

Commerce Under Siege: An Exchange

William A. Reinsch, Under Secretary of Commerce for Export Administration, defends his department's turf. Kenneth R. Timmerman replies.

Once again I must write to correct the errors, omissions, and misrepresentations that fill Kenneth R. Timmerman's recent article in your publication about the Bureau of Export Administration (BXA) ["Close-Out Sale at Commerce," *TAS*, August 1995]. I had hoped that his willingness to talk with me beforehand was a sign of his interest in producing an objective and accurate article. Unfortunately, that was not the case. It became apparent during our meeting that he had already largely written the article and was not interested in anything but a few *pro forma* quotations he could use to create the illusion of fairness. The body of Mr. Timmerman's work, both in *The American Spectator* and elsewhere, demonstrates that he is not a journalist but an advocate. He has a narrow, focused agenda, which he pursues single-mindedly, ignoring facts that do not fit his predetermined conclusions and liberally cutting corners on the truth to make it fit his design.

His most recent article, "Close-Out Sale at Commerce," also unfortunately, takes on a politically partisan cast. It is clearly one more chapter in the ongoing Republican effort to abolish the Commerce Department at the very point when it is at the peak of its success in creating jobs and promoting economic growth. It makes no more sense to tear apart the Commerce Department than it does to dismantle a pennant-winning baseball team, although the adverse consequences of the former in terms of jobs, exports, and technology development are far greater.

It is worth noting, in addition, that Mr. Timmerman's various comments about BXA, aside from his character assassinations of several of our career employees, are not new. Most of his

points have been publicly reported, analyzed, and dismissed. What continues to distress me is his reliance on anonymous "critics" of BXA or other "observers" or "policy makers" who are apparently not willing to make their points on the record. I was asked to respond on the record, and I did so, despite the fact that Mr. Timmerman has refused to make public the basis or sources for his assertions. I regret that he has not been willing or able to provide more than innuendo and vague attacks by anonymous critics.

The Issue Is Export Control Policy

Turning to the substance of the article, let me begin by making clear that Mr. Timmerman is really driven by his disagreement with the administration's export control policy, not by concerns about agency competence. This administration, from the president on down, has made no secret of its view that export

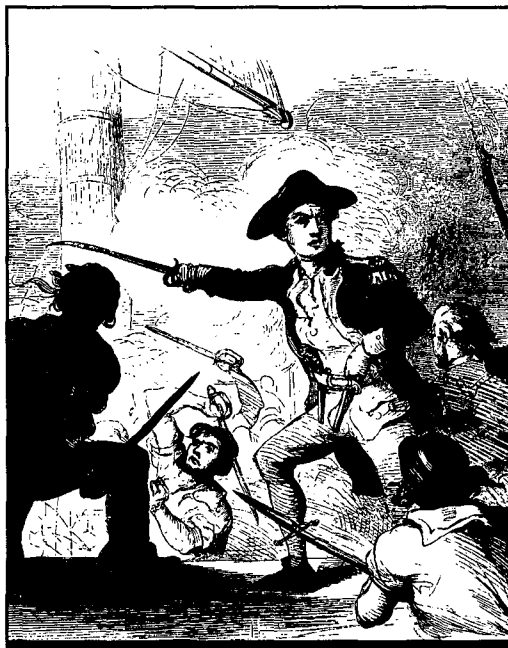
control liberalization is overdue. Residual Cold War controls are blocking American access to foreign markets at a critical time for our global competitiveness without contributing to our national security. We are proud of the actions we have taken and do not believe that export control liberalization has compromised our national security or non-proliferation goals.

Obviously, there are people who disagree with our policies, and, judging from the leaks of confidential business information Mr. Timmerman has used, some of them apparently are inside the U.S. government. The fact is that these individuals have lost the policy debate, and they have lost it *within* their own agencies, as the actions Mr. Timmerman complains about were the result of inter-agency agreement rather than unilateral action by Commerce.

Decisions Are the Product of an Interagency Process

This administration from its inception has recognized that most export licensing decisions involve input from multiple sources: They have foreign policy implications, which brings in the State Department; they have military security implications, which requires input from the Defense Department; they have clear economic implications for business, which explains Commerce's involvement; those decisions relating to nuclear equipment are of concern to the Energy Department; and as proliferation of weapons of mass destruction becomes an increasing concern, the Arms Control and Disarmament Agency also has a role to play.

