

U.S. EXPORT POLICY AND NATIONAL SECURITY

A Discussion with

**Senator John Heinz
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and

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**Moderated by
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by Senator John Heinz and Stephen D. Bryen

W. Bruce Weinrod

On behalf of The Heritage Foundation, I would like to welcome you to a discussion of U.S. export policy and national security. I am Bruce Weinrod, Director of Foreign Policy and Defense Studies at Heritage.

There appears to be a general consensus in this country that the U.S. and its allies ought not to provide the Soviet bloc with advanced technologies that would enhance Soviet or Warsaw Pact military capabilities. At the same time, there are differing perspectives on the best way to prevent advanced technology transfers or leakage to the Soviet bloc while at the same time not unduly infringing upon U.S. private sector exports. This, therefore, is the topic of our program: what policies should the U.S. adopt in order to make advanced technology leakage difficult or impossible. To discuss this and related topics, we are pleased to have two of the people in the United States with the most knowledge on this subject. Each has spent years involved in various aspects of U.S. export policy. First, I would like to introduce Senator John Heinz from Pennsylvania. Senator Heinz is in his second term in the Senate after two-and-a-half terms in the House and experience in the private sector prior to that. He serves on the Finance Committee, the Special Committee on Aging, and also on the Government Affairs Committee. But most relevant for us today, he is a senior member of the Senate Banking Committee, where he has spent a good bit of his time over the past few years working on export issues. So we welcome you here today, Senator Heinz, and we look forward to your comments.

Senator John Heinz

Thank you very much. It is good to be here with Steve Bryen, who has come before the Banking Committee on numerous occasions, and also with Bruce. One of the things he did not mention is that I had the honor of having him as my Legislative Director for a number of years.

This is an extremely timely forum. The issues that we will be dealing with are in the news and on the table between the House and Senate, as the trade bill is in conference. So The Heritage Foundation has performed an important public service in arranging this forum.

It should be clear to anyone who is concerned about U.S. national security that a major source of U.S. military strength lies in preserving the strategic balance with the Soviet Union via an advantage in high technology. For example, our technological edge ensures that the Soviets recognize our nuclear deterrent as the terrible weapon that it is. Our technological edge permits us to face military forces far larger than our own or our allies' with a great deal more confidence. And our technological edge permits us to track and to apprehend what is probably the most dangerous strategic weapon, the nuclear submarine.

In trying to set export control policies for the 1990s, the key question we face is how to maintain the technological lead that we now enjoy. Do we do it by simply outrunning the competition? By slowing their rate of advance? I think the answer is, both. So our first goal has to be to ensure that U.S. high technology industries are strong, are competitive, and are in a position to maintain high quality research and development, and therefore the technological lead that our security obviously depends on.

Trade Deficit a Concern. The private sector is the technological leader in this country. Seventy percent of all the high-tech research is funded by the private sector, not by the federal government, SDI notwithstanding. And it will remain so, we hope, but that will happen only if U.S. companies are capable of earning the profits necessary to fund new research and development. And with our high-tech trade companies now running a trade deficit for the first time in history, this is something to be concerned about.

The second goal for our export policy must be to keep the Soviets from gaining on us. Since primary research and engineering are not their forte, this mainly involves limiting the flow of militarily critical technologies from the West to the Soviet Union. It would be impossible, of course, to totally deny Soviet access to our technology, because technology diffuses too quickly and there are always dedicated salesmen, not all of whom can be detected and caught, who are intent on circumventing any controls.

However, an export control policy should filter the flow to catch as much of the critical technology as possible, thereby making its acquisition by the Soviets difficult and costly. I realize I have not yet told you anything you do not know, but I think we ought to be clear that these are our two objectives and that they create competing claims on our export control system.

Notions in Conflict. All of our COCOM allies and, I might add, a growing number of developing countries produce advanced technologies as good as, and in some cases better than, our own. In that world of universal technology, maintaining our competitive edge in high-tech argues for open trade. Denying technology to the Soviet Union, on the other hand, argues for limits on trade. These two notions are in conflict. If our system is to work, we have to resolve that conflict successfully.

This requires first of all fine-tuned judgment on the proper balance of U.S. security interests and economic interests. An excess of control over our industries might endanger their ability to compete and innovate; and that would be more damaging in the long run to our technological position than slow leakage of technology. To put that in context, in 1985 it is estimated that about \$80 billion of U.S. foreign sales were covered by export controls. About 70 percent of those sales, \$56 billion, involved technologies below what is known as the old PRC greenline, that is, the technology that we sold without controls to China up until last year.

If our export controls were applied in a way that slowed, retarded, or jeopardized the \$56 billion in sales to COCOM countries, rather than stopping the diversion of critical technologies to the Soviet Union, that \$56 billion loss in sales

would put a serious dent in the profits of the companies that produce high technologies, and therefore in their ability to finance new technological developments.

