

THE CHALLENGE OF AMERICAN EXPORT CONTROL LAW-MAKING

by

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(Under the Direction of Gary K. Bertsch)

ABSTRACT

This thesis explores the trials and tribulations of the Export Administration Act in the United States to discover why the U.S. Congress has had great difficulty in passing new export control legislation, a universally agreed upon tool for national security. The thesis focuses on the efforts of Senator Michael Enzi in 2001 as a case study for the majority of the analysis. Further, the role of the industry organizations is explored to uncover whether or not they are truly at fault for the lack of export control legislation in the United States. The conclusions of the research are that the industry groups are not the root of the failure of export control legislation, but rather, act as an interested partner in the crafting of legislation. The research also concludes that the most important reason for the failure of legislation is a lack of empowered leadership on the issue.

INDEX WORDS: Export control, Export Administration Act (EAA), Michael Enzi, Defense industry, Trade and security

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DEDICATION

The following research paper is dedicated to Stephen, Laura and Noah Tucker, who have all pushed me to do what I enjoy in life and have continuously encouraged my research. It is dedicated to Lyndsey Sargent, who constantly motivated me to work on this project and acted as constant source of support. Finally, it is also dedicated to Dr. Gary Bertsch, my major professor and long time mentor. Without him, I would not have ever become interested in these issues. Without his guidance and support these past four years, I would have never become the researcher that I have nor would I have been able to put together this thesis.

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SECTION 1

INTRODUCTION

The Cold War; the geopolitics of Earth divided in twain. The United States, a beacon of capitalist economics and the patron avatar of liberty, stood in the western hemisphere opposed to the Soviet Union, an enormous military monolith that dominated the eastern hemisphere. During the Cold War, both nations raced in epic fashion for technological, primarily military, superiority over the other. The Cold War marked the dawn of intercontinental missile technology, the ability to harm another country half the world away, as well as the ability for space exploration as seen by the Soviet orbiter missions and the American moon missions. The Cold War also marked the advent of the nuclear weapon, the actual ability to annihilate a target in a way that had never been seen before; the ultimate weapon of mass destruction. It was a period of scientific breakthroughs in the fields of military and aerospace technology, a period of scientific hegemony where two countries raced and battled to truly declare themselves the most advanced nation on the planet.

Given that each country, or pole, saw itself as a rival of the other, both nations embarked on a mission to safeguard their individual technological achievements. Each time one nation would develop a newer model of nuclear weapon, it would attempt to safeguard how its new achievement was accomplished while the rival country strived to develop an even-better model of nuclear weapon, stealing the technology of the other, if possible. It was during the age of the Cold War that espionage and counter-espionage

became an advanced game of protecting ones achievements while, at the same time, attempting to steal and learn from the achievements of another.

The Cold War also was noted as an era of expansive trade within each “pole.” The United States traded and shared its technology and its advancements with its allies of the North Atlantic Treaty Organization (NATO) and the Soviet Union traded and shared its technology and advancements with its allies of the Warsaw Pact and other communist states. As such, it became in the interest of each nation to safeguard and prevent its individual achievements from being transferred from either itself or from an ally to a member of the other “pole.” It was also in this time period that the security concern of “nonproliferation” became an issue. As both of the polar nations and their primary allies, the French, British, and later, the Chinese, acquired nuclear weapons, all were concerned, to lesser and greater extents, in preventing the technology of nuclear weapons, a technology rapidly becoming a world-ending force, from spreading to other nations.

The great powers of the world, in the name of nonproliferation, then took it upon themselves to globally keep this destructive force to themselves via several methods. Economic incentives, the promise of civilian nuclear power, the promise of security, such as in the case of the U.S. nuclear umbrella, and a variety of other “deals” were made with other nations in an effort to stem the desire to develop nuclear weapons. At the same time, there was another tool to be employed, one that was also employed to secure and protect civilian technological and economic advantages, the tool of export controls.

The formal establishment of export control came at the end of World War II and the dawn of the Cold War, the first major multilateral iteration of which being COCOM, the Coordinating Committee for Multilateral Export Controls in which the west put a

trade embargo on the eastern, Soviet, bloc.¹ In the United States, the Export Administration Act (EAA) was passed in 1979 to set up the licensing system of export control to be implemented by the Department of Commerce. Before that was the International Traffic in Arms Regulations (ITAR) at the dawn of the Cold War to regulate the export of military-related goods through the Department of State.²

Although those are the formal iterations of U.S. and global export controls, there are numerous anecdotes stating the existence of export control in various fashions harkening back to even the advent of the longbow, where the governing bodies of France attempted to prevent the sale of the longbow to other nations and surrounding provinces for fear of losing the military edge that the longbow provided.³

Export controls are essentially economic trade controls on a various good, service, or technology. Export control is the ability of one country to prevent the sale of a particular good or service to a user in another country for reasons of maintaining technological advantage. Export controls have since evolved into many forms ranging from formal blanket embargos where no company in the United States can sell to any company in a particular country to where licenses are required to sell a particular good, licenses which are approved by the implementing government stating that the importer is “approved” to have possession of a particular technology or good. Granted, in the

¹ Heinz, John. *U.S. Strategic Trade: An Export Control System for the 1990s* (Colorado: Westview Press, 1991)

² Frierson, Jack. “The Challenges of Passing a New Export Administration Act and Strengthening the U.S. Export Control System for Dual-Use Items.” Unpublished Paper. Summer 2004.

³ This is an oft-discussed anecdote by colleagues, although there is no concrete historical source to confirm with. Dr. Jim Holmes of the Naval War College is credited for sharing this insight with me.

modern day even knowledge itself is controlled. The idea being that an American scientist capable of building a nuclear weapon should not share sensitive knowledge with an African or Chinese scientist who is interested in the same issues. Further, export controls are no longer solely used as a method of protecting national security interests. Export controls have been employed on a variety of products, including even agricultural products, in order to protect an economic advantage in various regions or advantage held by various indigenous corporations.⁴

⁴ A Lexis-Nexis search of export control, although mainly consisting of arms-related news articles, will also yield multiple hits for controls imposed on textiles and agricultural products, especially in China.

SECTION 2

ASKING THE RESEARCH QUESTION: BUREAUCRACY VS. HYPOCRISY?

The current status of export controls in the United States is an unusual and awkward situation. In discussing export control in the United States, one can easily find himself exploring a balancing act between trade interests and security interests, interests whose importance are exacerbated by the post-9/11 security climate and the post-globalization economic climate. Currently, the export control system of the United States is operative and for all intents and purposes, functioning well. There can be a great deal of debate as to what one would consider “functioning well,” yet for the purposes of this research, it is acknowledged that the United States does have an active export control system. Yet, it is a system that lacks a fundamental keystone of legitimacy, it lacks a legal basis.

As mentioned in the introduction, the United States in the aftermath of World War II was the stalwart advocate of robust and effective export control in order to regulate the exchange of strategic technology and in order to draw a line in the sand in terms of the technological capability of the West versus the Soviet bloc. The Export Control Act (ECA) of 1949, just at the end of World War II, was a key piece of legislation that set a new bar for military trade embargoes and trade restrictions. Later, the International Traffic in Arms Regulations (ITAR) was created to regulate military goods during the Cold War. The Export Administration Act (EAA) was later passed in 1979 to set up a formal licensing system as the technological infrastructure of the United States economy grew. In dealing with the Soviet Union, the United States tried to get all of its proverbial

ducks in a row in regulating the flow of military goods and ensuring the integrity of its own military capability as well as the capability of its allies. However, as West met East, telecommunications evolved, and the phenomenon of globalization began to evolve in the late 1980s and throughout the 1990s into today, controlling technology became more and more challenging.

The world itself has moved toward an incredible and at one time unfathomable level of trade and technology transfer. Free trade agreements have increased exponentially since the fall of the Berlin Wall and the collapse of the Soviet Union. Corporations have become multinational in an unprecedented way with Wal-Mart, McDonalds, Microsoft and others expanding worldwide to the extent that one would be literally hard-pressed to find a country without one. Countries that were once considered third world or agricultural mainstays have become major technological players. China underwent a rapid industrial revolution throughout the 1990s, as did India, partially due to the outsourcing of the Western labor force into “eastern” areas. China, a communist nation with an evolved capitalist economy, posted an unprecedented and incredible one trillion dollar budget surplus last year alone.⁵ The global economy is booming. With this boom, however, are considerable dangers. These dangers are the heart of trade and security research, which in academia range from policy studies of sub-state terrorism to democratic peace theory.

With the onset of globalization, access to various military technologies is difficult to control. Scientists in the United States can now communicate simultaneously with

⁵ CNN ran a video package about the China trillion dollar surplus in late March 2007. The video can still be found on the AOL Web Video system at <http://uncutvideo.aol.com/videos/ae6a169d5e2602f726363e05c251708c>

scientists anywhere else in the world. Corporations that manufacture various military technologies and other high-tech goods now serve a global market instead of a country market and now have loyalties to the global economy as opposed to their home country. Multinational corporations are no longer reliant on the “home base” to engage in international commerce.