We proposed in legislation 18 months ago a license process which fit these agency equities into a transparent and disciplined framework that guaran-



tees timely decisions. Under it, we will refer license applications to other agencies on demand, and in turn we will receive comments back within rigorous deadlines. Dispute resolution will be undertaken at the political level, up to and including the president, if necessary. Licenses will not be permitted to languish. Since Congress has not acted on our legislation, we plan to implement these procedures shortly by Executive Order.

Even before that, however, we have taken an interagency approach to licensing issues. Most of the actions and decisions Mr. Timmerman refers to that occurred during the Clinton administration were, in fact, the product of interagency consensus. Were they unanimous? Most of the time, but not always. Even when they were unanimous, were there lower level dissenters? Obviously, and it is apparent Mr. Timmerman has talked to all of them. What is disappointing is the weight he gave them rather than the majority on these matters.

In particular, the new regulations Mr. Timmerman refers to that Commerce "unilaterally" issued that have "freed billions of dollars of sensitive exports from licensing requirements," in fact were interagency agreed-upon changes that freed from strict export controls low-level computers and telecommunications technology that were already widely available all over the world from other sources. Recent studies demonstrate that countries like India, China, and Russia can indigenously produce computers at performance levels that currently exceed our definition of a supercomputer (1500 MTOPS—million theoretical operations per second, a measure of processing speed). Why, given that reality, should we be controlling low-level PCs to such countries? Mr. Timmerman may wish to reverse progress and keep the rest of the world in the information technology Dark Ages, but he is too late. The information revolution is global, and we all benefit from it without endangering our national security.

Controls Involve Consideration of All Interests

I would also take issue with the statement of one of Mr. Timmerman's anonymous sources that "the whole system is set up to push exports." In fact, the rea-

son BXA was established separately from the International Trade Administration, the Department's trade promotion arm, was precisely to avoid that conflict, and we have not hesitated to caution the export promotion part of the Department with respect to projects that raise export control concerns.

Mr. Timmerman apparently believes that commercial interests do not deserve consideration in this process, and that is simply wrong. In the case of the missile sanctions that were imposed on China in 1993 (Mr. Timmerman frequently forgets to mention the tough actions this administration has taken to curb proliferation), one American CEO stated that such action cost his company \$1 billion! I am happy to debate whether or not we made the correct policy decision, but no one can responsibly argue that the impact on business was minimal or should not have been taken into account in the decision-making process. That is the Commerce Department's job—to make sure our economic security interests as well as our national security interests are represented at the table when these decisions are made.

Next, after some comments about Commerce-Defense relations during the Reagan administration—again, old news, which I couldn't comment on—Mr. Timmerman turns his attention to China, asserting that Commerce approved the sale of \$60.2 million of missile technology items without consulting other agencies. This is simply untrue. During the time period cited, we received a total of thirty-three license applications for items on the Missile Technology Control Regime Annex. We approved nineteen, valued at \$6.5 million, with full interagency concurrence.

Second, in something of a geographic leap, Mr. Timmerman complains that we approved the sale of an aircraft carrier to India, which perhaps went on to China, without prior consultation with the Joint Chiefs of Staff. While Mr. Timmerman quotes our comment that the ship in question was built in 1945 and decommissioned in 1970 and was anything but recent technology, he fails to mention that the Defense Logistics Agency and the Naval Sea Systems Command certified, in writing, that the hulk had been inspected and that "all weapons systems have been rendered disabled, there are no arms or munitions aboard, and that the

hull and superstructure of the vessel has been cut such that it has no value other than the reclamation of the material content thereof."

According to our records, both State and Defense concurred in our judgment that the vessel qualified as scrap, which is what it was sold for. With respect to its final destination, the June 5-18, 1995 issue of *Business India* states that the vessel arrived in India to be cut into scrap.

With respect to the JCS, we assume that when we receive a notice from the Defense Department or any agency, for that matter, or when we consult with other agency officials in meetings or on the phone, that they have consulted appropriately within their building. To assume otherwise would bring government business to a halt. If the JCS was not consulted in this case, they should be complaining to their colleagues in the Pentagon who forgot to talk to them, not to Mr. Timmerman.

Mr. Timmerman then goes on to assert, without presenting any evidence, that "Chinese missiles, *perhaps incorporating U.S. technology*, are now being shipped to Iran, Libya, Syria, Pakistan, and elsewhere." Depending on the nature of the technology, U.S. law could require sanctions against the appropriate Chinese and/or recipient country entities, if such shipments in fact had occurred. Obviously, the administration would be very interested in seeing any evidence Mr. Timmerman has on these points.