If the first requirement is to make careful judgment, the second is to require that the controls be multilateral. If the U.S. were simply enforcing its own control system without cooperation from its COCOM allies, principally the EEC and Japan, that would not produce a very successful export control regime. And no matter how tightly we control, even if multilaterally, there is nothing we as a country can do to control directly the actions of a Toshiba before the fact. We have to have the Japanese do something about Toshiba before the fact. Our law does not reach to Japan. Only Japanese law does.

Two Factors. So if my thesis is correct, meeting our twin objectives of competitiveness and appropriate control depends on two factors. First, and most important, agreement with our allies on the critical technologies to be controlled; this must be a mutual agreement. Second, having reached that agreement, a regime for effective and universal enforcement must be established.

To do that, we need the support of both industry and our allies. We can delude ourselves, I suppose, into thinking that controls on every technology from the most mundane to the most advanced represent the appropriate amount of caution to preserve our national security. But if we attempt to place national security controls on many of the items available in any Radio Shack, our allies will, and they have, question the seriousness of our effort and our exporters will throw up their hands in despair. We will achieve none of our objectives. We will not be promoting U.S. economic interests and we will not be achieving multilateral control of the leakage of critical technology to the Soviet Union.

Solid Principle. Setting aside the issue of consensus, we have to realize that it is senseless to spread our control efforts too thin, especially at the low end of the technology spectrum where foreign availability through rapid diffusion of technology makes control virtually impossible. The notion that foreign availability should guide our export control policy is a longstanding principle in our law. It is one more honored in the breach than in the observance in some of our export control decisions. But it is a good and solid principle.

Once we have agreed on the technologies requiring control, we come to the real keystone of export control, and that is effective, universal licensing and enforcement. Here we must provide our exporters clear policy guidance and efficient licensing services. We must demonstrate that those attempting to evade controls will be caught and severely punished, and we must ensure that our allies do likewise.

I might add parenthetically that over the last few years Congress has come to recognize that we need more resources for export licensing and enforcement. Budgeting for resources of the Commerce Department devoted to export administration has grown in the last ten years from \$6 million to \$27 million, more than four-and-one-half times, and personnel from 150 to roughly 550. You might think the results of those efforts would be considerable. The fact is, they have

been significant but not considerable. The average processing time for license application has been reduced by about 25 percent, from 28 to 21 days, and overdue licenses have been reduced further. But we still have a very complex, time-consuming export control regime, and to the extent we can remove unnecessary burdens, we will be more credible on those things we seek to control, and we will be advancing U.S. economic interests more effectively.

Stiff Penalties. Deterrence is an essential element of any system based on the unmonitored compliance of those controlled. Our government--and this is true for our COCOM partners as well--simply cannot track the thousands or tens of thousands of trade transactions undertaken every day. It is for the exporters themselves, and always will be regardless of any laws that Congress passes, to read the regulations and apply for the licenses. To ensure faithful compliance under these circumstances, U.S. export control laws have been given real teeth, and offenders face penalties that include some very serious sanctions.

While the U.S. has been increasing the effectiveness of its controls, strict enforcement has hardly been the norm in the rest of COCOM, a situation attested to by Steve Bryen before the Banking Committee about six weeks ago. The Toshiba case, for example, demonstrates that the basic export control laws in many COCOM countries are indeed a weak reed. Many are based on postwar short supply or foreign exchange concerns with very modest civil penalties and rarely, if ever, criminal liability. Statutes of limitation are as short as six months. Licensing and custom checks are extremely cursory at times and carried out by seriously overworked staffs. Clearly that kind of enforcement by our allies is unacceptable in matters of national security.

Important Amendment. The amendments to the Export Administration Act (EAA) that I sponsored have been reported from the Banking Committee and acted on by the Senate. They address the two key issues that we have been discussing. They focus first on the system and the critical technologies, and then they focus on ensuring effective, universal licensing and enforcement. I believe they will make an important contribution to effective export control.

These amendments are intended to eliminate individual licensing for shipment of low-level technologies to free world destinations. These are technologies that are now freely shipped by our allies to the East bloc with just a simple notification to COCOM and are literally available at the corner electronics store. Prior approval to ship would be eliminated for exports to and reexport within COCOM involving goods already freely available there. Procedures for making foreign availability determinations would be streamlined so that decontrol of items freely available abroad could be accomplished in timely fashion.

Such individual licenses as those above the Administration Exception Note (AEN) and below the old PRC greenline were eliminated, but for COCOM, basic reporting and notification requirements under a general license were retained. The paper trail thereby created would permit the U.S. to block Soviet targeting of critical technologies and also to support enforcement efforts if problems arose. In addition, end-user restrictions and advance notification requirements would apply for shipment to COCOM of a short list of highly critical technologies, such as some

Vax process control computers. Finally, individual licenses still were required for blacklisted companies and for shipment to COCOM countries who had not met their obligations under the COCOM agreement.

The EAA amendments also would reduce those licensing requirements for U.S.-made component parts that have resulted in such U.S. parts not being used in foreign designs. Under the new language, exporters would be free to ship U.S. components--often simply chips--of larger systems that are not themselves controlled. Foreign suppliers also would be able to build up to 20 percent U.S. content into their products without seeking export licenses. Taken together, these changes would eliminate about 25,000 to 30,000 licenses each year, a reduction of about 25 percent. They would remove controls whose principal effect has been to limit U.S. ability to compete without having any effect on the strategic balance. And in no case would the essential controls on high technology flows to the East be removed. That is to say, everything above the PRC greenline remains as it has been.