Up until September 11th, the United States, while still controlling its sensitive military technology, was not nearly as worried about the possible dangers of global commerce as it is today. The Export Administration Act (EAA) itself, the legal basis for the American export control system, lapsed in 1989, just as the iron curtain fell and as the world’s economy began to liberalize. Although military technology, such as aircraft and tanks, were still controlled under the 1976 Arms Export Control Act, there was no standing legal framework outside of the EAA for dual-use goods, goods that can be used to manufacture military-grade technologies, such as nuclear weapons. With the nuclear weapon status of India and Pakistan outside of the NPT in the 1970s, there was an already standing nonproliferation concern as other states explored nuclear weapon possibilities. With September 11th, that concern became applied and highlighted to non-state actors, namely, terrorist organizations.

All of these seemingly different threads of concern, nonproliferation, free trade, evolution of technology and terrorism suddenly ran together. The expansion of free trade and the evolution of technology has allowed for a greater diversity in ability to create weapons. In Australia, using parts bought over the internet and from a standard franchise hardware store, all parts that are readily available commercially, a man was able to construct his own short-range cruise missile. Computer processors that were used for

targeting and weapon design thirty years ago are now present in the standard living room computer system. Everything from video games to storing family photos to advanced mathematical models is done on what was once advanced weapons-related technology. Interestingly enough, five years ago, the Playstation 2, a video game entertainment system for mass market was considered a controlled item upon its release due to the processing power that it contained.⁶ Technology has evolved to the point that thousands of corporations worldwide manufacture items that were once considered military-only and then sell those items to even the most novice civilian consumer.

With globalization and with non-state actors as threats, export control, realistic and reliable export control, has developed into a keystone of national security policy, nonproliferation policy, and global economic policy. Control lists have to be continuously updated and maintained to reflect the continuous evolution of mainstream consumer technology. Licensing bodies are now necessary to restrict trade of items that have legitimate civilian uses for manufacturing and medicine.

A variety of countries throughout the world are in the process of developing and do not have up-to-date knowledge of controlled goods. Many do not have customs officials whom would be able to distinguish a spark gap for a nuclear trigger from a traditional spark plug for a vehicle. Priorities of most nations are not geared toward nonproliferation, but instead, are geared toward preventing smuggling of alcohol, drugs, cigarettes, and humans. Most nations are of the mindset to capitalize on globalization,

⁶ http://news.zdnet.com/2100-9584_22-6065566-2.html details the issue with video game entertainment systems and export controls. The recently released Playstation 3 has within in the Sony software licensing agreement a statement disallowing re-export to embargoed nations. It can be found here http://www.scei.co.jp/ps3-eula/ps3_eula_en.html

even developed nations. These nations extend open arms to and attempt to attract multinational corporations, international trade and technology, and investment. Nations also solicit transshipment rights, act as forwarding zones, and open their borders to import/export of a variety of technological goods that they are either ill-equipped to regulate or unmotivated to prevent re-export.

In the wake of September 11th, the United States has made it a nonproliferation and thereby national security priority to not only secure its own WMD-related technology and military advantages, but to also assist other nations in buffing up and strengthening their own customs, border security and overall export control programs. Through the Export Control and Border Security program (EXBS), the U.S. Departments of State and Commerce have worked to have export control legislation developed and passed in a variety of countries worldwide. Expanding on that legislation, EXBS officers have engaged in training customs officials in Eastern Europe, South Asia, and other regions of the world to recognize and properly enforce export control legislations. Through EXBS and other methods of encouraging countries to adopt proper export control legislation and develop export control systems, the United States has been able to assist countries that are not otherwise educated or motivated to regulate weapons-related and dual-use trade to do so of their own accord, as well as become responsible global partners themselves, a benefit of reputation that speaks volumes in the international community. Also through efforts of the United States and European Union partners, China developed its national export controls and has signed onto a variety of multilateral export control regimes,

bringing a potential U.S. rival more in line with global standards of technology control.⁷ In short, promoting export control legislation and export control development worldwide is a universally recognized national security priority for the United States.

In fact, a major goal for the United States has been promoting export controls abroad. A large goal, exhibited by EXBS, in U.S. nonproliferation policy has been assisting others in the development of comprehensive export control legislation. The U.S. also continuously evaluates and examines these other countries for progress in the field of export controls and its requisite legislation.

However, since 1989, although there have been attempts to revise and pass a new Export Administration Act, the statutory basis for export control in the United States has existed solely via temporary renewals and Presidential directive. The United States itself, the champion of export control legislation and export control systems worldwide, does not have an export control law of its own and has little legal basis for the export control system that it currently operates and promotes for others to adopt. There have been a variety of attempts to formally revise and pass a new Export Administration Act through Congress, the most high profile and most promising attempt being one led by Senator Michael Enzi in 2001. Yet, all attempts to date have failed to pass through the United States Congress.

The research question posed by this thesis research is “Why?” Why has the United States Congress failed to pass an export control law despite seemingly universal,

⁷ For a more detailed examination of multilateral export control regimes, see Mike Beck, Cassidy Craft, Seema Galhaut, and Scott Jones, “Strengthening Multilateral Export Control: A Nonproliferation Priority,” *Occasional Paper*, Center for International Trade and Security, October 2002. For more on Chinese export controls, see Jon Davis, “Export Controls in the People’s Republic of China,” Center for International Trade and Security, February 2005.

particularly U.S., acknowledgement that export controls are a fundamental aspect of nonproliferation policy? What explains the inability of the U.S. Congress to pass a contemporary Export Administration Act that serves U.S. interests? Why is the United States engaging in an unusual example of hypocrisy? Are there bureaucratic and political issues within the Congress itself, such as personal vendettas or party politics to be addressed or is there a more detailed explanation?

The Export Administration Act was meant to serve a set of defined American interests. To start, it was designed to secure sensitive technologies and assure they did not fall in the hands of designated adversaries. Further and just as important, it was designed to secure the comparative advantage that the United States had on an assortment of technologies, especially those with military applications. American interests, as far as a contemporary EAA are concerned, would be to serve those two purposes in a fashion updated with a comprehensive understanding of globalization. In the trade and security debate, academically and policy-oriented, there are two conceptions of security. One is that a robust American economy in and of itself creates less conflict and increased security. Second is that a tightly controlled American economy creates less proliferation and less possibility of dangerous technology ending up in the hands of adversaries. Granted, summarizing in that fashion is not fair to the entire literature on the subject, however, these two opposing schools of thought on security are what drive the debate as to what is an effective export control. For the purpose of this thesis research, those in the “national security” camp of the export control debate are those that believe that tighter controls create less proliferation and a decreased possibility of technology landing in the hands of adversaries. Those in the “industry” camp referenced throughout this thesis can,

in many cases, be considered those that argue that a robust American economy with fewer controls will lead to enhanced security.

With those definitions stated, there are a variety of possible explanations and numerous variables at play, especially when including any analysis of Congress and its activities. Some of these variables can be measured quantitatively, such as campaign spending, party identification, voting patterns, and campaign finance; however, to reach the heart of the question, I believe a narrative story has to be told, a story of the many possible explanations and an analysis showing which explanation is the most convincing. Therefore, what follows is a story of export control politics in the United States, a qualitative case study of the question with special attention to the United States Congress and the attempt by U.S. Senator Michael Enzi to pass a new Export Administration Act in a post-globalization and post-Cold War atmosphere.

SECTION 3

DESIGNING A QUALITATIVE APPROACH

In designing this research project, a number of factors were considered in evaluating whether or not to use a quantitative or qualitative approach. The dependent variable for this thesis is the absence of an American export control law. From a quantitative standpoint, the variable does not truly vary. However, from a qualitative standpoint we can observe that there was at one point a formal export control law previously and that, through various legal wrangling, has continued to exist in some sort of ethereal fashion. Yet, the dependent variable still represents an attempt to prove a negative, something seemingly impossible. It's impossible to positively determine why Ethiopia and Liberia were the only African countries to resist imperialism, and yet, it is the subject of a great deal of historical study, speculation, and discussion. Further, despite the impossibility of definitively answering the question, a variety of policy experts still pursue the answer in the search for possible insights into the strength of those two nations or the weakness of the imperial powers, a strength to be generalized and harnessed or a weakness to be generalized and avoided. Given the difficulty of scientifically and mathematically proving a negative, it still does not make a particular topic or issue unworthy of study.

The next difficulty, especially when discussing the independent variables, is deciding on a feasible unit of analysis. The unit of an analysis for research on Congress can range from individual Congress members, the Congress as a whole, or various Congresses over time. To capture the story of export control legislation, there are a

variety of stakeholders and a variety of limiting factors. Individual Congressional members, the Executive Branch, which carries out the functionality of export controls, outside government interests, such as China or Europe or others, and indigenous and exogenous defense industries and high-technology manufacturers all play a variety of important roles in defining and affecting export controls. For the purpose of this research, providing two separate units of analysis captures all of stakeholders and factors. First, the individual Congress members themselves, for example, roles and the experience of Senators Michael Enzi and Fred Thompson in 2001 will be analyzed. The 2001 failure of export control legislation serves as a somewhat critical case study, in that, with the threat of terrorism, one would expect export control legislation to fly through the halls of Congress on silver wings, especially if it was bolstered by pro-national security amendments. Yet, it did not. The second component of the study is an analysis of the 2001 Congress as a whole and the impact of outside interests on its deliberations.