There has been some media speculation about such sales to Iran and Pakistan. Questions like this are always under review in the administration, and if such events have occurred we will follow the requirements of law with respect to them. A decision to impose sanctions would be made by the State Department following interagency consultation.

Commerce "Controls" the Media?

That discussion then leads Mr. Timmerman on to one of his favorite past subjects—the Commerce Department's role in "blocking" publication of a story in *Time*. Mr. Timmerman, of course, fails to mention that the story in question was his, so he is not exactly a disinterested party. The truth is that the Department wrote *Time* to express concern that Mr.

Timmerman's story might make several assertions despite having been presented with evidence that they were not true. *Time* will have to speak for itself with respect to why the story did not run, but I would like to think it was an exercise of responsible journalism on its part. I would also add that in my nearly twenty-three years of government service I cannot recall a situation where a major national publication "caved in" to a letter from a government official. That is hardly a realistic description of government-media relations.

Clarifying the Record

As his article proceeds, Mr. Timmerman repeats a number of old stories about various items having been exported during the last three administrations to various countries he disapproves of. Let me comment briefly on several of his charges, focusing on those that allegedly occurred during this administration.

- "An April 1995 report by GAO determined that Commerce approved a large number of licenses to export stealth technology. . ."

Response: GAO never determined that Commerce approved a large number of licenses to export stealth technology. The report indicated that stealth technology was contained in several much broader control categories and that some of the export applications classified under these numbers were not related to stealth. In fact, a random sample indicates that the majority of the cases are not related to stealth technology in any manner. The few applications actually involving stealth technology that Commerce has approved were processed in full conformance with established interagency agreements.

- "GAO highlighted two exports of a radar-absorbent material to a German firm for use in a cruise missile that could subsequently be forwarded to the Middle East."

Response: Commerce suspended one case after information was obtained which indicated that the commodity fell under State's jurisdiction. The second case was returned to the exporter because it did not contain sufficient information to make a decision. No shipments were made under Commerce licenses. At no point in the report does GAO suggest

that this technology was being diverted to the Middle East.

- "U.S. aerospace production tools are going directly to Chinese military factories."

Response: China has received dual-use machine tools which were auctioned off by McDonnell Douglas. These are used machines, 9 to 26 years old. They are general purpose machine tools for large components of commercial aircraft and are not designed, modified or classified as aerospace machinery. These applications were approved through an interagency process.

- "A 1992 shipment of some 160 third generation night-vision devices licensed by Commerce, appears to have gone [sic] 'missing.' . . . The UAE refused to allow a post-license verification..."

Response: Third generation night vision equipment was controlled by the State Department prior to October 23, 1993, so if a 1992 shipment occurred, Mr. Timmerman should look to State for the reason. Commerce has no record of this equipment approved for export to the UAE, and the UAE has never refused a pre-license or a post-shipment verification request from the Department of Commerce.

- *Garrett Engine Co. could export advanced gas turbine engines to China without a license.*

Response: The engines to which Mr. Timmerman apparently refers are executive jet engines involving technology that is more than 20 years old. After full interagency consultation and approval, it was determined that these were decontrolled items and that Garrett could sell them to China for use on its K-9 trainer. Contrary to Mr. Timmerman's assertion, that action did not mean the Chinese could also purchase the engine manufacturing technology.

- "An inertial navigation system was exported in 1993 to a company on the Isle of Jersey, even though the company noted its intention to re-export the systems to Iran."

Response: Commerce never approved such a case. We did receive an inquiry on exporting related sales technical data. However, after the firm understood the difficulty in actually selling production data to Iran, it did not pursue the matter further.

- *Commerce approved the sale of extremely advanced computer chip man-*

ufacturing technology to China. . . . Technical specifications on the equipment were subsequently removed from the file.

Response: Three related license applications were submitted to Commerce for technology and equipment to manufacture chips in China. After close review it was initially determined that the items could be shipped under General License (i.e., without advance written approval from the Commerce Department). However, after receipt of new information, Commerce's Enforcement Office asked Customs to seize the equipment. Commerce informed the exporter that an export license would be required for shipment of the equipment and technology, and all three applications were subsequently rejected. The full history of these applications, including all technical specifications, are maintained in our files. (How Mr. Timmerman would or would not know what is in our files is a question that deserves some investigation.)

