As the United States and Europe wrestle over European plans to sell conventional arms to China, many Americans would like to see a new transatlantic treaty regime. They disparage the existing regime, the Wassenaar Arrangement, which coordinates export policies on conventional arms and related industrial technologies.

European officials also acknowledge the limitations of the current arrangement; British Foreign Secretary Jack Straw has even proposed a new arms trade treaty.

Yet, it is unlikely that any replacement or change to the Wassenaar Arrangement can provide meaningful restraint in conventional arms transfers and still be acceptable both to the United States and Europe. The negotiations during the early 1990s that led to the creation of the Wassenaar Arrangement made clear that mutual restraint in transfers of advanced technology and arms is impossible when foreign policies diverge. And with the end of the Cold War, any Atlantic consensus was fast eroding over sales to commercially important nations in Asia and the Middle East.

The Wassenaar Arrangement, established in 1996, replaced NATO’s Coordinating Committee for Multilateral Export Controls (COCOM). Created in the 1950s, COCOM blocked technology transfers to the Soviet Union and its allies. It had three lists of controlled goods—arms, industrial equipment, and “atomic” technologies—that members “embargoed” to the Soviets. To ensure that an export of a listed item was consistent with the embargo, COCOM procedures required the review and consent of all members. This gave the United States extraterritorial authority to “veto” exports to the Soviet bloc.

COCOM was not a nonproliferation regime. It lacked a global scope and applied only to the Warsaw Pact, China, Vietnam, Albania, Mongolia, and North Korea. It controlled only the advanced industrial equipment the Soviets needed to make their already formidable military equal to the United States.

COCOM’s extraterritorial reach made it unpopular with U.S. allies. With the Soviet collapse, there was immediate pressure to end it. Germany and France in particular believed that the United States used the regime to advance its commercial and foreign policies, using procedures that were no longer acceptable.

The 1991 Persian Gulf War showed that COCOM was neither well suited to the post-Cold War world nor adequate for nonproliferation. Iraq had built the world’s fourth-largest army with $40 billion in foreign arms acquisitions. The discovery by post-war inspection teams that Iraq had easily obtained a broad range of Western industrial equipment for weapons of mass destruction (WMD) programs and for conventional arms was disquieting. The administration of President George H. W. Bush launched two initiatives to remedy these problems. The first sought agreement from the five permanent members of the UN Security Council (the P-5) to restrain arms transfers to the Middle East. The second sought agreement from the Group of Seven (G-7) states on exports of sensitive industrial and civil goods to Iran, Iraq, Libya, and North Korea.

**New Initiatives**

The Bush administration put forward its plan for arms transfer restraint shortly after the end of the Persian Gulf War. The administration was prompted not only by the ease with which Iraq had
purchased a huge conventional force and equipment for an extensive WMD program, but also by a desire to forestall congressional interest in legislating new restrictions on arms exports. The proposal called for the P-5 to cooperate in ending destabilizing arms sales or proliferation-related exports to the Middle East and was closely linked to British Prime Minister John Major’s effort to create the UN Register of Conventional Arms.[1]

The arms transfer component of the Middle East initiative became, at the United Kingdom’s suggestion, a proposal for a regime with global scope to prevent destabilizing arms transfers. The core would be a commitment by the five governments to observe a common set of guidelines for major weapons systems. The guidelines emphasized avoiding arms transfers that could destabilize a region, put human rights at risk, or provide inappropriately advanced technology. These principles became a precedent for the UN Register of Conventional Arms, the Wassenaar Arrangement, and the European Code of Conduct.

Transparency measures would reinforce guidelines. Participants would notify other partners in advance of a proposed arms transfer to allow them to judge if it was consistent with the principles and to intervene through diplomatic channels if they decided it was not. Transparency would give supplier states confidence that they understood the range of acquisitions by a country and allow them to better assess the consequences of a sale. It would also reduce the risk of a purchaser evading detection through piecemeal acquisitions from different suppliers.

The United States was untroubled by advance notification because its Arms Export Control Act already required that Congress be notified of proposed transfers, but the idea faced stiff opposition from France and China. Negotiators met in Paris, London, and Washington and made progress in developing principles and procedures. Talks collapsed when China withdrew in 1992 after the United States decided to sell F-16s to Taiwan.

The G-7 proposal was similar. It called for a mechanism to ensure that industrial exports did not result in another Iraq. A G-7 summit tasked experts to develop restrictions on transfers of sensitive industrial equipment to four problematic states: Iran, Iraq, Libya, and North Korea. In large part, the abject failure of COCOM even to touch such transfers to Iraq prompted this initiative. Additional items whose export might contribute to terrorism, such as hang gliders and zodiac boats, would also be restricted. The G-7 talks were moving toward consensus but had not progressed as far as the P-5 discussions by the end of President George H. W. Bush’s administration.