Efforts at developing new U.S. export control legislation had failed previously in Congress, in 1985, 1991, 1996, 1999, and 2001. The majority of those attempts failed to achieve major debate and escape the grip of Congressional committee. These past attempts will be discussed in a historical context for comparative purposes, but they will not be analyzed closely. Therefore, in discussing the “group” unit of analysis, it will be the 2001 Congress as a collective unit, and include issues of campaign donations and other related group variables. Discussion of previous Congresses, as a whole, will be used as historical background for the overall analysis at the conclusion of the paper.

With the problem of the unit of analysis addressed, there still remains a need to outline the individual independent variables and discuss how they relate to the various

units of analysis and how they lend themselves to the overall “big picture” conclusion that arises from telling the U.S. export control story. In terms of influencing individual Congress members, there are a variety of independent variables in play. Monetary campaign contributions from defense industry and high-technology manufacturers, presence of either defense or high-technology manufacturers among the individual constituencies, lobbying efforts by defense industry or high-technology manufacturers, lobbying of individual Congressional members by other countries, and, of course, a prime variable for this research, whether or not a Congressional official has taken leadership on the issue and the strength of his or her position to influence the legislation. In terms of discussing Congress itself, the variables can involve party identification, whether Republicans or Democrats controlled Congress and what were the particular views of the two parties on export control. Also in discussing Congress as a group, there is the issue of the current political climate. In discussing political climate, there is the question of whether or not the political climate lends itself to increased security or increased trade. In dealing with export controls, are export controls viewed as a highly salient issue when discussing security or when discussing trade. A frequently observed phenomenon in conducting this research was that Congress members have viewed export controls as either/or and their individual, as well as collective, support of the issue depending on whether export controls were framed in conjunction with the current political climate, say as a trade issue during an economic boom.

Logically, although not necessarily in practice, lesser export control lends itself to freer trade and more economic growth for related industries as well as decreased national security, whereas increased export control lends itself to less trade and decreased

economic growth, but increased security. Ian Fergusson's latest 2007 Congressional Research Service report on the Export Administration Act states it best with "In debates on export administration legislation, parties often fall into two camps: those who primarily want to liberalize controls in order to promote exports, and those who believe that further liberalization may compromise national security goals."⁸ A common theme to be noted throughout the rest of this paper, however, is that the logic does not match the reality and only with coming to terms with the reality can legislation be truly crafted.

In conducting a case study of Senator Michael Enzi and the 107th Congress, it is important, especially for the purposes of future research on the topic, to parse the views on trade from the views of security espoused by individual parties and then to place that in the context of reality and the current political climate on Capital Hill and within the Executive Branch.

The most valuable and difficult variable for measurement in this study, however, is leadership. Whether or not a person is a leader on this issue is not enough, but the power of said leader is an essential quality. The ability of the individual to use his/her leadership on export control, which much of the time is constrained by the political climate, and the ability of the individual or individuals in question to actively frame the issue appropriately and give it a saliency within the Congress as a whole are critical in discussing the important variable of leadership in this study. As will be noted throughout and in the conclusion of this research, leadership was and is the most critical factor in pushing export control legislation through the cogs of the U.S. Congress. To truly

⁸ For the purposes of this research, Ian Fergusson's latest updated, however as of yet unpublished, report was used. A previous version of the report can be found at <http://www.fas.org/sgp/crs/RL31832.pdf>. The report is a yearly update of the state of export controls done by the Congressional Research Service.

understand leadership, there must first be a brief overview of its use as a variable and its use in academic research.

Leadership is an oft-discussed variable and factor in multiple disciplines of study. Psychology, sociology, and political science are merely three of the many fields that attempt to analyze and study leadership. From the perspective of theory, there is a series of common conceptions of the origin of leadership. It is difficult to state that leadership appears out of the blue without a start or even a series of identifiable precursors. Researchers have then quested to discover what the precursors to leadership are, what spurs leadership in an individual and what are identifiable traits of a leader. From the perspective of academia, it is an attempt to discover not only the origin of leadership, but ways to detect it in others and to possibly even create or engender leadership through action.

Psychologists have argued that leadership can come from personality-type, the lamented Alpha Male for example. Further, psychologists and sociologists have discussed the impact of education on fostering leadership as well as parenting, culture, environment, and other extensive series of environmental factors as well as biological factors. The literature on leadership is vast, both from a philosophical and psychological perspective and from a political science perspective. There are large bodies of work on leadership in Congress, leadership from the executive branch, and leadership in most other facets of government. Richard Cupitt's Reluctant Champions: Truman, Eisenhower, Bush, and Clinton: U.S. Presidential Policy and Strategic Export Controls is in several ways a study of leadership at the executive level.

For the purposes of this study, it would be difficult in the time allotted to concisely summarize or do justice to the literature on leadership. In this study, leadership is seen as a trait that is engendered through education and then empowerment, the ability to apply that education and channel it into action. Hence, leadership, as defined and conceptualized in this study, begins with education and proper framing. To be discussed later, Senator Michael Enzi from on-the-job experience gained an education of export controls, an education that led to a framing of the issue in a high-saliency context. It was the knowledge of the issue, the framing as a high-saliency issue, and the ability that he possessed in his Congressional role that engendered his leadership on the issue. Export control became an issue that he could claim as his own and could serve as his contribution to the overall welfare of the United States, regardless of how that welfare is conceived.

SECTION 4

A SHORT HISTORY OF THE EXPORT ADMINISTRATION ACT

The Export Administration Act has had a long and torrid history, evolving over the course of the conclusion of World War II, into and throughout the Cold War when export controls were at their height of saliency, into the period of economic boom and globalization of the 1990s and now in the age of terrorism and renewed great power rivalry between the West and the East, namely the United States and China. In terms of rivalry, it's not a direct military confrontation, as was the case of the Cold War, but now is more of an economic competition with militaristic implications.

The Export Administration Act has had an unusual history and the even the statutory legislation itself is unusual. Susan Eckert, the former Assistant Secretary of Export Administration in the Clinton Administration, remarked that the Export Administration Act itself is one of the most legislatively specific and micromanaged pieces of legislation to ever be wrangled with in the executive branch or on Capital Hill.⁹ It is so complex that it's unclear when it is and is not in effect and given that it overlaps with a variety of other pieces of legislation, parsing its history is challenging. Dr. Scott Jones of the Center for International Trade and Security and Ian Fergusson, an analyst for the Congressional Research Service International Trade & Finance Division both make great strides in capturing the life and death of the Act in their work, some of which is

⁹ Comments were from an Interview with Ms. Susan Eckert conducted April 4 2007

quoted below.¹⁰ There is an immense amount of literature, mostly of a policy nature, recommending how to devise proper export controls and when and where these controls are most urgent. The majority of the literature comes from a period of the close of the Cold War into the early 1990s. The Export Administration Act experienced a great deal of evolutionary changes throughout the 1970s and 1980s, however, the debate over crafting a new law that reflects the progress of industry is seen mostly within the 1990s.¹¹

The Export Administration Act that is known today was originally passed in 1969 to upgrade and codify the early Cold War U.S. Export Control Act of 1949 that was littered with rhetoric and language of embargoes and blanket restrictions. The Act was renewed in 1974 and 1977 and with those renewals became progressively looser in its statutory restrictions. In 1979, the Act was given a complete and total overhaul and that 1979 version is what empowered and gave life to the export control system in the United States as it stands today. As stated previously, the Act lapsed in statutory authority in 1989, however, export controls continued to exist in the United States by the saving grace of temporary renewals installed within the law by Congress from 1989-1994, a measure that, in discussing with sources, was mostly to put a type of pressure on the executive to devise a new approach and new overhaul of export controls while still allowing them to function. In 1994, President Clinton invoked the International Emergency Economic

¹⁰ The citation for Dr. Jones draft work is Jones, Scott. "U.S. Export Controls in the Wake of September 11th," *Draft Paper*, March 2003. Copies can be provided upon request to Dr. Jones.

¹¹ Cupitt, Richard. *Reluctant Champions: Truman, Eisenhower, Bush, and Clinton: U.S. Presidential Policy and Strategic Export Controls* (New York: Routledge, 2000) is an excellent source for viewing the historical evolution of export control. Insights are provided from the perspective of the executive branch and within different historical contexts.