The second element of these amendments is aimed at ensuring effective, universal enforcement. Since we have been unable enforce our laws through COCOM ourselves, we have adopted a second-best solution, namely deterring foreign violators by threatening them with the loss of the U.S. market. Such sanctions would put real teeth into our export control laws. In 1985 in the Banking Committee, I pressed for discretionary import sanctions as part of the EAA amendments. I added debarment from U.S. government procurement for five years in this year's bill. And after the committee hearings on Toshiba/Kongsberg, it became clear that even sterner measures were necessary, and then Senator Garn and I offered the so-called Toshiba Amendment, which mandates two-to-five-year import sanctions on any COCOM violator.

The Toshiba Amendment may be the most important amendment of its kind that has ever been passed by the Senate. It certainly has received a lot of attention, both here and abroad. It is not every day that heads of big corporations resign. But this does not mean the problem is solved. Other amendments in the bill call for multilateral improvements of export controls through negotiations with COCOM. The key provisions provide that serious violations must incur a high penalty.

Taking Controls Seriously. This is not the preferred method for promoting improved COCOM enforcement, for dealing with those who have sold export agreements short. It is second best. But our COCOM allies, other than the Japanese, are beginning to take export controls seriously for the first time in their history. Even the Norwegians, who have traditionally been viewed as strong COCOM supporters, but who have not acted to support this position, have realized the weakness of their export control laws and taken measures to improve. But the guilty parties, whether in the U.S. or elsewhere, have to be punished as sternly as possible, if we are going to deter future diverters.

It is apparent to me after wrestling with Export Administration Act issues for nearly a decade that the U.S. cannot exert complete control--even of the most critical technologies. They are made in other countries. Toshiba and Kongsberg

shipped their own technologies, not ours, to the Soviets. They did it in violation of the laws of their own countries. This was a technology on which controls were maintained only by consensus; it was beyond the reach of U.S. law. Such cases can be avoided in the future only if all COCOM countries and other cooperating countries dedicate themselves to control of critical high technologies, not the marginal ones. And I am hopeful that the amendments recently passed by the Senate will help to achieve that end.

Mr. Weinrod: Thank you very much, Senator Heinz. It is now my pleasure to introduce our second speaker, Dr. Stephen Bryen. Dr. Bryen received his Masters and Doctorate from Tulane University. He served as Assistant Professor of Government at Lehigh University, where he specialized in computer applications to social science problems. He worked on Capitol Hill for Senator Clifford Case, as Senior Foreign Policy Consultant, and then on the staff of the Senate Foreign Relations Committee. He has served as Deputy Undersecretary of Defense for Trade Security Policy since 1981, and in 1985, was appointed Director of the Defense Technology Security Administration, which was established in order to consolidate all of the Pentagon's technology security concerns.

Dr. Stephen Bryen

Thank you. I am glad to have the opportunity to discuss what we in the Pentagon call the Heinz Amendment. It is a terribly important program, which the Toshiba/Kongsberg case has made very clear. This is an instance of a transfer of equipment where military goods are being produced directly, one to one, in a very visible and tangible way, which has an immediate impact on the strategic balance.

There have been many other transfers--computer hardware, graphics equipment, command-and-control-type systems--which are harder to see because they get buried in the Soviet industrial complex. I would argue, and I think Senator Heinz would not disagree, that these transfers have just as negative an impact as those involved in the Toshiba case.

In 1981, when the Reagan Administration started to study export controls, it was immediately evident that the problem was far greater than anyone had imagined. This was revealed largely by an agent operating in the Soviet Union, who provided a great deal of information on just what the Soviet program was and how extensive it was. What we learned was that thousands of people, from intelligence collectors in the KGB and GRU to people in the Academy of Sciences and in the various trade offices around the world, even in the satellite countries, were heavily engaged in a vast technology collection effort, in an effort to replicate weapons systems that we had, or at least countermeasures. And in order to do that, the Soviets needed to build the kind of infrastructure that the U.S. had.

In 1970, for example, the Soviets had no semiconductor industry. They could not even make an integrated circuit. Their computer industry was producing a 1962 computer, and to this day, they are producing a 1962 computer. They had to change that if they were going to retain credibility as a superpower. And the only way to effect that change was to rip off the United States either directly, which they

did very well throughout the 1970s, or indirectly, which they have been doing very successfully since the 1980s.

The reason for the change is that this Administration tightened up here at home. The Soviets started operating off-shore, first in the neutral countries. Then when the neutral countries closed division operations down, the Soviets turned to the the COCOM countries. Their effort to get technology in the COCOM countries continues today. And in the COCOM countries, there is clearly not enough of an offensive to confront a massive Soviet effort. For example, Norway has just six licensing officials and Japan, only ten. And I suspect that Japan exports more high-tech than the U.S.