- *Commerce approved the sale of a tomography scanner to China.*

Response: This is categorically false.

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No license was approved for export of tomography equipment to the PRC. Rather, the exporter was explicitly informed that the application would be denied.

Enforcement

Mr. Timmerman also cites several GAO criticisms of both State's and Commerce's enforcement efforts, particularly with respect to pre-license checks and post-shipment verifications in China. These GAO comments are well-taken, and we have implemented the recommendations made in the referenced report. Unfortunately, Congress, in its determination to destroy the Commerce Department, may not provide us with the money we need to expand our end-use check programs.

Regulatory Reform

Mr. Timmerman also criticizes our new regulations, the first complete rewrite in over forty years and a major reinvention initiative of this administration. Although I explained this effort in some detail to Mr. Timmerman, it is apparent he does not understand three simple points: (1) These regulations are the result of interagency consensus. They are not a unilateral Commerce product. (2) These regulations are designed to simplify and clarify procedures. They do not make the major changes in policy that Mr. Timmerman asserts. They do not create a "right" to export, and they do not make it "virtually impossible" to block an export. (3) The bottom line is that what was controlled prior to these regulations will still be controlled after they are finalized.

Attack on Career Civil Servants

Finally, and most disturbingly, Mr. Timmerman directs his rancor toward several career employees of the Bureau of Export Administration, citing cases as old as twelve years. To the extent the law permits, I have commented on some of those more recent cases above. Those facts make clear that these decisions are the result of an interagency process. Even within our building, however, licensing decisions are not made by a single officer but are reviewed and approved by senior managers. With respect to Mr. Timmerman's allegation that the FBI had investigated Mr.

Lerner, the FBI never conducted such an investigation.

It is always more fun to search for someone to blame for events one does not like, but the more prosaic truth is that licensing decisions follow clearly delineated policy guidelines, and disputes are resolved by interagency discussion. As I said initially, if something happens that Mr. Timmerman does not like, it is because he does not approve of our policies, not because we have licensing officers acting on their own in defiance of policy. The system is structured to prevent that from happening. At the same time, I take allegations of wrongdoing seriously and have several times invited Mr. Timmerman to bring his concerns to the attention of law enforcement authorities rather than using the media as prosecutor.

I regret that this letter seems nearly as long as Mr. Timmerman's article, but he makes so many misstatements that I felt your readers deserve the truth. It is obvious that Mr. Timmerman's view of the way the world ought to be is different from the administration's. He would restrict the export of vast quantities of relatively low-level goods and technology to a wide variety of locations out of an exaggerated sense of their national security value and out of fear that one or two of them might be diverted to Iran. The damage such a policy would do to our economy is incalculable, but more important, the benefit it would bring to our national security is minimal. Anyone interested in America's economic security should be happy that Mr. Timmerman is not in charge of the nation's export control policies.

—**William A. Reinsch**

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Administration*

*U.S. Department of Commerce
Washington, D.C.*

Kenneth R. Timmerman replies:

William Reinsch is right about one thing: The people he talks to in his agency and the sources I have interviewed have very different views on how well he and his department are safeguarding our national security. The sources for my article included researchers at the Government Accounting Office, the Office of Technology Assessment, the Congressional Research Service, the Department of Defense, the White House, the Arms

Control and Disarmament Agency, the Department of State, and staffers at a half-dozen congressional offices. The agreement from such different quarters about the problems at the Commerce Department's Bureau of Export Licensing (BXA) was, frankly, astonishing.

The Commerce Department is one of the most secretive agencies of the U.S. government, a situation not unique to the Clinton administration. Its decisions as to what items can or cannot be exported are not made public, and the department even has its own special form of classification in the Export Administration Act, in Article 12(c), which prohibits the disclosure of so-called proprietary information to Congress and the public, unless it is judged to be in the national interest. Who makes that judgment is anybody's guess.

According to Reinsch, the Commerce Department has never taken a decision without full approval of a very broad inter-agency group that includes the Defense Department, the intelligence community, and the White House. Nothing could be further from the truth. One reason so many are up in arms about Commerce is precisely because it has consistently withheld licensing information from other government agencies, especially when national security issues are at stake.

