324. Id. at 1121.
325. See id. at 1121 (describing how U.S. exports to Iraq developed Iraqi arsenal).
326. Id.
327. Id.
from advanced technology.\textsuperscript{328}

Opponents also assert that deregulating export controls creates enforcement concerns.\textsuperscript{329} Although the EAA has strict licensing and enforcement provisions,\textsuperscript{330} the United States has not always been able to determine if the exporter knows the civilian export will be used for proliferation activities.\textsuperscript{331} Those concerned with national security fear that relaxation of export controls of goods intended for civilian use will result in the diversion of these goods for military purposes.\textsuperscript{332}

III. NATIONAL SECURITY INTERESTS DICTATE THE UNITED STATES SHOULD CONTINUE TO CONTROL THE EXPORTATION OF DUAL-USE TECHNOLOGY TO RUSSIA

Russia's political transformation\textsuperscript{333} invites the elimination of export controls that were implemented due to the Cold War.\textsuperscript{334} The United States, however, should continue to limit deregulating export controls to Russia because the current state of Russia continues to pose threats to U.S. security interests.\textsuperscript{335} At the same time, the United States cannot ignore the costs export controls place on U.S. technological industries.\textsuperscript{336} The disbanding of COCOM and the intention to establish a new multilateral export regime\textsuperscript{337} present the United States with the opportunity to

\textsuperscript{328} See Alam, supra note 10, at 146 (noting opponents of deregulation are fearful Russia will qualitatively enhance their military capabilities). The Russian government's arsenal includes 27,000 nuclear warheads. Security Hearings, supra note 18, at 22.

\textsuperscript{329} Morillo, supra note 16, at 1121.

\textsuperscript{330} See OVERVIEW OF EXPORT CONTROLS, supra note 26, at 67-80.

\textsuperscript{331} Morillo, supra note 16, at 1121.

\textsuperscript{332} See Alam, supra note 10, at 146 (noting that Russia has made quantitative cutbacks in its arsenal, but possibility that Western technology will qualitatively upgrade remaining weapons still exists).

\textsuperscript{333} See Clines, supra note 8 (reporting on disbanding of Soviet Union in December 1991).

\textsuperscript{334} See supra notes 29-40 and accompanying text (describing unilateral and multilateral export controls imposed to prevent Soviet Union from dual-use technology).

\textsuperscript{335} See supra notes 153-92 and accompanying text (discussing political and economic instabilities in Russia, influence of ultra-nationalist leaders, and Russia's nationalist external policies).

\textsuperscript{336} See Telecommunications Hearings, supra note 9, at 14-15 (testimony of Robert E. Allen, Chairman of the Board and Chief Executive Officer of AT&T) (stating U.S. companies may lose billions of dollars in revenue if export controls toward Russia and other former communist nations continue).

\textsuperscript{337} Launching New Regime, supra note 196, at 1634.
create an export policy toward Russia that addresses both economic and national security concerns.

A. Threats to National Security That Arise from Russian Access to Dual-Use Technologies

During the Cold War, the United States limited exports of dual-use technologies to Russia to prevent the Russians from enhancing their military capabilities, to further intelligence gathering, and to hinder Russian economic development. In many respects, these rationales for limiting exports of dual-use commodities remain. As Russia is politically unstable, surveillance efforts are an important aspect of national security. The political environment in Russia also creates the possibility of the Russian government using Western technology to enhance their military capabilities. Moreover, the United States seeks to frustrate corrupt activities that threaten the development of a capitalist economy in Russia.