Back to Bottom. So what we must do is go to our COCOM allies to try to get their renewed, serious cooperation. Think of export controls as similar to a slide in a children's playground. The hard part is climbing the ladder to the top, and then it is zip right down to the bottom. Export controls are precarious in the same way. You work your way up the ladder, but if you are not careful it is zip right down to the bottom again.

And what some of us fear and why we are concerned about the Senate bill, however well-intentioned it is, is that it might push the U.S. down the slide a lot more precipitously than is desirable. There is no doubt that the infrastructure for export controls is in need of vast repair, particularly abroad. It is not especially effective at home, as many exporting companies know. It is a difficult and cumbersome system, and much must be done to improve it.

What the Senate has targeted (in terms of the goods that are shipped to the COCOM countries) are goods that for the most part do not go through the individual validated licensing process anyhow. They are sent abroad under a variety of bulk licenses, the most well-known one, the one that the Commerce Department tightened up a few years ago, is called the distribution license. The license authorizes companies which sell large quantities of goods abroad to sell those goods in an approved trading network, where they carry out some significant responsibilities in making sure that the recipients of those goods can be relied on, are good customers, and will not divert products or engage in other activities that are against U.S. interests.

Requirements Tightened. That system, as it stood before 1985 or so, had to be improved. We had found that the auditing and the care with which U.S. and foreign companies were handling the process was far below par. And the Commerce Department very appropriately tightened up the license requirements. That is where the \$56 billion budget increase, at least the substantial portion that goes to the COCOM countries, really is at work is in the Distribution Licensing System.

Now what the Senate amendments would do in principle is eliminate the Distribution Licensing System for the goods in the China greenline bracket, and that is three-quarters of the goods, and replace it with a system that would send goods off to Europe to any customer, except those that are explicitly on the banned list. There they will be disposed of using European licensing systems. Now Senator Heinz himself has said that clearly the system in the alliance is not what it ought to

be. Therefore, the Senate bill in effect says if Norway is handling 10,000 licenses now (I have no idea what the number is) tomorrow it will have to process 30,000, because Norway will have our goods in addition its own, and we are not going to help. All the Europeans are on their own.

The problem is that I do not think they can handle it without a lot of help from the U.S. But how can the U.S. have any idea what the transactions are? How can the U.S. know who has the goods and where they are going? These questions need to be answered. It is bad enough the way it is, but I suspect that one of the consequences of this approach is to make it even worse.

U.S. Leadership. If that is true, if all we would do is shift the burden to our allies, then in a sense we have given up the leadership of a program that everyone understands only we can provide. There is no debate about the fact that the United States has to provide the leadership for the COCOM process. We provide the lists almost always. We defend the lists almost always. We point out wrongdoing almost always. We blow the whistle when necessary. We put pressure on the allies to improve their systems.

The reason we went to the neutral countries is because they were a big sieve, through which technology flowed like rainwater. We said, this is just not acceptable. It is not neutrality if all you have become is a passthrough to improve the Soviet military-industrial operation. And we had a major case in Sweden, a thing called Datasat, which involved the sale to the Soviets of an air-traffic control system that could be used against our cruise missiles. A very embarrassing case involving both Swedish and American technology, but it illustrated the problem: widespread cheating with our technology and their technology. But it brought home, I think, that neutrality is a delicate thing. On the whole I think I can report that the neutral countries today are no longer a sieve. The holes have been plugged. But I cannot say the same about COCOM countries. In a curious sense, the Senate has created a paradox where it would make available to the COCOM countries benefits in excess of those made to countries who might do a better export control job. And to suggest that the U.S., as a public matter, tell a COCOM country that it cannot have something because of a declaration that the country is unfit would seem to me politically impossible.

"Gold Card." I believe that there is a better way to do all this and I made a proposal that the Commerce Department once supported more strongly than they do now. It said that any company abroad that proves to be a reliable company deserves special recognition, special praise, and special support from the United States. Such companies ought to be able to receive goods without licenses from the United States. Someone has called it the Gold Card Program, but it is officially called the Certified End-user Program.

What this means is that a bona fide company that has done business with the United States over time and indicated an interest would be allowed to receive goods from the U.S. without a valid individual license. This procedure would substantially reduce the licensing burden for valid licenses while maintaining the integrity of the audit system. It would bypass the distribution license. And the U.S. would know to whom it was selling.

Under the proposal in the Senate, as it currently stands, the U.S. would not know. And while it is true that in the Senate proposal those on the banned list could not receive goods directly, there are plenty who are working up to getting on the banned list. They are diverting goods but have not quite gone through the administrative process that Commerce has to get on the Black List, and they are receiving these goods like hot cakes.

The point is that the U.S. should sell things to people who are reliable, not to anybody--and should reward people who are reliable. That was the notion behind the Certified End-user Program, and I was surprised that the Senate failed to consider it in thinking through the program to streamline the licensing system.

Nobody can argue against making the system effective, but in any reform that we propose, we must be sure it does not result in reindustrializing the Soviet Union, which is the goal they were trying to achieve through diversions.