The Secretary of Commerce is required to notify the House Foreign Affairs and Senate Banking committees at least thirty days before issuing an export license to any country on the State Department's terrorism list. While a professional staff member of the House Foreign Affairs committee two years ago, I requested a search of committee files to determine whether Commerce had complied with that requirement. The last time Commerce had seen fit to notify Congress of an export license to any of those countries was 1987. Several thousand licenses have been issued in the intervening years. These actions were kept secret for a simple reason: If Commerce had drawn attention to its role in facilitating the sale of billions of dollars in U.S. high technology goods to dictators like Saddam Hussein, Congress would have hit that roof—as it finally did when it subpoenaed the lists.

I stand by every line of my article. □

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Eye Street

by Benjamin J. Stein

Monday

Dinner at Morton's with my agent pal and his wife. It's jumping here tonight, just like the old Morton's back in the 1980s before the Los Angeles economy slipped into the longest recession it has ever been in. This recession has been going on for six years, and shows no sign of stopping. Defense demolished. Housing gone. Commercial development, a dim memory; retail, a joke. Financial services? Well, they were largely Drexel scam companies, and they're gone.

But maybe things are picking up, because the place is booming. At one table there's Sandy Gallin, big-time manager. Then there's Barry Diller. Then there's Marvin Davis, and Leslie Moonves, the new head of CBS, and he's eating with Jane Seymour, and it's a rocking good time.

"You want to hear about Hollywood?" asks my agent pal. "There's a certain woman star with huge breasts. And she's got a deal at a big studio on the West Side, and in this deal she not only gets an eight-figure salary, but has a clause that says that when she goes on location, she must have a trailer that has a tanker truck filled with Evian attached to it, because she will only take baths and showers in Evian, can you believe that?"

"I can do better than that," said his wife, who is a lawyer in the show business field. "I have a friend who's doing some work papering a movie deal that Prince is in. And Prince insisted that at all times that his name came up in the contract, he would be referred to solely as 'the artist formerly known as

Prince.' So we did all the contracts this way. It's supposed to allow him to express his anger at his record label. Then a few days ago, he got his lawyers to call and demand that the contracts all be redone, and he wanted to be referred to only as 'the Beaver.'"

"Fantastic," I said.

"Then, a week after that," she said, "his lawyers called and said it was back to 'the artist formerly known as Prince.'"

It all reminded me of a story I was told long ago by a writer named Eve Babitz. She said you could understand all there was to know about Hollywood and stardom if you knew about a famous youth who was a bandit in the mountains of Italy during World War II. At the age of about 15, he became the leader of a big bandit gang and had all the money and women and fame he could want. So the only thing he could think of to do was to capture people and take their money. Then, when they asked if they could go, he would tell them they had to sing their favorite aria as loud as they could. When they had their mouths open, he would shoot them in the mouth. That, she said, was Hollywood.

I am also reminded of a man I knew who suddenly became head of a small studio. One day when I visited him, I asked him if I could have some "water." He misheard me, got an evil smile on his face, and said, "Yes, it's time to slaughter."

"What?" I asked him, totally startled.

As if he had been caught reciting some secret code of the devil, he said, "Oh, no, it's *not* time to slaughter."

I still do not know exactly what he was talking about. It was a hint, as if I

needed one, that people who became really successful here have made some kind of pact with the devil. I definitely have the feeling that there is a secret cult of people who make it here. I can recognize who they are by their cloven Gucci loafers.

However, none of the power players here reads the *Spectator*, so they don't know that I know about them. I guess I'm safe (at least until it's time to slaughter and eat me).

Then again, maybe this is just jealousy on my part. It's important to know about one's own motivation.

"Hollywood is a mental hospital, a real one," said Isaac Singer, one of the great writers of our era. How right he was. But where else is it so much fun and so easy to earn a living? On the other hand, I often think this: I have been here almost twenty years, and I have *far* fewer friends here than I had when I first moved here. I am so alone here that it's a joke.

Oh, well. Enough of that. Time to eat my tuna, listen to tales about the passing parade, and go on.

"When I think about the deals that are being made in Hollywood right now," the agent at my table said, "it's more like mental disease than business."

"It can't go on forever," said the lawyer.

"Well, as my father says, 'If a thing cannot go on forever, it will stop.'"

That pretty much put an end to the conversation, as pointing out the truth often does.

Tuesday

A foolish consistency is the hobgoblin of little minds. So said Emerson, I believe, and he was right. Today, I love Hollywood. I am on

Benjamin J. Stein is a writer, actor, economist, and lawyer living in Malibu and Hollywood.