Assembling a New Regime

The Clinton administration was initially uncertain whether to proceed with the P-5 or the G-7 initiatives it had inherited. Fortuitously, a renewed impetus for an arms transfer regime arose at the first summit between Presidents Bill Clinton and Boris Yeltsin in April 1993. The United States expressed concern over arms sales to Iran, particularly the sale of three Kilo-class submarines. In turn, the Russians asked the United States to end the economically burdensome COCOM restrictions.

Yeltsin’s request led to a plan to replace COCOM with a regime that merged the P-5 and G-7 efforts. The new regime would block transfers of arms and industrial goods to Iran, Iraq, Libya, and North Korea and strengthen restraint for sales to unstable regions. The implied trade for Russia was that, if it agreed to stop arms sales to such countries, the United States would end its technology embargo and support Russian membership in the regime, speeding Russia’s incorporation into Western institutions. This was the genesis of the Wassenaar Arrangement. The proposal assumed that COCOM procedures would continue, including the so-called veto, which the United States saw as crucial for ensuring common decisions on exports.

In July 1993, U.S. officials met with counterparts from Germany, France, and the United Kingdom[2] to discuss how to move ahead. There was unexpected opposition. British officials praised COCOM’s work in winning the Cold War but said the conflict’s end also ended the need for controls on arms and technology not covered by the existing nonproliferation regimes. They recommended immediate termination with no replacement. The Germans seconded this.

Ironically, given their later opposition, the French rescued the proposal. They argued that it was
premature and abrupt simply to terminate COCOM, as this might create gaps in the coverage of the nonproliferation regimes. The French intervention led to agreement to take the proposal to a September 1993 NATO meeting in Bonn. There the United States would accept COCOM’s end in exchange for European agreement to a new regime for arms and industrial equipment. Tellingly, the French warned the United States not to ask for too much.

The End of COCOM

In Bonn, the United States presented a detailed 17-page proposal that retained COCOM procedures and added elements of the G-7 and P-5 initiatives. The proposal survived long enough for the German chair to go around the table and obtain a resounding rejection. Although the allies disparaged the proposal as cumbersome and intrusive, they agreed that a new arms transfer regime had merit and negotiations should continue. The goal was to present a draft agreement to a sub-ministerial meeting scheduled three months later in The Hague.

It ultimately took three years to reach agreement. The United States wanted a regime that would let it continue to shape other nations’ arms exports. France, Germany and others wanted to restrict the most egregious transfers and little else. For the United States, retaining prior review was crucial. It would build confidence that international norms were being respected and allow consultations if a member state felt a transfer was ill advised or dangerous. Most countries did not want prior review as many feared that although the United States could force them to stop a sale, they would lack the same influence over U.S. transfers.[3]

Washington clung tenaciously to prior review and floated numerous variants during the negotiations. It narrowed the scope to only a few countries and to “sensitive goods,” and when this was rejected, it tried “very sensitive goods.”[4] Opposition to advance notification, led by France, Germany and the United Kingdom, only grew stronger when Russia joined the negotiations.[5]

The Russians were embedded by the lengthy negotiations that preceded their entry. The chief sticking point was the U.S. demand that Russia, like all other Wassenaar members, agree not to sell arms to Iran. It took almost two years to reach agreement. The Russians asked why U.S. arms sales to Israel and Saudi Arabia were not equally destabilizing and attempted several times to link ending sales to Iran to U.S. agreement to limit sales to Saudi Arabia or Israel.

Other European states made similar points, noting that they denied manufacturing or testing equipment to programs that the United States supported such as Israel’s Arrow missile defense system. The German Foreign Ministry denied the sale of Leopard tanks to Saudi Arabia and asked if the United States would honor that denial and refuse tanks to the Saudis. The United States responded that its global security commitments gave it a unique responsibility to transfer arms despite foreign objections. This lack of reciprocity damaged the U.S. case, and it highlights a central and often unnoticed problem for multilateral arms transfer restraint. There were also hints that a few countries were tempted to curry favor with China or Arab states by vetoing U.S. transfers to security partners such as Taiwan or Israel.

The negotiations revealed that there was little commonality in foreign and security policies outside of the conflict with the Soviets. COCOM gave U.S. policymakers the false impression that NATO members’ security concerns were closely aligned. In fact, there were wide divergences. Many Europeans thought the goal of the U.S. effort was to multilateralize its unilateral embargo on Iran. Others saw no risk in transfers to China.