Powers Act, known by the acronym IEEPA. Under the authority of IEEPA, the executive branch was able to issue Executive Order No. 12924 in August of 1994. This executive order gave a statutory renewal, on the basis of IEEPA, to the Export Administration Act from 1994 to 2000 and the close of the Clinton Administration. Then, following another interesting switch, the United States Congress in November of 2000 passed another temporary renewal of the Export Administration Act of 1979, not an overhauled version, extending its functionality and statutory power through August of 2001. In August of 2001, when the temporary renewal lapsed once more, George W. Bush, the new President of the United States, issued Executive Order No. 13222 and once more invoked the statutory power of the IEEPA legislation to continue the functionality of the EAA.

As is quite apparent, the tale of the Export Administration Act and its life cycle is a confusing and constantly changing set of twists and turns throughout the 1990s and into today. Ian Fergusson, Susan Eckert and others have expressed and pointed out that operating the Export Administration Act under IEEPA “constrains the export control process and makes it vulnerable to legal challenges, thus undermining its effectiveness.”¹² Ms. Eckert noted, however, that there have been few legal challenges to its operation and limited, if any, successful challenges.¹³ In terms of constraining the export control process, as Ian Fergusson states in his yearly reports, the constraints are pro-industry constraints in that it limits the jurisdiction of the American export control machine and it limits the penalties, namely the size of fines issued for violations.

¹² Fergusson, Ian F. *The Export Administration Act; Evolution, Provisions, and Debate*, Congressional Research Service, Order Code RL 31832. Updated January 15, 2007. Unavailable via Web. Pg 6

¹³ The Honorable Susan Eckert is a Senior Fellow in International Studies at the Watson Institute for International Studies at Brown University

In discussing these 1990s activities with the Honorable Ms. Eckert, she shared that there was a great deal of interagency wrangling in the 1990s regarding attempting to rewrite the Export Administration Act to include the text of the Clinton Administration's executive order and the vast majority had to do with differences in how the legislative and executive branches conceived of the process for passing the law, whether it began after the interagency and cannot be edited by the legislative or if the legislative began the rewrite and then the interagency edited itself. In discussing with her the bureaucratic issues revolving around the Export Administration Act and in consulting other research, one of the key pitfalls of the 1990s attempts to rewrite the law was Section 10G "Rights of the Defense Department on License Decisions," a provision that became a sticking point and a power struggle between the executive and legislative, with no strong leadership that broke the conflict and engaged in facilitating collaboration. Ms. Eckert further imparted the fact that export controls are a multi-jurisdictional phenomenon, even within the legislative, with military goods being dealt with by Foreign Relations and Armed Services whereas dual-use and other consumer goods, the primary subjects of the EAA are dealt with by Banking, Housing and Urban Affairs. This multi-jurisdictional phenomenon can only be a factor in further leading the logjam of legislation that required executive intervention, or as Richard Cupitt put it, a reluctant champion.¹⁴

Attempts to overhaul and craft a new updated Export Administration Act are not new to 2001, however. As was already observed, the 1990s were a period of great turmoil for the Act. As discussed further by Fergusson, Cupitt, and Jones, notable

¹⁴ Cupitt, Richard. *Reluctant Champions: Truman, Eisenhower, Bush, and Clinton: U.S. Presidential Policy and Strategic Export Controls* (New York: Routledge, 2000) Dr. Cupitt's work is frequently referenced in this thesis, although not directly quoted. It is from his work that I was able to develop the concept of championship.

attempts to renew the EAA started with the 104th Congress in 1996. The 1985 and 1991 attempts to pass a revised Export Administration Act were unceremoniously swept away by greater priorities given the executive commitment to executing the legislation and the existence of the temporary renewals. In 1996, however, the House packaged together an Omnibus Export Administration Act that passed in July of 1996 after escaping two national security oriented committees, International Relations, Ways and Means, and the committee on National Security. However, inaction by the Senate committee on Banking, Housing and Foreign Affairs caused the bill to lapse and die within the committee. H.R. 1942, export control-related legislation was introduced in the 105th Congress, but was never debated, discussed or put forward through any committees.

It was not until the 106th Congress and 1999 that the revised Export Administration Act began to achieve a semblance of traction. In 1999, an updated Export Administration Act was introduced in the Senate by Senator Michael P. Enzi (R-Wyoming). The new EAA (S. 1712) was unanimously reported by the Senate Banking Committee to the Senate floor, however, debate was never held on the Senate floor due to as Ian Fergusson puts it “concerns of several Senators about the bill’s impact on national security.”¹⁵ It is at this point that the liberalization of export controls seems to visibly intersect in the on-the-record mindset of the legislative branch with national security. The next attempt, the most successful attempt, was by the same Senator Michael Enzi in 2001. Senator Enzi and his attempt is the subject of the case study to follow and as will

¹⁵ Fergusson, Ian F. *The Export Administration Act; Evolution, Provisions, and Debate*, Congressional Research Service, Order Code RL 31832. Updated January 15, 2007. Unavailable via Web. Pg 7

be noted represents a critical turning point for export control legislation. However, to spoil the ending, the bill still failed in 2001.

The EAA has been fraught with a variety of complicated issues in its history, a large portion of them are too deep and broad to delve into in the context of a thesis paper, but lend themselves to possible future research and exploration, to be discussed later. However, a sampling of these issues are already visible to the naked eye and it becomes very clear that two camps are developing, the two camps that will dictate the future of the EAA and its policy debates, simply put, trade and security.

Before delving into the overview of the U.S. export control system as it stands today, it is important to note that for the purpose of this thesis research, the Export Administration Act is the primary focus. Separate legislation, the Arms Export Control Act, the National Defense Authorization Acts, the Nuclear Non-proliferation Act and the International Traffic in Arms Regulations (ITAR) deal with military-related goods, such as fighter jets, complete nuclear warheads, and submarines. The Export Administration Act deals with dual-use goods and in making that statement is where the lines between controlled, uncontrolled, civilian, military, trade and security all become blurry. It is crystal clear that a tank is a military item. It is not crystal clear that a spark gap used for lithographers, machines that break up kidney stones, is also a key component for a nuclear trigger. Further complicating matters is the continuous evolution of technology, the mix of various control lists and the endless race of a cumbersome bureaucracy to stay up to date with the times.

SECTION 5

OVERVIEW OF THE U.S. EXPORT CONTROL SYSTEM TODAY

The present day United States Export Control System is a hodgepodge of bureaucratic organizations and processes and diverse, and many times conflicting, policies. As noted previously, the standing legal basis for the U.S. export control system is ethereal at best. In an unusual way of science fiction terminology, the Export Administration Act exists, while simultaneously not existing. The Departments of Commerce, State, Defense, Energy, and Homeland Security are all key players in the implementation of export control as it relates to the United States itself and the promotion of export control among allies. Essentially, the implementation of export controls is the dominion of the executive branch and it is no coincidence that the executive branch has been so active, reluctant champions or not, to continue the emergency renewals of the Export Administration Act by any means necessary.

There are great debates on both the trade and the security side of any discussion of American export controls and how they exist today. Although this thesis research is not meant to formally and systemically evaluate the American export control system, a few key debates around its current operation are essential for understanding the failure of export control legislation, especially during its seemingly best chance with U.S. Senator Michael Enzi. A formal and systematic evaluation of the American export control system, however, is a sorely needed exercise and is a priority suggestion for future research, especially using the export control evaluation methodology developed by Drs.

Michael Beck, Scott Jones and others within the Center for International Trade and Security at the University of Georgia.

With that said, further comment on future research is noted in the appropriate section. However, there are glaring weaknesses of the current American export control system that have ramifications for the passing of legislation. Currently, there are a variety of news clippings each week of various companies being investigated for types of illegal sales, whether to China, or whether someone maliciously has smuggled spark gaps to Pakistan, it is obvious that the enforcement aspect of export control is functioning, to what degree and quality is uncertain and since one cannot prove smuggling that did not occur, the quality will continue to be uncertain. Further, in skimming various news articles and speeches, there are headlines stating along the lines of “Industry blasts...export control legislation”¹⁶ and numerous pieces from academic papers and national education magazines discussing how export control stifle research and make it challenging for foreign nationals to study hard science in the United States.¹⁷ Security-oriented writers attack export control legislation for not being tough enough and not being well enforced, pointing out exports that have taken place of items that “should” or “should not” have been controlled based on the opinion of the author. A Lexis-Nexis search of the term “export control” for all news articles in any past six week period, at least for the past three years, is guaranteed to yield articles attacking the current export control system from the point of view of being too strict, too liberal, endangering the U.S.

¹⁶ Leopold, George. “Industry Blast House Legislation Proposing Tighter Export Controls,” *Electronic Engineering Times*, 18 March 2002.

¹⁷ One recent example is an article from West Virginia University in its *Daily Athenaeum*. <http://www.da.wvu.edu/XMLParser/printstory.phtml?id=27012>

economy, endangering U.S. national security or even endangering academic research. It is only the occasional non-opinion piece stating that an attempt to illegally smuggle a dual-use item, such as spark gaps by Asher Karni to Pakistan, was thwarted or a Yamaha Helicopter sale to China broken up or any other type of herald of success from either the trade or security “camps.”