Some Spectacular Success. Senator Heinz said that U.S. success has been moderate. I would argue that our success has been fairly close to spectacular in certain respects. In the 1970s through illegal and through legal means the Soviets received turnkey factories from the United States and from the allies in an almost unbridled way. That is what really enabled them to carry out one of the biggest military buildups known in this century, a successful one, and one that has caused us great problems and greater expense.

In the 1980s, no turnkey factory or high-tech or controlled goods have been sold on a legal basis, or as far as I can tell on any illegal basis, to the Soviet Union. We have prevented a major incremental gain by the Soviet Union. What we are up against now is, on the one hand, the technobandits, the thieves, and on the other, these unhappy cases where major companies simply bypass all reason and all law, as in the Toshiba/Kongsberg case.

What the U.S. should do is adopt something like the Certified End-user Program--reward reliable customers, but not just dump our equipment off on to allies and say, "You police it!"

Reciprocity Needed. It is important to move forward on enforcement. The Senate amendment is a great step forward on that score, and it deserves greatest praise, especially the idea of giving us the possibility of cutting off imports against companies and individuals who do business with our enemies. But there are some companies who do not export anything into the United States, and in those cases, the U.S. must rely on allies to prosecute. But there must be some reciprocity, so that a crime in one country is a crime in another. It is a serious business.

Neither the United States nor its allies can allow technology leakage to the Soviet Union. We have to use our creativity and our political clout now to bring about a system that really can protect our technology, not harm our business interests, but protect our technology and get us to a position where we can continue to maintain a leadership role in this and the many other areas essential to our responsibilities as a free country and a free world.

Mr. Weinrod: Thank you, Dr. Bryen. Before we take questions, Senator Heinz might have some comments.

Senator Heinz: I agree with Steve Bryen about the need to keep asking our allies to do more. The question is what we ask them to do. If we ask them to maintain controls on a huge list of technologies that are available from countries that are not part of the COCOM regime, or not even cooperating countries, we weaken U.S. credibility with its allies.

Dr. Bryen's point of view is: the more you ask for, the more you get, which is a time-honored negotiating and bargaining strategy. But if you ask for too much and you do not get it, and then you have to fulfill that threat and control the goods anyway, the only people hurt are those on our side. This is the way to lose technological leadership. The next time you go to the bargaining table, everybody laughs and says of course you do not want us to sell our products, because our products are better. Then you are in deep trouble.

Therefore the one thing that I hope we can focus on in the question period is not whether there should be controls, but where to draw the line. What should the U.S. be controlling? In the Senate bill it is the old PRC greenline, which refers to the technology we are willing to sell the People's Republic of China. The irony is that, although it is no friend of the Soviet Union, the PRC is no paragon of integrity.

The Chinese will sell anything to anyone, probably including the Soviet Union. They will buy anything from anyone. For example, when I was in China last year, the Chinese went on at some length about Israel as the scourge of the Middle East. We went up to the Bao Tou tank factory to discover that Israeli technicians had been there just a few months previously installing new rifle technology in these old T-54 model tanks. So we should not delude ourselves that, once we sell something to the People's Republic of China, that is the end of it. The Chinese are out to make money. They need it. They want to import more U.S., Japanese, or anybody else's technology. The U.S. is kidding itself in thinking that below PRC greenline goods remain right there in China.

There are other examples of goods that are produced and available and not controlled. There are some Vax computers in there that are a little different. We have tried to control them, but the question is where to draw the line. And the difficult problem that many of us have had with the Defense Department is that the Defense Department wants a very long list and does not want to draw what at least in my judgment is a reasonable line and then control the exceptions. They believe it weakens their approach to negotiations. We believe that to be unrealistic weakens our approach to negotiations. And there is the nub of the problem.

Dr. Bryen: My list is the Soviet list. If they want something for their military effort, and if it is important enough for them to go out and steal it, I would like to try to stop them. As for the Chinese and I am sure that I can speak for the Administration on this point, we do not have the impression that any of the goods we have sent to China have been directed to the Soviets.

The greenline was intentionally made an extremely generous list. Not only that, the U.S. has been actually expanding it since then. It was never intended to limit the Chinese, except in some very special areas. In fact, the purpose of the China greenline list was help reindustrialize China, to strengthen it, to enable it both in commercial and in military terms, to become a much more senior player.

What I am really afraid of is that the bill seeks to take the greenline out of the licensing process. What we are trying to do is to prevent the reindustrialization of the Soviet Union, because we know that most of that reindustrialization has as its final purpose the modernization of Soviet military forces. We do not see the Soviet Union making Atari games, or any other civilian products. The real thrust is military might. It is the one lobby in the Soviet Union that really has influence.

It is unfair to say that we take a position on the list of controlled goods simply for a negotiating posture. We have tried to understand, as best we can, what the Soviets have been seeking from us, and we have tried to prevent them from getting it, if we thought we could do so in an effective way. And I think we have been fairly successful.