China: Irreconcilable Differences

Differences were most intense over China. Even in the 1980s, restrictions on trade with China were so contentious that COCOM’s embargo for that nation had to be progressively relaxed. From the onset of discussions, other allies made clear that they saw China not as a threat but as a potential member. They told the United States that a new regime would be stronger with China in it. The U.S. response was that China could join if it agreed to sell arms only where the United States approved. China did not threaten European security, and there was keen interest among all participants to enter its rapidly growing market. If the United States chose to hamper its own companies in this
competition, the Europeans saw no reason to extend such restrictions to their own firms.[6]

Because Europe and the United States had imposed arms embargoes on China after the Tiananmen Square massacre and because Japan did not export arms, the China debate focused on dual-use technologies.[7] The United States assumed that there would be no arms sales from allies to China. It tolerated Russian sales to China as a lesser evil necessary to win Russian assent to end arms sales to Iran.

Key supporters in the negotiations bluntly stated that they would not restrict commercial trade with China. Despite understandings that Cold War restraints would be observed until the new regime was in place, high-technology trade with China expanded rapidly after 1994. In the middle of negotiations, German Chancellor Helmut Kohl led a large trade mission to China to push high-tech exports. The United States and its allies did not have a common China policy, and no ally wished to see the Wassenaar Arrangement become a tool to force commonality.

Alternatives Approaches

Given the unacceptable U.S. proposals, several states put forward their own ideas for a new regime. European alternatives were modeled on existing nonproliferation regimes rather than COCOM. Norway, France, the United Kingdom, and others wanted an arrangement like that of the Missile Technology Control Regime (MTCR) that would include lists of sensitive technologies, common understandings, and national discretion on exports.[8]

An MTCR-like arrangement appealed to Europeans. It dropped COCOM’s extraterritorial reach, used a “nondiscriminatory” approach that did not use the G-7 list of dangerous “rogues” to which a policy of absolute denial would apply, and avoided prior notification. The Europeans were somewhat disingenuous in putting forward these alternatives, as they did not include the most robust feature of the MTCR or the Nuclear Suppliers Group (NSG): the “no undercut” rule.[9] Their proposals also lacked the MTCR consultation mechanism for sensitive transfers.

External developments slowed the Wassenaar talks. As the UN Register of Conventional Arms progressed, countries were unwilling to adopt arms requirements that differed from what they had agreed to in the United Nations. Interagency disputes in the United States, known to the United Kingdom and others, over sharing arms transfer data made its proposal seem hypocritical.

Efforts to win multilateral support for arms transfer restraint were badly damaged by U.S. agreement to move arms discussions out of the larger Wassenaar negotiations, which involved more than 20 countries, to a small group of major arms producers: France, Germany, Italy, Russia, the United Kingdom, and the United States. The small group’s task was to develop more stringent procedures that would overlay any Wassenaar agreement on arms. These procedures (derived from the P-5 talks) would apply only to the small group members.

This placated Germany and Italy, who had been excluded from the P-5 talks, but it cut the United States off from its strongest supporters (Norway, the Netherlands, and Japan). In moving arms transfer discussions to a group dominated by opponents, the United States eliminated any chance for meaningful restraint. France, Germany, and Russia combined to block agreement. Commercial interests and a desire to negate U.S. influence shaped discussion. France went so far as to say that it regarded Wassenaar’s arms procedures—a munitions list and post-facto notification—as only advisory. The move to a small group destroyed the chance for serious restraint and ended the U.S. effort begun in 1991. The same problems that afflicted the small group, particularly the opposition of France and Russia, will shape any new effort at arms restraint.

Multilateral Restraint

A common enemy provided a degree of harmony in transatlantic relations during the Cold War. Since then, diverging views on economic and foreign policies and the effort to forge a European identity have created serious tensions. At times, the policies of some European leaders appear intentionally antithetical to U.S. interests. We can no longer assume that Europe and the United States automatically share security interests.
The Wassenaar Arrangement is weak because of these tensions, but it is also weak because the impetus for conventional arms restraint has evaporated. Global arms sales have shrunk from Cold War levels. Asymmetric attacks pose greater risk than conventional warfare. Many allies have redefined their national interests to give priority to economics and commerce. Additionally, the global diffusion of technology and production undercuts the effectiveness of supplier regimes.