Depending on one’s individual politics, whether they are for liberalized trade or increased national security, or even if they believe that both can coexist, as proposed by this thesis, it would seem from following the limited media coverage of export controls that they are liked by virtually nobody, security experts and economists alike. Although it is not the subject of this thesis, it is important in pointing out the indicators for success and failure of legislation, especially with legislation as complex as export controls, to ask why this phenomenon seems to be. What exactly is it about the current export control system in the United States that is so egregious? Is it a specific and fixable quality? Is it the authorities that operate it? Is it the structure of the system itself?

The answer to these questions lies in a truly incredible and underappreciated piece by Jason Meyers entitled *Risky Business: The Security Implications of Arms Export Reforms*. The piece, contained in a book entitled *Challenging Conventional Wisdom* edited by Tamar Gabelnick and Rachel Stohl provides an incredible summary of most of the issues with the current export control system without even outwardly stating it.¹⁸ A reading of the chapter reflects a variety of opinions from all camps, trade and security. In

¹⁸ Meyers, Jason. “Risky Business: The Security Implications of Arms Export Reforms.” Chapter 6 in *Challenging Conventional Wisdom*. Edited by Tamar Gabelnick and Rachel Stohl. Center for Defense Information and Federation of American Scientists. June 2003.

Jason Meyer's piece, he specifically critiques proposed alterations to the export control system and explains how those alterations would jeopardize national security. Key points include that accelerating licensing times, as industry would like, will lead to a decrease in licensing standards and that a review of the current munitions control list would lead to the decontrol of technology that should not be decontrolled. After all, technology that could be used to make a nuclear bomb in the 1960s can still be used to make a nuclear bomb today, albeit crude, regardless of if the parts can be bought on the internet or in standard hardware stores today. However, a key theme underlying his piece is that he does not disagree with export control itself, the spirit of export control that is assumed to be regulating trade for the purpose of enhancing national security and bolstering comparative advantage. Quite the opposite actually, a recurring theme in this important piece and throughout the book as a whole is not a disagreement with export control, but a disagreement with implementation. This disagreement is constantly repeated throughout the entire discussion of export control legislation and a disagreement that is continuously harped upon on all sides of the export control debate.

Simply put, the overwhelming opinion of critics of export controls is that in the United States, the system is outdated, overly bureaucratic and poorly implemented. The poor implementation originates from, as Susan Eckert put it, the complexity of the legislation. There are multiple control lists for dual-use goods and three large bureaucracies that directly deal with export control including Commerce, State and Homeland Security. In Customs, there exists a high turnover of trained officers. Further, there is little to no transparency as to what is controlled and when it is controlled. An exporter requires multiple consultations with several bureaucracies to develop a clear

export policy. Representatives from the Department of Commerce and its related subunits, the Bureau for Industry and Security (BIS) that handles investigative enforcement and fines related to export control and the Export Control and Border Security department that handles international outreach and export control promotion met with undergraduate and graduate students of the Center for International Trade and Security in 2005. In these discussions that included Peter Lichtenbaum, then acting Assistant Secretary of Commerce for Export Administration, BIS officials made clear that the majority of export control violations are not of malicious intent and that Company X is not desperate to attempt to smuggle nuclear trigger components to Terrorist Y or any state unfriendly to the United States.¹⁹ The majority of export control violations occur from a lack of understanding of the rules, regulations, licensing times, and control lists.

In dealing with export control legislation and its failures, this lack of cohesive implementation of export controls is noted by the debates on both the trade and security camps. In Congress, there are not only pressures exerted by outside interest groups but also a lack of pressure and leadership from the executive. In Congress, there is an obvious hands-off attitude toward export control. All of these qualities and the complexity of the issue are apparent in not only the previous inactions by Congress, but in the case study for this thesis, of September 11th and Senator Michael Enzi. It becomes clear that the one major solution to all of these problems exists within the idea of empowered leadership.

¹⁹ These were off-the-record discussions with Security Leadership Fellows at CITS. A search of corporate opinion on BIS and for actual apprehensions from the BIS website will note that very few are “malicious” acts.

SECTION 6
THE UNITED STATES CONGRESS, SEPTEMBER 11TH, AND SENATOR
MICHAEL ENZI

The ringing mantra of American politics is that September 11th changed everything. The unfathomable and unforgivable terrorist act that occurred that day has significantly changed the political landscape of the United States from its rhetoric to the implementation of its various agencies, bodies, and international programs. The priorities of the United States were turned upside-down and spun into action against a new objective: national security. The subject of Dr. Jones draft paper noted earlier in this thesis was, in fact, the impact of September 11th on the current implementation of export controls in the United States and abroad.²⁰ It can be argued and noted that the reason previous attempts at export control legislation failed was due to being increasingly liberal. The revamps of the EAA throughout the 1990s and all of its renewals were under the auspicious of taking advantage of globalization and expanding American economic influence around the world, overall, to inflate the economic boom that everyone in the United States enjoyed in the 1990s. Critics feared that liberalizing – i.e., relaxing and streamlining – trade controls would jeopardize national security and allow more military grade or previously classified military technology to leak through the cracks in the system and that companies would “heartlessly” attempt to sell these technologies in exchange for dollar signs.

²⁰ Dr. Jones and other referred works in this thesis discuss the implementation of export controls. For more information, consult the reference section of this thesis.

September 11th, on the surface, could only be viewed as a confirmation that stricter controls were needed and that there was and is an enemy harping at the gate, the terrorist enemy. From that standpoint, the natural progression would be that export control legislation would be passed, recognizing the weaknesses in the current system, with the idea of tightening the reins. Yet, that did not happen. So what changed with September 11th and how does it relate to export control legislation?

An incredible quotation by Kenneth Juster, a former DOC BIS Undersecretary for Export Administration, is the centerpiece of the introduction in Dr. Jones' draft paper on September 11th. Juster says, "I used to meet with some industry representatives and business leaders who viewed almost any form of export control as a threat to their livelihood. But that changed after September 11. Today, *no* company wants to see its name in the headlines of the *Washington Post* or any other newspaper as the source of some critical item or technology that facilitated an act of terrorism. And, I submit, the American public would not support a free trade system that resulted in U.S. companies arming our adversaries or facilitating the acts of terrorists. Effective export controls are thus one method by which the government and industry can work together to ensure responsible exports and thereby advance free trade."²¹

Intuitively, it makes sense. Corporations, as discussed later, would logically want to be considered responsible partners in exporting, if for only the sole purpose of excellent public relations. When it was released that Yamaha illegally sold a helicopter

²¹ This quotation can originally be found in a speech cited as "Globalization, National Security, and Export Controls," Remarks of Kenneth I. Juster Under Secretary of Commerce For Export Administration at Practising Law Institute Seminar Coping with U.S. Export Controls 2001 December 10, 2001 Washington, D.C.; <http://www.bis.doc.gov/press/2001/GlobalizationNExportControlsKJSpeech1210.html>

to China, the stock price of Yamaha suffered tremendously, just from the poor public relations of such an incident occurring. If anything, September 11th should have brought a new ally to the table of export control legislation, namely, U.S. industry.

What happened? To be fair, the clock must be rewound to slightly before September 11th. In January of 2001, Senator Michael Enzi, a man that had tried passing this legislation before, introduced the Export Administration Act of 2001 (S. 149) to the Senate of the 107th Congress. In February 2001, hearings were held in the Senate Banking, Housing and Urban Affairs Committee. Statements of support were submitted to these hearings that showed staunch support from the executive. Secretaries Powell, Rumsfeld and Evans as well as then National Security Advisor Condeleeza Rice wrote letters of endorsement.²² The hearing itself had testimony by all present members, chaired by Senator Phil Gramm and had witnesses including the chief executive officer of the Center for Strategic and International Studies, Richard Cupitt from the Center for International Trade and Security and industry association representatives.

In Senator Enzi's opening statement to the committee, he expressed a tone of frustration as well as enthusiasm for the heightened support of the bill. His opening remarks included the quotation "This is a day of mixed emotions. I am so pleased that we are working this bill again, but I am disappointed that we are working this bill again. It makes it kind of like old home week. The people that are here watching today have been here numerous times before and are very well versed in all that we are doing. And of course, our witnesses today, we have heard from before." He went on to note the

²² Statements of support can be found at the Library of Congress and the website of the Senate Committee Banking, Housing and Urban Affairs.
<http://banking.senate.gov/docs/eaa/eaamain.htm>

bipartisan effort that was made to put together his new bill “I have to mention Senators Sarbanes and Johnson and the way that they went about working on crafting this bill as we went through the unique process last time of taking an issue that had failed 12 times previously--in fact, had not even gotten out of Committee before that--and putting together a bill that would get out of Committee 20 to nothing. We are talking about bipartisan efforts this time. That is an example of a bipartisan effort last time.”²³

In March, the legislation was sent to the floor of the Senate with a favorable committee vote of 19-1. With Enzi’s leadership, the Senate debated the legislation on September 4th of 2001 and passed the proposed bill with only a few amendments at 85-14, a clearly bipartisan vote. Although not the most rapid of movement by a piece of legislation on the surface, given the pace of Congress in debating any matter thoughtfully, the second Enzi attempt at a new EAA flew through the halls of the Senate, just as it would be expected given leadership by a security and economic conscious Republican. Senator Enzi himself had been in the Senate since 1997 voting in favor of a variety of key issues including the impeachment of President Clinton, a revamp of the medicare system, the use of military force in the Middle East and a variety of other notable votes that are seen in his biography.²⁴ From outward appearances and voting

²³ Congressional Testimony by Senator Michael Enzi at the Senate Banking, Housing and Urban Affairs Committee, February 7 and 14 of 2001. Accessible at <http://www.gpo.gov>

²⁴ For more information on the Senator personally and his voting record, consult his website: <http://enzi.senate.gov/public/> For more of his personal opinions on export controls, consult his articles in *The Monitor*, a quarterly published by the University of Georgia’s Center for International Trade and Security. Enzi, Michael B. “The Future of Export Controls,” *The Monitor*, 3 (Spring 2002) as well as Enzi, Michael B. “What will it take to Revise the Export Administration Act of 1979?” *The Monitor* (Fall 2004)

record, the Senator was and is a security conscious Republican that was willing to take strong leadership on export controls for both the economic and national security benefits.