1. Dual-Use Exports Impair U.S. Surveillance Efforts

Eliminating export controls on telecommunications equipment and encryption technology makes it increasingly difficult for the United States to monitor activities in Russia. With Yeltsin's popularity on the decline and ultra-nationalists gaining power, the future leadership of Russia is unclear. Although Russia is no longer the military superpower it once

340. See Galuska, supra note 166, at 56 (reporting on popularity of Zhirinovsky and his desire to enhance Russian defense industries).
341. See *Crime and Corruption in Russia*, supra note 135 (describing current state of Russia as nation plagued with organized crime and corrupt activities).
342. See *Dual Personality*, supra note 19, at 116 (explaining NSA is opposed to deregulation of export controls on telecommunications equipment because advanced telecommunications system is harder to monitor); *Software Hearings*, supra note 266, at 11 (stating cryptography cripples ability of United States to monitor international communications).
343. See Hiatt, supra note 155, at A20 (reporting that only eight percent of Russians support Yeltsin).
344. See *Policy Toward NIS*, supra note 17, at 1 (stating Ultra-Nationalist Party is largest political bloc in Russian parliament).
was, the Russian arsenal contains 27,000 nuclear warheads. In order to preserve national security, the United States must have the ability to monitor political activity to determine who will ultimately control the Russian nuclear arsenal.

Even if Yeltsin remains in power, the United States must have the capabilities to watch Russia closely. As Yeltsin has contemplated authoritarian measures, asserted a nationalistic agenda, and encouraged Russian defense contractors to market their goods abroad, U.S. surveillance efforts are necessary to monitor the activities of the Russian government. In addition, Yeltsin’s establishment of the Ministry of Security requires the United States to have the abilities to counter Russian surveillance efforts.

2. Dual-Use Exports Can Facilitate the Development of the Russian Arsenal

As highlighted by the Toshiba-Kongsberg affair, the exportation of dual-use technologies can also provide Russia with the ability to enhance their military capabilities. While in theory the United States can limit the exports to civilian end users, as seen with Iraq, exporting dual-use commodities enables the receiving government to use the technology for military purposes. Allowing U.S. industries to export telecommunications and computer equipment for limited purposes, therefore, does not diminish the possibility that the technology will be diverted for restricted use.

345. See Security Hearings, supra note 18, at 23 (stating Russia’s conventional forces have weakened and pose smaller threat to United States than during Cold War).
346. Id. at 22.
347. Cohen, supra note 17, at 373.
348. Efron, supra note 186, at 8.
349. See Trimble, supra note 167, at 42 (reporting that Russian Ministry of Security is run by former KGB agents who intend to spy on Western nations).
350. See supra notes 106-11 and accompanying text (exhibiting how violations of export controls can harm U.S. national security interests).
351. See Kenner & Russell, supra note 110, at 623 & n.6 (explaining how exporting dual-use technology to Russia enabled Russia to enhance ability of their submarines to evade radar).
352. Morillo, supra note 16, at 1121 (discussing how United States encouraged exportation of sensitive technology to Iraq).
353. See 15 C.F.R. § 771.20 (c). The GLX is not available for items subject to missile technology or nuclear proliferation controls and only encompasses exports to civil end users for civilian uses. Id.
Political instabilities present various scenarios where Russia may divert dual-use technologies. First, if Yeltsin is overthrown, an ultra-nationalist leader will have access to dual-use technologies to produce more sophisticated weapons. In this worst case scenario, the short term economic benefit of deregulating exports will be replaced by long term expenditures of fighting another Cold War, or in the worst case scenario, a conventional war. Second, if Yeltsin adopts a more authoritarian, nationalist agenda, the chances of Yeltsin developing the Russian arsenal increase. Enhancing Russia’s military capabilities will become necessary if Yeltsin continues to pursue actions comparable to engaging war with the Republic of Chechnya.

Economic instability in Russia also increases the likelihood that the Russians will sell weapons and technology to other nations to increase revenue. The Russians have already attempted to sell arms to India and continue to transfer arms to Iran. If this behavior continues, exporting dual-use technology to Russia will not only enhance the Russian arsenal but these technologies will in effect enhance the military capabilities of other countries whose policy objectives are counter to those of the United States.