I might add one other point: recently the British made some proposals for streamlining the COCOM list. And I thought they were very good. Without going into details, I can tell you right now that they do not propose making available anything like the PRC greenline list. They are purposely way below that, because they share the idea that we do not want to let such goods go to the Soviet Union. That is their bottom line, and that is the common thread. It is what we have to build on in terms of enforcement and in terms of developing a system that can really work.

Senator Heinz: In terms of what we are trying to do in the Senate bill, we have no interest in decontrolling up to the PRC line. We are interested in COCOM destinations that are reliable. What we propose in the Senate bill is to rely on European licensing systems for those goods that basically the Europeans and the Japanese and others already make as well or better than the U.S. does, which, apart from the psychological desire of the Soviets to have U.S. brand-name products rather than Japanese brand-name products, are controlled nonetheless by the producing countries under their own national export regime.

There is not much point in attempting to control an IBM AT computer, which you can buy at Sears, by the way, in Belgium, or in trying to control its re-export, under U.S. law as well as under the law of Belgium, when there are NEC computers that are every bit as good, built in Japan, already for sale in Belgium to anybody who wants to come through, the Libyans, the Soviets, or the Cubans. Not much is gained by maintaining strict licensing on that kind of technology.

There of course should be restrictions on a Vax 8500, and that is permitted. That was part of the legislation discussed with Steve Bryen in the Committee. It was agreed it would solve the problem if we could structure the legislation where first there would be control, and second, a paper trail for critical items, when there was not something as good or better from friendly competitors. I think it goes back to the question of where to draw the line. And I do not know where DOD

would draw it, but I do not think that we can maintain a list that is infinitely long. If we can return to the issue of where to draw the line, then I think there will be a better focus on what appears to be a disagreement.

Mr. Weinrod: This has been an extraordinarily useful delineation of the key issues in this matter. I would like to open the floor to questions and also invite particular comment from the distinguished representatives here from both the Commerce and the State Department.

Paul Freedenberg, Commerce Department: Steve Bryen said that the Commerce Department had not supported the Certified End-user, Gold Card concept. Essentially, it is a good concept; we issued regulations for it. It is just very difficult to put it into effect, because there are thousands of companies abroad who have some suspicion about the U.S. auditing their system, and it takes more education before trying to put it into effect. But we adopted it. It is a concept that Steve Bryen developed. We do not think it is the ultimate solution to all the problems, but we do think it is a good one, and one that could be effectively used.

But it seems to me, the question is, what would you want to control under the PRC greenline that you cannot control with a specific, targeted list of technologies in, say, the *Federal Register*?

Dr. Bryen: I think you have already answered your own question. As soon as you start generating lists of things that are sensitive, it starts to look like the COCOM List. You end up saying, this one is special, and that one is special, I am worried about that, and worried about that, and worried about the other thing, and they need this and they need that. And pretty soon, everything is back under control, and nothing has been accomplished. So I do not know what the point of that exercise is, except to force everybody to try to renegotiate the COCOM List in advance of its renegotiation.

There is still confusion between countries. Some can handle the problem. There are a couple of countries in the COCOM system that do a pretty good job, and I would not hesitate to rely on them. They have real enforcement, and they have proved that they will prosecute cases and basically have stayed with it. And there are some which have done no job at all--one country representative stated at the recent enforcement conference that they do not even publish the COCOM list in his country because they do not want to offend the Russians.

And what we have in mind now is putting our goods there, without any paper trail, without any license, without anything at all. It is rather two-edged. Even in that country there are companies that are reliable, good customers, and they deserve to be treated in a decent and honorable way, and not to be forced into a paperwork morass. And there are companies there that are real crooks. But the Senate provision will say "up to the China greenline, we do not care. Let the other countries worry about it."

Senator Heinz: That is not technically true. First, because we had a managers' amendment, Senator Garn's and mine, on the floor, and second, we put in the Wallop Amendment. So, I really do not think that is accurate.

Dr. Bryen: And I do not think you will prevent goods being sent. Let me give you a case in point. This is a real case. A year and a half ago, there was a diversion of graphics workstations, very sophisticated ones, which fall within the China greenline I might add. They went from the U.S. to Germany, and from Germany they were sent either directly to East Germany or to Austria, from where they were sent on to the Soviet Union. We thought then and we are pretty well convinced now that the reason for the Soviet interest in these work stations was to help develop very large-scale integrated circuits for their military program. It was under a distribution license, and the licensee had the responsibility to check the end-user. The end-user in Germany lived in an apartment. His business was in this apartment, and the millions of dollars worth of workstations that he had been acquiring theoretically were in this apartment, which meant there was a small living space. But indeed, he never did take delivery of them. He just sent them on later, to wherever, as burglar alarm systems.

What I see is that we had some possibility of getting a German prosecution, but we had not succeeded in that. But we should be able to prosecute under the distribution license procedure if we can show some malfeasance. Whether we can or not is still being debated. But there is a possibility of following it with a prosecution. As I understand the amendment, however, with all the managers' modifications and formulae that have been thought of, these goods would just be shipped directly to this guy's apartment.

Senator Heinz: I must ask you one question about the graphics workstations. They were--correct me if I am wrong--on the list that we thought, or knew, that the Soviets had targeted.