Senator Michael Enzi represented in 2001 what was a critical turning point for the Export Administration Act. As stated, he was an active and respected member of the Republican party, and he had been shown previously to be a leader on the issue of export control. Senator Enzi was and still is an active member of the Senate Banking, Housing and Urban Affairs Committee, a chairman of the Subcommittee on Securities and Investment, and a member of the Subcommittee on International Trade and Finance. Starting in 1999, he was chair of the International Trade and Finance subcommittee; the key committee that had jurisdiction over export control. Enzi also was a seasoned politician on the Foreign Relations committee as well, sitting Subcommittee on International Economic Policy, Export and Trade Promotion and the Western Hemisphere. From these positions, Enzi was exposed to and educated on the ramifications of export control and then assumed a leadership role from his subcommittee post on pushing export control legislation. It is for these reasons that Senator Enzi was chosen as the focal point for this thesis and it is for these reasons that the 2001 attempt exists as a critical case study and turning point in the export control effort, it was only then that it was helmed by a proven and knowledgeable leader.

After the work was done by Senator Enzi, there was still the House of Representatives to overcome. The House of Representatives version of the bill, H.R. 521 was introduced in July of 2001 by Benjamin Gilman. Gilman is an ex-military man and now former Republican representative from New York. His tenure in the House of Representatives extended for thirty years from 1973 until 2003, only after deciding not to

run for re-election in 2002. A senior representative on the hill and a member of the House International Relations Committee, he held hearings in late May and early June of 2002, a long lag-time after September 11th.

After September 11th, gears that operated the halls of Congress grinded to a halt and a new, fresh, and urgent set of priorities arose. All of these priorities are common knowledge to any American. The Patriot Act, the incursion into Afghanistan, the reprioritization of intelligence officials to the Middle East, the development and creation of Homeland Security, the shift of the military structure to a new adaptable triad and the knowledge that the current worst threat to the United States was not a place that anyone could point to on a map. The entire machine of the United States government, its law enforcement, its military and a variety of other agencies had to restructure and revamp to meet the new challenge of a non-state actor willing to use any and all means at its disposal to harm the country. Simply put, the Export Administration Act was sidelined, not defeated, but sidelined. Despite its necessity for national security as well as economic development, the lack of education on its urgency left in the dust without a leader.

The defeat did come and it was delivered in the House of Representatives. The Gilman version of the bill was, according to Ian Fergusson and most others, identical to the Enzi bill except for an addition of one provision that added oversight of nuclear transfers to North Korea, an addition that was in no way unpopular and in no way the reason for the defeat. On August 1st, however, the House International Relations Committee passed the legislation with 35 amendments. It was then referred to two other committees, Armed Services and Permanent Select Committee on Intelligence. Both committees held hearings, but only Armed Services chose to add more amendments and

further alter the bill. After being struck with three committees, the bill then fell to its knees. No further action was taken in the House of Representatives on the bill during the 107th Congress. In the 108th Congress, it is worth noting that another House Representative, David Dreier, a Republican from California, introduced a new version identical in every facet to the Enzi Senate bill, however, it did not even escape committee.

What happened? What was the difference in the House and Senate and what was the difference in this case from all previous cases? It is true that a vast majority of legislation does not survive committee. However, this was a piece of legislation of high importance and framed properly, could be viewed as critical to U.S. national security. It was viewed by the executive branch as an essential piece of American nonproliferation policy, as exhibited by the executive branch's lasting commitment. So why did it stop short in the House of Representatives? In short and simplest terms, the variable of championship is the difference maker. Championship, as conceptualized in this thesis and to an extent by Richard Cupitt in his book Reluctant Champions, is not merely leadership on an issue. The conceptualization used for this research is that championship has two key components, leadership and empowerment. Without leadership on an issue, empowerment is just that, power. With leadership, yet without empowerment, anyone can feel strongly about an issue and yet not have the capability to achieve anything. The next logical question would be where empowerment comes from. It is apparent that leadership comes from either a personal immeasurable desire or, from a realist perspective, from a cost-benefit political gains perspective. Simply put, being a leader on an issue is going to lead to great benefits whether they are personal satisfaction benefits

or political gains and reputation points. Empowerment can come from a series of sources; it can come from strong alliances, a strong inherent position of power, or it can come from reputation.

In POLS1101, a required course, all freshmen undergraduates at the University of Georgia are taught the basics of American politics. In these discussions, the concept of deferring to colleagues is touted by many as a large mechanism for moving the cogs of Congress. Especially in the House of Representatives, members will defer their vote to those that are believed to have expertise on a particular issue or a reputation for leadership on a particular issue. Deference is mostly done on low-salience issues and on issues where a particular politician believes that deferring is a politically safe choice.²⁵

The process of deferring to others is a key aspect of empowerment. Championship entails an individual that others will defer voting alongside. Championship demands simply a willing leader and a leader that has the power to push progress on his or her issue. In the case of Senator Michael Enzi, empowerment and leadership, and thereby championship, was the factor that made the difference in the bill surviving the Senate. It was also the factor that made the difference in the bill falling through the cracks of the House of Representatives.

Senator Michael Enzi was a proven leader on this issue. It was his second attempt at moving forward export control legislation, a fact that already denotes him as a committed individual. Further, he wielded empowerment. The executive branch, that previously had not expressed extreme interest one way or another in terms of particular pieces of export control legislation, wholeheartedly endorsed the Senate approved Enzi

²⁵ This observation is from a personal experience as a teaching assistant for American politics and the instruction of Dr. Shawn Treier.

bill and actually scolded the House of Representatives for its manipulation of the bill, i.e. the addition of 33 amendments. Enzi had a reputation for leadership on the issue from an economic committee, was a security minded Republican and had the open support of the executive branch, clear signs of empowerment.

Enzi, however, was not without a semblance of opposition, the most notable of which on this issue was Senator Fred Thompson, a Republican from Tennessee and a man currently considering a 2008 Presidential run. He is currently and was previously an accomplished actor on successful television shows such as “Law & Order.” Although his acting career may seem a tad trivial, it is important in noting that this and other factors made him a recognizable name with a recognizable face to the constituencies of many other Senators and members of Congress. Thompson possessed and still possesses an innate empowerment granted by his tenure in the Senate and his visibility throughout the United States, qualities shared by few other empowered people. The United States has fifty governors and any high school student would be hard-pressed to name their own governor, yet, when asked, almost all know who Arnold Schwarzenegger is and that he is not only an action movie star, but is the governor of California. Regardless of how fair it may be, the mystique of celebrity lends itself to the concept of empowerment.

Although backchannel innuendos and media reports indicate strong disagreement between Enzi and Thompson, with Thompson being a staunch proponent of tightening controls for national security purposes, Thompson²⁶ supported the Enzi bill with the addition of his own amendment along with Senator Jon Kyl, a Republican from Arizona,

²⁶ For more about Senator Thompson’ personal views on export controls, consult his piece in *The Monitor*, citation: Thompson, Fred. “The Need for a Strong Export Control Regime,” *The Monitor* (Spring 2002)

aimed at strengthening the rules on clear dual-use equipment and moving the language away from the mass marketing approach previously in the bill proposing that if something can “be bought at radio shack” then it should not be controlled. In the debate on the floor of the Senate, Thompson was adamant about the national security aspect with statements about the export control legislation, as chronicled in *National Defense Magazine*, “has been designed not to facilitate business, but to help protect the national security interests of this country.”²⁷

With the empowerment of overcoming disagreements on national security, the alliance of the executive branch, the recognition of important allies and proven leadership on the subject, Senator Michael Enzi fit the definition of the championship variable. However, to truly pass export control legislation, championship was needed in the House of Representatives as well, an area that, as previously discussed, has a larger diffusion of power and less potential for championship. Although Gilman possessed a fairly solid, albeit arguable, amount of innate empowerment due to seniority in the House, he was not an active proponent near the extent Enzi was in pushing forward the legislation. There exists little to no reporting of active measures Gilman made past introduction and further, instead of reaching out to the executive branch, the bill was amended repeatedly and lacked the empowerment that comes with the influence of the President. The House version of the bill was weakly backed and was caught in the freezing of gears that occurred on September 11th, export control legislation was strangely far from the minds

²⁷ Kennedy, Harold. “Export-Control Reforms Stall in Aftermath of Terror Attacks,” *National Defense Magazine*, June 2002

of representatives as noted by its lackluster debate in committee and eventual death in said committees.