3. Dual-Use Exports Foster Corruption

Exporting computers and telecommunications does not aid in developing capitalist markets in Russia because Russia’s economy is plagued by organized crime. While telecommunications technology and encryption software can help develop legitimate businesses, they also provide the means to further en-

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354. See Galuska, supra note 166, at 56 (reporting Zhirinovsky seeks to rebuild Russia’s defense industries).
355. See Morillo, supra note 16, at 1121-22 (citing Iraq as example that short term economic benefits of exports was outweighed by costs of fighting full-fledged War).
356. See Hockstader, supra note 159, at A28 (reporting that Yeltsin’s decision to wage war on Chechnya caused Yeltsin to lose support from Russian democrats who see Yeltsin’s decision to send troops Chechnya as authoritarian measure).
357. Id.
358. See supra notes 173-77 and accompanying text (describing substantial economic instability in Russia).
359. Policy Toward CIS, supra note 17, at 34.
360. See Russia in New Regime, supra note 210, at 5 (indicating U.S. concern over 1988 Russian arms contract with Iran).
361. See Crime and Corruption in Russia, supra note 155 (stating corruption in Russia has permeated economy and politics).
hance criminal activity in Russia.\textsuperscript{362} In order to develop a more stable economy in Russia, the United States must limit exports that enhance the capabilities of criminals to threaten capitalist endeavors in Russia.

The extensive corruption has also caused the Russian people to be wary of democracy and capitalism.\textsuperscript{363} As corruption continues, so does the likelihood of the Russian people embracing an authoritarian government.\textsuperscript{364} In order to stifle the trend toward authoritarianism, the United States cannot pursue an export policy that ignores the influence organized crime has on Russian politics and the Russian people.

B. \textit{Balancing the Competing Interests}

Although the Russian government poses extensive security concerns, the economic arguments for deregulating export controls cannot be ignored. The United States must address the ability of Russia to obtain controlled dual-use technologies from non-U.S. sources.\textsuperscript{365} At the same time, the United States should continue to encourage programs that can develop democracy and capitalism in Russia while enabling the United States to have a healthy trade relationship with Russia in the future.

1. Addressing the Concerns of U.S. Businesses

Two bills pending in Congress seek to balance economic interests with national security. House Bill 3534\textsuperscript{366} and House Bill 3937\textsuperscript{367} propose legislation that attempts to alleviate controls on dual-use technologies that is available from other sources while recognizing the need to maintain controls for security purposes. Through requiring the Secretary of Commerce to conduct yearly reviews on technology export controls and indicating the reasons for controls, House Bill 3534 imposes greater accountability

\textsuperscript{362} See \textit{Press Secretary supra} note 267, at 2-3 (indicating concerns over exporting encryption software as encryption devices can help further criminal activity).

\textsuperscript{363} \textit{Crime and Corruption in Russia, supra} note 135, at 5 (statement of Dr. Louise Shelly).

\textsuperscript{364} \textit{See id.} at 5-6 (indicating Russian people lived in nearly corruption-free society before democratization, and manner in which Russians appraise democracy directly impacts on ability of authoritarian leaders to gain control).

\textsuperscript{365} See \textit{supra} notes 292-302 (noting extent of controlled dual-use technologies available to Russia outside United States).

\textsuperscript{366} H.R. 3534, 103d Cong., 2d Sess. (1994).

\textsuperscript{367} H.R. 3937, 103d Cong., 2d Sess. (1994).
on the Administration without asserting where controls should be lifted.\textsuperscript{368} Similarly, House Bill 3937 requires more stringent and more frequent assessments of technology available from non-U.S. sources.\textsuperscript{369} This type of legislation avoids removing controls where similar, but not as powerful or comprehensive technology, is available from sources outside the United States while preserving U.S. competitiveness in international markets.