Dr. Bryen: That is correct, but so is all the rest of it.

Senator Heinz: As I think we all made clear in the course of debate on the bill, it would be the intention of the government, of Commerce and Defense, in designing general licenses, to stipulate for special attention those items that had been targeted by the Soviet Union. And that list of what they have targeted is great deal shorter than the list that would be subject to a general license under PRC greenline.

Dr. Bryen: I do not think it is.

Senator Heinz: Well, that is what you testified to in the debate.

Dr. Bryen: Of course they had not written their list according to COCOM definitions. The way they do it, as you can imagine, is say we need 3,000 graphics workstations by Techtron, we need 2000 Vax computers, and they go out and get them. And the next day they make up another list. So what you are asking us to do is to try and bypass the existing system that is already set up, which has lists, and has comprehension of this, and select out for special treatment some subset.

Senator Heinz: And I asked you this question: can you think of any technology that is above the AEN level, which is low, and below the PRC greenline, which is not broadly available from sources outside the U.S. yet within COCOM?

And your answer was, "I will have to look at that." But that is what we are dealing with--a lot of items that are widely available in many countries and that cover a wide spectrum of technology.

Dr. Bryen: The point is that the Soviets are targeting U.S. stuff, not necessarily somebody else's. They want Vax computers, they want the Model 780, they want the Model 750. They have the software already. They have tried to emulate our weapons systems. They have a large spy apparatus that spends all its time getting as much of the paper information on how we do it. They want to copy what we are doing.

They are less and less interested in the Japanese Toshiba machine, but they targeted an Osword Machine made in the U.S. and tried to get it. And this was in the 1970s. And Commerce wanted to give it to them, I might add. And it was only because one admiral in the Defense Department said, "No way are they going to get those machines." They wanted six, but he stopped it. This is a corner from which there is no way out. It is asking us to honor export licensing systems which I do not think can take the heat.

M. Stanton Evans, National Journalism Center. Could we try to clarify some points that are not very clear to those of us who are not specialists. First of all, Senator Heinz, just to make sure that I have this right. Your amendment, dealing with PRC greenline, would in essence take items that are now on the validated license list, and transfer them to the general license list. Is that correct?

Senator Heinz: No, that is not, generally speaking, correct. Most of the goods that are on validated licensing, that are critical, are above the PRC greenline.

And the reason the question is hard to answer is that we do a lot of things with those goods, such as sell them to the People's Republic of China, whom we trust.

Mr. Evans: What would be the licensing status of goods sold to COCOM countries below the PRC greenline? What kind of license would be required for this kind of export?

Senator Heinz: A lot would be on a distribution license. One of the items positioned right in the middle, between the Administration Exception Note, which is the level below which we do very little, and the PRC greenline is an IBM AT, which is a kind of a business version of a personal computer. It is generally sold on distribution license to all kinds of destinations. It is sold to the equivalent of Sears Roebuck in Belgium.

These are the kinds of items over which there is argument. Steve Bryen wants those things subject to re-export controls. My view is that I do not want the Soviet Union to be keeping lists of Refuseniks on IBM AT computers, but they are going to use Japanese computers if they cannot steal ours.

Mr. Evans: I am not trying to get at the merits. I am trying to figure out what kind of licensing now affects that kind of computer, under existing law, compared to what it would be under your amendment.

Senator Heinz: Under existing law, it would be under a distribution license. And under our amendment, it would be under general license.

Mr. Evans: It would go from distribution to general, and that in essence would pull it out of the Pentagon system. What is it then, Steve Bryen, that makes this worse than the existing system?

Dr. Bryen: What makes it worse in my view, but not in Senator Heinz's view, is that in effect the U.S. releases the goods without any knowledge, without any way of ensuring responsibility for where they go. Under current law, companies are responsible under their distribution license to ensure that the people they sell those goods to are respectable businesses with reasonable uses for the equipment. And if they do not do it, and they do not attempt to police their distribution license themselves, they will lose their distribution license. And so, the companies have a responsibility. And I might add that we are the only country that really uses distribution licenses and bulk licenses on this scale. Most of our allies require valid permits for shipments within COCOM. The Germans, for example, require a license for every shipment within COCOM. We do not.

Miles Costick, Institute for Strategic Trade: In cases of diversion, such as the graphics example, would they not be much better dealt with by applying espionage statutes than handling under export controls? This also would be a deterrent.

Senator Heinz: The U.S. law is pretty tough. We do not shoot anybody for selling controlled technology to the Soviet Union, but we can put them away for ten years, and that is pretty severe. The problem is that many of our allies in the COCOM regime do not have very stiff penalties, and they have very, very short statutes of limitation. But you are right, if we could get them to have a much tougher enforcement regime, it would be a lot better.

Philip Hughes, Department of State: What this discussion suggests to me is the classic inability of our export control community to stop focusing on details and look at a larger picture. If I could, let me take a second to synthesize for the nonexperts in the audience what in the Senate bill and the House bill are the three basic ideas about how to ease the burden on West-West trade that arise from our East-West trade controls.

