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STATEMENT OF
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BEFORE THE
SENATE COMMITTEE ON FOREIGN RELATIONS

ON

FOREIGN POLICY EXPORT CONTROLS

Mr. Chairman and Members of the Committee:

At ~~your request,~~ the request of Senator Percy, Mr Chairman, we reviewed the Administration's implementation of certain provisions of the Export Administration Act of 1979 which require consideration of the domestic economic impact of foreign policy controls. Specifically, we reviewed Administration compliance with the Act's provisions requiring (1) consultation, as appropriate, with businesses affected by the proposed controls and (2) consideration of the economic impact of such controls before imposing, expanding or extending them.

To do this, we reviewed the Administration's actions in four recent cases in which export controls were imposed for foreign policy reasons. These cases are: the controls on oil and

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gas-related exports to the Soviet Union of December 30, 1981 (imposed in response to martial law in Poland) and June 22, 1982 (known as the extraterritorial controls), and the controls on exports to Libya of October 28, 1981 and March 12, 1982. We also examined the process by which existing export controls for South Africa were relaxed during 1981 and 1982.

FORMAL CONSULTATION WITH BUSINESSES DID NOT GENERALLY TAKE PLACE

The Administration carried out what might be called formal business consultations in only one of our case studies--the comprehensive export controls for Libya imposed March 12, 1982. In this case, Commerce and State held a meeting with known and available U.S. exporters to Libya on March 4, 1982. Commerce extended the invitation to these businesses only one day before the meeting was held and did not inform them of the purpose of the meeting. It did solicit comments on the proposed controls from the participants but required that any comments be received by March 5. Business representatives were highly critical of this approach to business consultation because of the difficulty of producing detailed information on such short notice and because it appeared that the decision to impose export controls had in fact already been made. In the other three cases, there was either no consultation or only last minute phone calls were made to a few major U.S. exporters.

The Administration's reasons for the lack of formal business consultations before imposing export controls included (1) the need to avoid leaks which might dilute the foreign policy impact of the control decisions and (2) the desire to deter measures from being taken by the target countries and by U.S. exporters to circumvent the controls.

ADMINISTRATION KNOWLEDGE OF BUSINESS CONCERNS

Despite the minimal formal business consultations, the Administration was aware of business' key criticisms of foreign policy export controls well in advance of the Soviet control actions. It was public knowledge in mid-1981 that the Administration was reviewing trade with the Soviet Union and that one issue still to be decided was the degree to which U.S. suppliers of oil and gas equipment would be permitted to participate in Soviet energy development.

The Advisory Committee on East-West Trade has been a major forum for business-Government exchange on U.S.-Soviet trade. It consists of senior representatives of leading corporations, banks, law firms, and universities and meets quarterly to advise the Government on current trade issues. Throughout 1981, business representatives advised the Administration about their key concerns through this Committee. Such concerns included (1) the doubtful effectiveness of unilateral U.S. export controls in influencing Soviet foreign policy behavior because of the availability of alternate suppliers, (2) the need for close consultation with and strong support from West European allies, (3) adverse consequences of violating signed contracts, (4) damage to their reputations as reliable suppliers, (5) foreign suppliers replacing them in world markets by taking advantage of unilateral U.S. export controls and (6) the difficulty of removing controls if they proved ineffective, because of the foreign policy consequences of revising U.S. policy.

During the 6 months between the December 1981 controls and the June 1982 extraterritorial controls, there was some public debate both in reaction to the December controls and in anticipation of possible extension of the controls extraterritorially. Again many of the same points were made.

There was less opportunity for business-Government exchange on U.S. trade policy toward Libya, since there was no trade advisory committee similar to the one on East-West trade. Nevertheless, the deterioration in U.S. political relations with Libya during 1981 and 1982 was evident to public observers, and some businessmen started noticing longer delays in getting approval for export licenses for goods destined for Libya.

Other forums for business-Government consultation are the President's Export Council and its Subcommittee on Export Administration and the 21 Industry Sector Advisory Committees (ISACs) set up under the Trade Expansion Act of 1974. The Council did register business' general concerns about foreign policy controls during 1981 and 1982, but the ISACs, except for the aerospace ISAC, did not focus on foreign policy controls or provide cost information on the controls' effects.