Multilateral cooperation is essential if the United States seeks to control a particular commodity that is available worldwide. As a new multilateral export regime is scheduled to form,\textsuperscript{370} the United States will have the opportunity to present the reasons for retaining controls on dual-use exports to Russia. If multilateral cooperation is achieved, the United States maintains enforcement mechanisms under the Multilateral Export Control Enhancement Amendments Act\textsuperscript{371} to impose sanctions on those countries illegally transferring dual-use technology to Russia.\textsuperscript{372}

The United States, however, must continue to exercise unilateral controls to Russia in limited instances. Even if an export is widely available from non-U.S. sources, the United States must prevent exporting technology that is critical to U.S. security interests. In these limited circumstances, the United States must consider the global impact of contributing to the proliferation of sensitive technology before considering the economic benefits.

Although the instability in Russia requires the United States to continue to limit exports of dual-use technology to Russia, the United States should continue to develop economic opportunities in other former communist nations. As Hungary, Poland, and the Czech Republic are establishing political and economic institutions comparable to those of Western countries,\textsuperscript{373} the United States has the opportunity to develop viable trade relationships with these nations. U.S. businesses can develop these markets with few restrictions as most of the exports controls to

\textsuperscript{368} H.R. 3534 § 2, at 2-7.
\textsuperscript{369} H.R. 3937 § 105, at 45-49.
\textsuperscript{370} Launching New Regime, supra note 196, at 1684.
\textsuperscript{372} Id. §§ 2410a(a), 2410a(h).
\textsuperscript{373} McKenzie, supra note 3, at 7.
Hungary, Poland, and the Czech Republic have been lifted.\textsuperscript{374} Although the potential markets in these countries are less extensive than the economic opportunities in Russia, the current situation in Russia would require the United States to risk national security in exchange for economic gains.

2. A Viable Export Policy Toward Russia

In order to develop a viable trade relationship with Russia in the future, the United States must pursue policies that foster these initiatives. Admitting Russia into the new multilateral export control regime will allow the United States to have greater control over Russia's proliferation activities. Once the United States is assured that Russia is not diverting dual-use technologies to nations such as Iran,\textsuperscript{375} one of the major concerns over decontrolling exports to Russia will have been addressed. In the interim, the United States should continue to provide educational programs for Russian capitalists and democrats\textsuperscript{376} and encourage U.S. investment in civilian industries in Russia through the U.S.-Russia Business Development Committee.\textsuperscript{377} These programs will promote economic and political stability while countering nationalism and anti-Western sentiments in Russia.

\textbf{CONCLUSION}

As the Cold War has come to an end, the United States is looking for ways to build ties with Russia and open economic opportunities that were closed for over forty years. The alleviation of export controls on dual-use technology to Russia appears to achieve those goals. Russia's inability to establish a stable regime, however, creates a variety of U.S. security concerns. To address the competing objectives of economic opportunities with

\textsuperscript{374} See 15 C.F.R. § 799.1 (Supp. 1 1994) (indicating dual-use exports to Poland, Hungary, and Czech Republic are likely to be approved).

\textsuperscript{375} See Launching New Regime, supra note 196, at 1634 (stating Russian membership in new regime is contingent on rescinding Russian arms contract with Iran). Countries expected to participate in the new regime have agreed to control exports to pariah nations. Allies Firm Up List, supra note 212, at 1922.

\textsuperscript{376} See Policy Toward NIS, supra note 17, at 49 (discussing program where members of Russian parliament study democratic process with U.S. congressional counterparts). The United States also invites Russian entrepreneurs to receive training and education in the United States. Id. at 25.

\textsuperscript{377} See supra notes 220-22 and accompanying text (describing activities of Business Development Committee to promote investment and trade with Russia).
national security, the U.S. Congress must amend the EAA to remove controls on exports available to Russia from other countries while retaining export controls on sensitive dual-use technologies to Russia. Meanwhile, the Clinton Administration should promote policies that foster democracy and capitalism in Russia in order to enable U.S. industries to export dual-use technologies to Russia in the future without compromising U.S. security.