One idea is to shorten the control list. And connected to that idea is shortening the control list by taking into account widespread foreign availability. Everybody should understand when we shorten the control list, that means those goods, whatever we take off the list, are now available as freely to the Soviet Union and its allies as they are to Western destinations. This is a debate about where to draw the line.

The second idea that most of this discussion is focused on is eliminating certain licensing requirements, certain control requirements for controlled goods, to

friendly cooperating countries, to COCOM or countries that are cooperating with COCOM. That is based on the assumption that those countries do now or can soon be expected to control these things with the same rigor that we do. So we can eliminate re-export controls or something like that. This presumes a lot about third countries' control systems.

And the third idea, not very much discussed here, is streamlining or regularizing the decision-making process about export licenses within the Administration, within our Administration particularly, and particularly for sales to the West. So that they do not drag on interminably and cost a company sales.

I have two question/observations.

First, there is a way to make a big contribution to easing the burden on our industries in the licensing process that is not addressed in any Senate bill and has not been discussed here at all. And that is simply automating the process of license issuance. Most of the controlled shipments go, after all to friendly, cooperating destinations. Most are routine and repetitive. The same paperwork is handled over and over again by licensing officers in the Commerce Department and in other departments. Dr. Bryen's operation has made a major step forward in automating its end of the license review process, but it still takes days and days, instead of hours and hours to license a personal computer from the Commerce Department to a cooperating country in COCOM. A similar problem, incidentally, affects our munitions sales abroad to friendly countries. Why is it that no particular attention is being devoted to cutting down here where it seems the main burden of the licensing process is?

The second observation has to do with that idea of removing licensing requirements to friendly destinations, COCOM or cooperating countries. Is there not a bit of a contradiction built into the bills? On the one hand, it is saying we have to get these countries to be more explicit about their commitments to improve their licensing systems in order to be able to trust them, so that we can get rid of re-export licenses. But on the other hand, we are going to impose tough sanctions on those countries if they fail to live up to what our understanding is of the rules of COCOM, when those rules are formed in a multinational organization with no written charter, with voluminous written records, in the course of which you could probably find just about anything you are looking for if you look back far enough over the 35-year history. Is that not probably going to stand in the way of getting countries to be more explicit about what their commitments about improving export controls really are, for fear of then being sanctioned for any breach of those specific commitments? And would it not in a sense make it harder for us to impose more trust in them and eliminate the licensing requirement?

Senator Heinz: On your first point, why not focus more attention on process and procedure and computerization? Commerce has been doing some of that. They have made some progress, as I mentioned. That is an area we probably could focus on.

Second, in the process of eliminating or reducing requirements to friendly countries, we may be on some kind of a collision course as we tighten up and get

tough and focus mainly on enforcement, and at the same time, make shorter lists or say we are going to rely more on the other nations means for tracking these sales.

And I have two answers for you. One is I do not think it is inconsistent to say, "Look, we are not going to try and apply our law to you. We are going to ask you to do what you say you are going to do. And secondly, we are not going to get you to control a bunch of things, like IBM ATs, which we think are kind of ridiculous to try to control. We prefer that we not be embarrassed by the Soviets using them. Just file off the brand name, please." And say at the same time, "Now that we have agreed on a smaller list, you've got laws. Let's all really do something with them." I do not think that is inconsistent.

But even if it is, I would say that the alternative is worse. The alternative is not to enforce, as happened in the case of Toshiba. That is really the major item which seems to have awakened our COCOM allies. The idea of not enforcing and then taking actions to hit the perpetrators, which are companies, not countries, would be a bad alternative.

Mr. Weinrod: I would like to give each of our panelists a brief opportunity for closing remarks.

Dr. Bryen: I think the real discussion is over whether or not we are going to end up decontrolling a substantial part of our high-tech exports, which will then end up in the Soviet Union. As Senator Heinz pointed out, of the \$80 billion of high-tech exports, \$56 billion fit into this category. What a bonanza for Gorbachev. I just do not think that the amendment, however well-intentioned, that the Senate has come up with will do anything less than stand by while the U.S. lead over the Soviets evaporates. And I hope that the Senate will take a step back from this and take another look at it, before plunging ahead. If I have any appeal to make today, it is precisely that.

Senator Heinz: Nobody wants to help the Soviet Union reindustrialize, or gain the kind of base that they can use to make an even more effective challenge than they already have to destabilizing the world order. But I think that, if we are going to have cooperation from all the other people who have technology that is as good as or equivalent to ours, some of whom are not COCOM members, we have to use judgment about how far to go. This debate is not over whether or not we should control the export of critical technologies to the Soviet Union. This debate is not over whether we should obtain validated licenses on supercomputers. This debate is not over whether there should be tough enforcement. The debate is not over whether there should be reexport controls by either ourselves or our COCOM allies.

The question is who is going to do it. And is it realistic to expect the United States to have re-export controls on a computer sold under a distribution license to the equivalent of Sears in either Brussels or Athens or to expect that there is any way of prosecuting violations of those export controls?

Mr. Weinrod: We thank both of you very much.