Other nonproliferation regimes share, in varying degrees, the Wassenaar Arrangement’s problems. That said, the MTCR, the NSG, and the Australia Group remain more robust. They are unburdened by COCOM’s legacy and have stronger support. The principal reason they are strong and the Wassenaar Arrangement is weak is that stopping WMD proliferation is a compelling policy rationale. WMD exports are almost impossible to justify, while conventional arms exports are routine and legitimate when undertaken in the context of Article 51 of the UN Charter, which guarantees the right to self-defense. Self-defense is an elastic concept that gives states with different foreign policies broad latitude to decide when an arms transfer is legitimate.

The negotiating landscape is cluttered with regimes that would complicate new arms transfer restraint discussions. Alternate mechanisms and guidelines include the Organization for Security and Cooperation in Europe’s Principles Governing Conventional Arms Transfers, the European Union’s Code of Conduct and the UN Register of Conventional Arms. These will constrain any agreement, and it is likely that European states would use existing commitments to blunt U.S. initiatives.

The EU’s Code of Conduct for arms transfers will have the greatest influence. Despite uncertainty over the future of a common European security policy, EU members look to Brussels—not Washington and its partisan debates over China—to set the agenda. The code calls for respect for human rights and avoiding sales “if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.” Some but not all European countries take the code seriously. The dilemma lies in national discretion. Each country individually determines whether an export is consistent with the code. National discretion means that, if the EU lifts its embargo, transfers of advanced military technology (more useful to China than weapons) are inevitable. Making the code legally binding does not change this, unless committee decisions in Brussels replace national discretion on whether a transfer runs counter to the code. This is a step the major European powers will not accept.[10]

In this regard, a recent British proposal for a UN treaty is largely irrelevant. It focuses on small arms and the grey market, not the difficult issues. Nations will agree not to sell arms to African rebels, but they will differ on whether to provide advanced military technology to China. Nor would a treaty address the problem experienced in Srebrenica, where a mindless embargo left Muslims defenseless against the better-armed Serbs.

The Wassenaar Arrangement shows where the tensions will be if new arms transfer discussions begin. Will Europeans insist, as they did in the Wassenaar Arrangement, that agreement is impossible until Russia joins? They argued then that a regime would be ineffective without all major suppliers involved, but Russia will not accept an arrangement that closes off China, its largest arms export market. Other participants are unlikely to accept the U.S. notion that a transfer already approved by Congress needs no further scrutiny. The United States is equally unlikely to accede to other nations’ denial policies for arms exports to Pakistan, Taiwan, Colombia, or Israel.

It is no insight to say that key U.S. allies and other major nations disagree on many issues: Iraq, UN reform, and the response to terrorism. The experience of the Wassenaar Arrangement suggests that this is not a temporary aberration due to one administration’s policies. Foreign policies diverged in the 1990s and have not grown closer since then. Effective restraint requires more than agreed upon procedures and guidelines. It requires common approaches to foreign policy and security. Absent this commonality, any new arrangement will be hollow and ineffective. European arms sales to China would be a callous mistake, but pursuing some new agreement on restraint is unlikely to stop them.
James A. Lewis was a negotiator in the P-5 Arms Transfer Restraint talks (1991-1993) and in crafting the Wassenaar Arrangement (1993-1996).

ENDNOTES

1. The proposals were announced by President George H. W. Bush in a speech at the U.S. Air Force Academy on May 29, 1991. Discussion of weapons of mass destruction later moved to a separate track.

2. France, the United Kingdom, and the United States sent representatives from their defense and foreign ministries; the Germans were represented by foreign and economics ministry representatives.

3. Norway’s experience in trying to get the United States not to re-transfer Norwegian-made light anti-tank weapons to El Salvador, which contravened Norway’s arms transfer policy, colored the debate.

4. The United States was able to win agreement to “sensitive” and “very sensitive” lists but could never link them to robust notification procedures. The lists linger in the Wassenaar Arrangement, serving little purpose.

5. The very close coordination among France, Germany, and Russia to block U.S. initiatives foreshadowed their later actions vis-à-vis Iraq.

6. During the two and a half years of discussions, the Chinese approached some participants (Australia, Japan, the Netherlands, and Sweden) concerning membership. Other countries, notably Russia, approached the Chinese. Absent a signal that the United States would agree, no one pushed for China to join.

7. Europe’s embargo never forbade dual-use exports to China, and each nation has discretion in its application.

8. The Norwegian rapporteur of the working group was especially courageous in this regard.

9. “No undercut” means that, if one nation has denied a sale, other states will similarly refuse to sell the item in question. A considerably weakened no-undercut provision was ultimately included in the Wassenaar Arrangement.