The contribution that these advisory groups can make in compiling information on specific economic costs of proposed controls is limited. Proposed export controls are kept secret, and even though committee members are cleared to discuss such matters, they cannot question their industry sectors about possible economic costs.

MINIMAL VALUE OF PUBLIC COMMENT PERIOD

Businesses have two other formal opportunities to supply information and register their views on the impact of export controls: (1) the public comment period (usually 60 days) immediately after the controls are imposed and (2) the comment period during the end-of-the year controls extension process. We found, however, that the extent and quality of the information that businesses are willing to provide during these stages is limited. This is attributable to their reluctance to have the public perceive them as siding with an unpopular target country if they oppose the controls and awareness that foreign policy considerations may deter the Administration from reversing its announced and widely publicized decision. In addition, some businesses are reluctant to make public detailed information on their expected losses or future trade strategies. It appears that most businesses view these public comment periods as pro forma exercises, with little likelihood of influencing policy decisions.

GOVERNMENT ANALYSES OF ECONOMIC COSTS

With respect to the specific issue of what economic cost information was developed by Commerce staff and forwarded to the President or other decisionmakers before controls were imposed, we found that the Administration did have basic knowledge of direct export costs and the effects of the controls on some individual companies. In general, it did not have the data to assess the controls' secondary effects, such as the consequences for future trade, impact on subcontractors, jobs, and government revenues. In this regard, we should qualify our comments by noting that top Government officials participated in the determination process and their discussions are not part of the written record.

Six days before the December 30, 1981, controls on the Soviet Union, Commerce informed the National Security Council that halting exports of oil and gas equipment would cost the U.S. economy about $210 million a year in reduced exports. This estimate was based on the value of licenses issued for oil and gas equipment during the previous year, augmented by knowledge of major upcoming sales. Commerce also noted that $80 million worth of oil and gas technology exports to the Soviet Union were denied in 1981 under prior foreign policy controls, but this amount was not included in the overall loss projection for 1982. Commerce noted that the U.S. sells equipment that the Soviets prefer but that most of it is also available from sources other than the United States.

Like the December 1981 controls, the June 1982 extension of controls extraterritorially was the result of a lengthy debate within the Administration that included Commerce-generated information on the likely domestic impact of proposed actions. As early as February 1982, Commerce had developed the economic cost information that it would continue to use until the controls were lifted 10 months later.

Concerning the very broad export controls imposed on Libya on March 12, 1982, Administration policymakers had been informed that oil and gas equipment comprised a large share of U.S. exports to Libya ($200 million to $300 million out of a total of $800 million in U.S. exports) and that one company provided a large portion of this equipment. It was also noted that Libya imported few items from the United States that were unavailable from other sources and that the reputations of U.S. companies as reliable suppliers would be hurt if controls were adopted.

For the October 28, 1981, controls on light aircraft exports to Libya, we did not see any evaluation of economic effects made prior to their imposition, even though they also had been considered by State and Commerce for several months before being imposed.

DIFFICULTIES IN REMOVING EXPORT CONTROLS

With respect to the question of how much economic analysis is made as part of the annual controls extension process, we found that usually only perfunctory analysis is made and that it does not represent a continuing effort to monitor adverse economic effects.

A basic problem in revising or removing foreign policy export controls once they are imposed is the need to relate relaxation of controls to some progress in achieving their initial foreign policy purposes. We found this to be the case in the export controls imposed on South Africa in 1978: adverse economic effects were a primary reason for relaxing the controls, but opposition to revising them without accompanying progress toward their foreign policy objectives dominated the decision-making process for several years.

LIMITS ON DATA AVAILABILITY TO SUPPORT ANALYSIS

More thorough analysis and calculation of economic effects, including secondary effects, is likely to be a difficult and time-consuming task. Commerce does not presently have some of the quantitative information needed for assessing economic costs. Data are available for items already subject to controls; however, detailed data are not available on exports of noncontrolled items, the extent and location of subcontractors, and expected future sales.