Before 2001, neither leadership nor empowerment was present on the House or Senate side of the debate. The legislation rarely escaped committee and upon escaping committee, there was no empowerment to frame the issue properly. In the first attempt by Senator Enzi, the bill survived committee, yet was not empowered to defend against pro-national security senators. In the second attempt, the cloak of national security was successfully draped over the bill with the support of the executive branch, an outspoken Senator Fred Thompson, and without an improper framing of the issue.

After the second Enzi failure, David Dreier, like Gilman before him, did not actively pursue export control legislation past its introduction. The bill that was introduced by Dreier was virtually unchanged from the previous Enzi bill. From an outside observer, it could be construed as either believing the Enzi bill was powerful enough to stand on its own or an unwillingness to take ownership of the fate of the bill, either way, export control legislation stood little chance of success.

SECTION 7

THE DEFENSE INDUSTRY: THE COUNTERINTUITIVE PLAYER IN THE
EXPORT CONTROL GAME

In the debate regarding export control legislation, the most obvious entity to blame for its failure is not the U.S. Congress. It is not the President. It is not even foreign influence. The most readily and intuitive group to point the finger at is the defense industry and the high technology industries indigenous to the United States, the people that are subject to export control and stand to be fined by its violations and subject to its bureaucracy. From the outside looking inward, the defense and high technology industries appear to be the best culprit. Taking the position that all capitalist entities are out to make a profit, to have the best and most advanced and most in-demand products on the market and to sell them to whomever they choose at whatever price whenever they please is the most cold, calculating and ultimately, realistic view of these industries.

The most intuitive position and arguably, the most logical, is that the defense industry and high technology corporations do not want an export control law and would relish trade being free of any and all restrictions, especially in the globalization atmosphere and especially with China having a thirst for military technology, a trillion dollar budget surplus, and a incredible trade deficit with the United States. In fact, several politicians have come forward in favor of selling certain, currently controlled, items to the Chinese in an effort to close the massive widening trade gap with China, a trade gap that China is all to happy to continue expanding. From a realist theoretical perspective, China engaging in the multilateral export control regimes and developing a

large trade gap with the United States serves as a political pressure on the part of the Chinese to the United States and the European Union to drop arms embargoes and relax trade restrictions.

With this backdrop, the incentive for industry is to provide as much pressure as possible to stop an export control law from passing and therefore, wait out the tenure of the current renewal of the Export Administration Act. Yet, that is not the trend seen. In fact, in years when export control legislation has been up for debate, there has been little to no alteration in the defense and high technology industries campaign spending and lobbying habits. An examination of the Federal Election Commission's campaign finance disclosure records and at a timeline comparison of the defense industry donations through Opensecrets.org, it is apparent that there is no unusual activity in campaign donations or lobbying money by the defense industry during times in which the export control law has been under debate. Funding from Boeing and Lockheed Martin has progressed normally over time with spikes during key midterm election years and presidential bids, but nothing solely or even largely explained by the presence of possible export control legislation. The only unusual spike in defense industry funding was during the 1994-1996 election cycle, a period of little to no development on the export control front in Congress and a spike that is likely explained by the Bosnia incident.²⁸

Further, it is important to keep in mind that although the United States system has a flimsy legal basis, it does still exist. As stated, the enforcement mechanism of the

²⁸ Consult Federal Election Commission at www.fec.gov for verification. For a more navigable and easier to understand examination of defense industry contributions, charts supplied by Opensecrets.org are invaluable
<http://www.opensecrets.org/industries/indus.asp?Ind=D>

export control system as operated by the executive branch functions. Corporations are fined. For example, ITT Corporation was fined \$100 million dollars in late March due to illegal exports of night-vision technology.²⁹ Corporations are required to obtain licenses to export controlled goods. There are military control lists, dual-use control lists, and banned entity lists all for the United States as well as those adopted from multilateral export control regimes and the European Union. No shortage of lists and items requiring licenses exists, and with it, no shortage of bureaucracy exists. In the realm of globalization, time is of the essence, although suppliers are limited, they are not without competition. If one corporation cannot deliver in the time frame that the buyer wants, there are other places to look, especially within developed Western Europe, an economically weak and foreign capital dependent Russia, and, of course, China and Japan. In a capitalist economic system, any economist will repeat the slogan of supply and demand reigning supreme.

However, the earlier quote from Secretary Juster comes to the forefront once more, no corporation in its right mind would like to be labeled as a serial proliferator or as a threat to national security. Given the political climate in the United States, even from a selfish perspective, it is still bad for business in a post September 11th world. In the first and second attempt by Enzi, there was a provision in the bill that was of great distress to the security community, the so-called pro-industry mass-market provision. The argument was made, a logical argument, that if an item can be bought in Radio Shack or from Wal-Mart or any of a million franchise locations in the world that it should not be a controlled good. It was a very pro-industry provision and one that has been a

²⁹ Klein, Alec. "ITT To Pay \$100 Million Export Fine," *The Washington Post*, 28 March 2007.

sticking point with security experts who argue that because something can be bought everywhere does not mean that it is not worth controlling. It is a provocative and persuasive argument in favor of loosened controls.³⁰ As stated previously, a man in Australia was able to construct a very crude missile using components that were purchased at hardware stores and from the internet. Stories of crude bomb manufacturing and purchasing components at hardware stores is essential education for any law enforcement officer in the United States from the local to the federal level.

In a discussion with Dr. Michael Beck in thinking through this issue, it became apparent that the security experts have a point. This is the essential reason for of having so-called “catch-all provisions” in export control legislation. An example that was discussed with Dr. Beck was that if an individual in the United States buys certain suspicious components from hardware stores or pharmacies that could be used in construction in a methamphetamines lab or crude fertilizer bombs, such as those used in Oklahoma City, it is the responsibility of the company, the store, to ask questions and red flag authorities.³¹

The defense industry, however, has seemed to have moved past this hardline stance on mass marketing. Yet, there are still these two divided camps of trade and security with each one blaming the other for either loss of American economic

³⁰ See Kennedy, Harold. “Export-Control Reforms Stall in Aftermath of Terror Attacks,” *National Defense Magazine*, June 2002 for quotations from the Senate debate about this provision. Much of this discussion and the analogies are credited to Dr. Michael Beck who assisted in this line of thinking.

³¹ As a further example, Sudaphedrine, a key ingredient of methamphetamines and an over-the-counter cold medication is now required to be sold behind the counter in an effort to control its distribution in large quantities.

superiority or increased vulnerability to terrorism. The fact that makes the defense industry a counterintuitive player in the export control game, however, is that the defense industry does not, generally speaking, have a problem with export control legislation nor does it have an issue with crafting strong national security stance legislation. It is important to remember that despite a lack of statutory strength in export controls, aerospace, high technology and defense corporations are all still subject to a functioning system. Boeing itself was levied an enormous fine for the export of aircraft parts to China. A cursory search of the Bureau for Industry and Security website will list several instances in which fines have been imposed on deep-pocket corporations.³² Further, the existence of export control legislation would actually raise those fine caps and allow for greater punishment and greater penalty for violations of export controls.

As such, why in the world would industry be proactively pursuing an export control law or export control reform? To liberalize controls away from national security and to unfettered trade? To fatten the bottom line of its shareholders? In reality, the answer that industry merely wants a change in the current bureaucracy and if a law is the way to achieve that, then they are all for it. Statements by Mark Esper, a leader of the Aerospace Industry Association, indicate that these high tech corporations that are consistently fined by the Bureau for Industry and Security have no issues with the spirit of export controls, but have an issue, like Jason Meyers with the implementation. Industry leaders and University research institutes have voiced opinions for increased transparency, increased consistency in licensing times, and streamlined bureaucracy. Although any industry would love to have faster licensing times and a release of

³² Consult <http://www.bis.doc.gov/> or the Export Control Newsletters of CITS at <http://www.uga.edu/cits/resources/newsletter.htm>

restrictions and fewer control lists, the priority is for a more effective and more efficient system.

The bridge between trade and security is efficiency, plain and simple. For export control legislation to pass the halls of Congress, there needs to be a step away from the trade vs. security approach and a step toward the efficiency approach. Increased efficiency and streamlined bureaucracy of the export control system will enhance national security and will enhance the speed, quantity and quality of trade. A repetitive theme of this paper and of this research as a whole is that trade and security can be together and do not have to be mutually exclusive. The item that makes the industry a counterintuitive player in the export control game is that they merely desire efficiency and seem to be more than palatable to any measures to reach the level of efficiency. The requirement, however, is a champion. Leadership in Congress or in the executive branch empowers the other to take action.