For goods and data already controlled, information on prior year sales--broken down into very specific categories--can be obtained from Commerce files of license applications. For items not subject to any export controls, information can be obtained from the Census Bureau's monthly export statistics, but not in such specific detail. The December 1981 Soviet oil and gas controls provide a good example of this situation. Commerce already had a validated license requirement in effect for exploration and production equipment and data. The new regulations embargoed exports in these categories and in the oil and gas transmission and refining categories. Commerce analysts said that they had no trouble determining the total 1981 value of exports in categories already controlled. However the Census Bureau export statistics for transmission and refining items were not sufficiently detailed and they had to estimate the value of exports that would be suspended by the new regulations. Commerce informed us, as it turned out, they now believe the value of sales in these categories was underestimated by a considerable margin.

Knowledge of upcoming major projects is also important in analyzing economic effects. When such information is known, it has been added to previous year trade statistics in developing economic cost estimates. Companies are not required to submit information on expected future sales, however, so it is difficult for Commerce analysts to consider this factor. Government knowledge of such future sales is spotty and is gathered from ongoing industry contacts, trade publications, and comments sometimes included in license applications for items already controlled.

Another limit in Commerce's information base concerns the impact of export controls on subcontractors, since Commerce does not require exporters applying for licenses to submit information of this kind. **We found no evidence of analyses of the controls' effects on secondary suppliers in any of our case studies.**

Another very important gap in Commerce's information base concerns the foreign availability of items that may be subjected to export controls. Foreign availability is important in assessing the effectiveness of proposed controls in denying exports to target countries, the potential for long-term losses of U.S. export markets, and the controls' economic impact. Although Commerce has been directed by the Export Administration Act to establish a capability to monitor and gather information on foreign availability, it has made only minimal progress in doing this.

Finally, the most difficult of adverse economic effects to quantify, and perhaps the most important to long-term U.S. export interests, is the impact of controls on the reputations of U.S. companies as reliable suppliers and the resulting adverse structural changes in trade patterns.

For Commerce to have all pertinent information on hand for use in preparing thorough economic analyses on export controls, the Government would have to require extensive data submissions from business. We do not believe such data collection is desirable or realistic.

OBSERVATIONS

As you know, the Export Administration Act of 1979 guides, but does not precisely limit, Presidential use of foreign policy export controls--permitting the President to exercise his judgment on a case-by-case basis. Changing the Act to try to improve decision making is possible, but implementation of these changes is likely to be extremely difficult and have limited benefits. For example, requiring additional data collection and economic analyses, and setting guideposts concerning the tolerable level of economic costs that might be incurred for potential foreign policy benefits is unlikely to improve decision making because of constraints on data collection and analysis and the predominance of foreign policy considerations. Improving the end-of-the year economic analyses made as part of the controls extension process would probably also have only marginal value, given the importance that demonstrated progress in meeting foreign policy goals plays as the primary justification for relaxing controls. There is potential for revising the law to reduce the burden on the private sector through provisions safeguarding contract sanctity or limiting extraterritorial reach. However, such changes address only part of the basic problem of damage to U.S. companies' reputations as reliable suppliers and the resulting long-term structural changes in U.S. trade patterns.

Other possible changes would not necessarily contribute to better decision making as a general proposition; however, these changes could reduce the use of foreign policy export controls by restricting them or making them more cumbersome to use. Improving Commerce's foreign availability assessment capability and prohibiting the use of controls where foreign availability exists would, in effect, greatly reduce the President's ability to use export controls as a foreign policy tool. And requiring a public comment period before controls could be imposed would have a similar effect, because it is unlikely a President would want such a decision making process conducted publicly.

In our view, the key problem with foreign policy export controls is that their economic costs have been more visible than their political benefits, yet their foreign policy rationale has overridden such cost considerations. By demonstrating that the Administration did know the essential economic arguments against the use of export controls, our review helps to clarify the debate on foreign policy controls, in the sense that it refutes the premise that the Administration might have acted differently had it been aware of the probable economic costs, and it shifts the debate back to the usefulness of such foreign policy controls.

If the Congress believes it is desirable for the President to have this kind of foreign policy tool, then it may have to rely on the judgment of the President to impose controls only where a consensus exists that their foreign policy purposes can be achieved at a reasonable cost. We do not believe that fine tuning the Act to require more economic analsis will alter the decicion made. On the other hand, if the Congress believes, as our major trading partners do, that unilateral foreign policy export controls are not an appropriate tool to achieve foreign policy goals, then it should eliminate this authority from the Act.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions you or your Committee may have.