SECTION 8

A CONCLUSION WITH GENERALIZABILITY OR MERELY STORYTELLING?

It could be said that the export control legislation scenario is a set of phenomena placed in a vacuum. It is a set of unrepeatable circumstances and unrepeatable variables. It could be said that it cannot be generalized and is merely a tale told for the purposes of informing within the specific niche of export control. However, it is clear that there are indicators for success and failure present in this case study, even with an objective that is unanimously agreed upon as positive. Proactive and empowered leadership is an essential indicator. This combination, named in the spirit of Richard Cupitt's work, *championship*, is the overall key variable. Without proactive and empowered leadership, both of those qualities, export control legislation has died in committee without a saving breath. With those qualities, it has survived committee and emerged to venture upon the floors of the U.S. Congress.

Garnering that empowerment of leadership requires a constituency with an interest and it is increasingly clear that the defense industry itself and the high technology exporters are becoming such constituency. With informed, relevant and enhanced implementation of export control, the effort actually gains a supporter in industry as opposed to the intuitive detractor. The general public has little to no education on the issue of export control and therefore, empowerment from the general public, is a difficult possibility. In the case of Enzi and Thompson, the two were naturally empowered by position, reputation and inherent seniority. The activism came from an attempt and a valuable notion that framed properly, export controls could be seen as a great benefit for

national security and for economic development as well as solid personal political positions in the future.

Export control legislation acts as a proving ground that simply because a policy is universally agreed upon as positive, that agreement is useless without education on the issue and that education, especially coupled with leadership, is what lifts the issue to higher saliency. The majority of the issues that arise in Congressional debates, especially involving export control, revolve around balancing trade and security and implementation of bureaucracy. Yet, the common thread is the lack of education among Congressional members on how trade and security can be effectively balanced as well as thoughtfully implemented. There are a variety of papers and research studies that have thoughtfully explored the balance of trade and security affected by export control, yet, few of those studies reach the attention of the overall Congressional membership. Further, in the specific instance of export controls, as Ian Fergusson elegantly put it previously, there are two camps and little movement to bridge these camps. It is an intriguing analogy to the overall political picture of the United States, blue states and red states, divided without a bridge. In export control, we have trade and security, divided without a bridge, a bridge that does exist, but none know about.

Like any good political scientist, it is important to ask when reading this tale, where is the theory? What are the theoretical implications? Where are the theoretical implications? Can this be applied to American politics as a field? International relations as a field? From the perspective of American politics, should this study be a quantitative analysis of campaign contributions, rational-choice voting, risky vote theory and other domestic political theories that operate in American politics research? The intuitive

conclusions from that perspective are that campaign contributions by the defense and high technology industries are driving export control legislation.³³ Yet, why has there been limited success? The risky vote theory would affirm that given the executive branch has had a continued willingness to renew and operate the program via executive order, there is no reason for any Congress members to risk voting for or against it.³⁴ If that's the case, then why have there been periods of leadership on the issue and why has there been a period of when the legislation has gotten out of committee and approved on the floor of the Senate? Quantitative science can capture the variable of whether or not leadership is present. However, where American political theory and theory in general can be bolstered is through this idea of empowered leadership, what variables compose empowerment and through what circumstances. Further, the research shows that the risky vote theory can be overridden by empowered leadership and that campaign contribution by intuitively antagonistic parties are not always the driver when examined with a closer eye.

In terms of international relations theory, this research accepts a variety of possible rational choice conclusions about corporations and individual members of Congress acting in their best interests. It also accepts a variety of realist theories regarding power politics and promoting a type of oversight and influence on another nation without subjecting yourself to the same. However, this research largely lands in the domestic politics realm and it notes that even in instances of universal acceptability of

³³ Wright, Jack. "Campaign Contributions and Congressional Voting on Tobacco Policy, 1980-2000." *Business and Politics*, 6:1, 2004.

³⁴ In discussing American politics, I would like to thank Dr. Scott Ainsworth for providing guidance on the types of American political theoretical possibilities at play.

a piece of legislation, even with high salience, empowered leadership and proper framing as part of that, empowered leadership is required. The glaring indicator in this research is the presence of active empowered leadership on the issue when compared across time and within specific cases, such as the case of U.S. Senator Michael Enzi.

SECTION 9

A FINAL WORD REGARDING THIS RESEARCH AND THE POSSIBILITIES OF EXPANDED RESEARCH

After conducting this research, searching through campaign finance data, sifting through news stories and industry magazines relating to export control, it becomes clear that the blame for the failures of export control legislation rests largely in the hands and halls of Congress. In fact, an argument could be made that the responsibility rests in the U.S. House of Representatives. The diffusion of power that is present in the House and the bureaucracy that ensues from that diffusion allowed export control legislation to fall through the cracks. The legislation passed through three different committees, a slew of amendments, and without coming up for a vote to refer to the floor, the bill was forgotten. In this regard, there is a distinct failure of the institution and it is a failure inherent in its design.

As the post September 11th American government continues to evolve, it is apparent that there is distress and frustration on all sides of the argument with the current American export control system. The only legal way to completely address these concerns and to fully empower a new system that operates with the cooperation of legislative and executive is to pass a new revamped Export Administration Act. As distress grows, as trade deficits grow and as Americans feel more and more vulnerable from the stories that they view on television of smuggling and weapons, it is increasingly important to tackle the issue. The term export control might not be a “flashy” issue and it

might not be one that brings to mind a host of possibilities in the minds of the average American, but it is essential to trade and security.

In providing actionable policy advice through this paper, the most obvious thing to recommend would be the presence of empowered leadership. It can be achieved through alliances and with the defense/high-technology industry acting as an interested party with its very deep pockets and widespread influence, it would seem like a counterintuitive, as well as, natural choice for an ally. Executive leadership is also essential, although the executive branch can run and renew the EAA until the end of days, for any quality of reform, it will need to do what it did for Enzi and back a quarterback. It is worth noting that this paper contained very little discussion of Republican vs. Democrat. This is the case because a lot of the campaign contributions are largely on the Republican side of the aisle. However, this is an issue that both parties in both houses have been inactive in pursuing. The one major success of the U.S. Senate to pass the bill was done in a bipartisan and collaborative manner. However, in the U.S. House and in other attempts, it is a case of bipartisan inaction.

In crafting such legislation, an expanded project on the American export control system itself, its quality, its strengths, its weaknesses, the influence of different economic groups on its functionality as well as its legal basis, and the influence of various political entities abroad and domestic, including the Democratic and Republican parties, on its existence are all to be analyzed. Evaluations of the American export control system have been done before, yet, with the ever evolving state of globalization and technological development, as well as the uncertainty of a future legal basis, updates need to be made. In order to implement an efficient export control system that so many groups are

hungering for, methods need to be developed to evaluate and catalog the evolution of technology and the pace in which it is evolving. It must be speedy, certain and nimble, three difficult aspects for any bureaucracy.

In 2008, there will be an election for a new President of the United States. For the first time in a long time, political scientists studying American politics are calling the 2008 election a completely “open seat.” There is no clear front-runner, no heir to the throne and no true measure of the pulse of the country. As such, it is unclear whether he or she will be a champion of export control. It is certain, however, that the executive, given all that is invested in the export control system from both the trade and security sides will continue to renew the current system and its function, regardless of how flimsy the legal basis is, in perpetuity.

It is uncertain how effective American export controls and the controls of its allies have actually been in curbing military technology proliferation and its even more uncertain of the impact that the lackluster and weakness of the American export control system has had on the economic development of high-technology industries. Although it is apparent in discussing this research that the high-technology industries and defense corporations are not dying and are not hurting for money, the lackluster implementation and the lackluster legal basis of the current export control system has undoubtedly led to immeasurable setbacks in academic scientific research at universities and has led to a clunky bureaucracy that stymies its own mission.

With the new Presidency in the making, it needs to be made clear in the campaign to come and on Capitol Hill that trade and security are not mutually exclusive, as has been explored previously; the defense and high-technology industries have little to no

animosity with the spirit of export control. Of course, any industry bound by licensing restrictions would adore having all export restrictions lifted overnight and for there to be zero consequences of unhindered trade for the goal of profiteering and capitalism, it's a concession that any realist individual will gladly make. However, the evidence contradicts the intuition and that contradiction is one from which all can benefit.

Finally, in looking to future theoretical research, there should be more work done on the intricacy of the relationship between executive and legislative in dealing with export controls. Export controls are the matter for at least four large executive departments and almost twelve Congressional committees. Each of those departments and committees has its own subcommittees and its own interagency plans and projects. In discussing these issues with Susan Eckert, it became readily apparent that these interagency types of issues and the attempts to codify executive orders and deal with the extremely complex nature of the Export Administration Act could easily serve as an expansive project spanning a doctoral dissertation or perhaps even a greater published work. It is the hope of this thesis research to spark interest in these areas and shed light on the truths behind the challenges of export control law-making.

SECTION 10

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