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2580	AGENDA	FOR NSC MEETING (SAME TEXT AS 2549)	1	2/4/1982	B1
2581	SUMMARY	OF PAPER RE NEXT STEPS (SAME TEXT AS 2551) *R 2/22/2008 F00-002*	6	2/3/1982	B1
2582	PAPER	RE NEXT STEPS *R 6/6/2006*	2	ND	B1
2583	FORM	SUMMARY DECISION SHEET RE LIBYA (SAME TEXT AS 2577) *R 2/22/2008 F00-002*	2	2/3/1982	B1
2584	TABLE OF CONTENTS	RE RECOMMENDED READING *R 6/6/2006*	1	ND	B1
2585	AGENDA	FOR NSC MEETING *R 8/21/2013 M325/1*	1	2/4/1982	B1
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2590	PAPER	RE POSITIONS OF COMMERCE AND STATE DEPARTMENTS (SAME TEXT AS 2565) *R 6/6/2006*	10	ND	B1
2591	PAPER	RE FURTHER SANCTIONS *R 6/6/2006*	1	ND	B1
2592	SUMMARY	EXECUTIVE SUMMARY RE POLAND (SAME TEXT AS 2558) *PAR 2/22/2008 F00-002*	2	ND	B1

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NSC Staff Summary of State Paper
for February 4, 1982 NSC Meeting
NEXT STEPS ON LIBYA

INTRODUCTION

Two December NSC meetings on Libya focused on the broad pattern of Libyan activity threatening to the US and on the specific Libyan threat to assassinate key US officials here or abroad. A status report on actions ordered by the President on December 10, 1981 was given at the NSC meeting of January 21, 1982.

The basic decisions before the February 4, 1982 NSC meeting concern whether to revalidate and then activate the next steps toward Libya discussed in December regarding the broad and long lasting Libyan threat rather than the proximate threat of terrorist hit squads. Revalidation involves inter alia giving approval to the contingency planning that focuses on the short term assassination threat as well as the broader Libyan threat in light of changed circumstances in Libya, the region, and in the world.

The primary issues to be decided now are whether and when to embargo imports of Libyan oil; to embargo US exports to Libya; to undertake additional measures against Libya, such as transaction controls, selective export controls, and export licensing requirements. Also, the February 4 meeting will consider the advisability and appropriate timing of another US naval exercise in the Gulf of Sidra.

CURRENT LIBYAN BEHAVIOR

Libyan support of international terrorism and subversion of regimes friendly to the US continue. The assassination threat against US officials may be viewed from the perspective of the broad pattern of Libyan support of international terrorism and subversion in the Middle East, Africa, and in Central America.

US OBJECTIVES

Objectives in December were limited, i.e., 1) to deter attacks against US targets; 2) to ensure the safety of Americans in Libya so that future US freedom of action would be greater.

Objectives in February are broader, i.e., 1) to pressure or coerce Libya to cease such policies as international terrorism and subversion of regimes friendly to the US; and 2) to isolate Libya in the world community and to drive a wedge between Libya and Arab regimes friendly to the US.

An important first step, now that the Americans have been withdrawn, is to remove the inconsistency between US political and economic policies toward Libya. Implementation of the economic measures under consideration here (the oil embargo, an embargo of exports to Libya, and a ban on commercial transactions by U.S. firms within Libya) will prevent continuation of the current cycle whereby U.S. oil income and production expertise plus the export of U.S. technology translate into Libyan income. This income is then used to purchase advanced Soviet weaponry and to spread terrorism and subversion in the region, in Europe through indirect funding of terrorists there, and, most recently, reaching to the United States itself.

CHANGES SINCE DECEMBER 10, 1981

Poland

Since the US has asked the allies to take economic sanctions against Poland and the USSR, even unilateral American sanctions against Libya may increase the strains within the alliance. Europeans resent unilateral attempts to control the final disposition of American exports or to control US subsidiaries overseas -- extraterritorial enforcement of U.S. embargoes. The U.S. currently imposes export controls on over 20 countries, which the Europeans think is excessive. Also, the Soviets might use U.S. actions against Libya as a means of diverting attention from Poland and as a way of dividing the U.S. from the allies. Imposition of a U.S. import embargo against Libya would not strain American ties with the allies. Even a unilateral export ban could cause strains to the degree that the U.S. applies it to American subsidiaries overseas and to the control of reexports.

The U.S. faces a dilemma here: in order to be effective to the maximum degree from an economic standpoint, the prohibition against exports to Libya would have to include provisions preventing reexport of U.S. origin products and prohibitions against alternative supply of proscribed items by U.S. subsidiaries and licensees operating in third countries. Such a policy would place an economic burden on the allies and incur political costs within the alliance. The recommended solution to this dilemma is one which squares the American intention to make a strong symbolic political statement that the United States has decided to conduct its own policy in a way that isolates Qadhafi on the one hand with a prohibition of normal U.S.-Libyan commercial relations on the other hand. The US should welcome Allied support but ought not pressure them to do so. Therefore, the U.S. could explicitly exclude extraterritorial application from the regulations designed to institute the export controls being considered in this policy review.

U.S.-Libyan Relations

Libya claims to want improved relations with the U.S.; to have cancelled terrorist operations; and to dismantle terrorist camps, but these claims have not been confirmed. Colonel Qadhafi appears to be disconcerted and threatened by U.S. actions yet is not prepared to abandon his goals, though on the basis of firm U.S. resolve he may be willing to modify temporarily some of his more extreme methods. The private U.S. demarche increased Colonel Qadhafi's perception of threat, while the public confrontation in the Gulf of Sidra enhanced his tendency for bravado.

The World Oil Market

The economic effects of a unilateral boycott of Libyan oil on either the US or Libya remain negligible as was the case in December. Free world demand will continue to decline, and OPEC will continue to underproduce as a whole, thus minimizing the effects of a US boycott.

Relations with Regional States

Israel's application of its laws to the Golan and the US veto of sanctions against Israel in the UN have enhanced cooperation between Arab states friendly to the US such as Saudi Arabia and those that are unfriendly such as Libya. Iran's successes in the war against Iraq and Iran's assertiveness in the Gulf provide an incentive for the Arab states to close ranks. The net effect of regional developments is to increase somewhat the political costs in the region of further US actions against Libya.

Soviet Posture

Soviet propaganda has ridiculed U.S. action towards Libya and suggested that Soviet support for Qadhafi has had a sobering impact on the U.S. Nothing has occurred, however, to suggest that Moscow's basically cautious posture has changed. Preoccupation with the Polish crisis may make the Soviets less inclined to get actively involved in defending Libya, although they will continue to use the US confrontation with Libya to increase their presence there.

US Public Opinion

As a response to reports of Libyan hit squads, there would be considerable public support for an American oil boycott. There is strong opposition to US military action without a Libyan attack on US nationals or facilities.

REVALIDATION OF OIL EMBARGO AND EXPORT BAN

In light of U.S. objectives toward Libya and an awareness of the changes that have occurred in the international environment since December, the U.S. should activate and confirm the further economic measures for which the President directed the Secretary of the Treasury to initiate and coordinate preparations, that is: termination of U.S. oil imports from Libya and prohibition of U.S. exports of equipment and technology to Libya.

The discussion of a ban on Libyan oil contained in the NSC paper of December 8 continues to be valid. World oil supplies are expected to remain more than adequate to meet demand through 1982 barring unforeseen political disruptions. An embargo on US oil imports from Libya would have a minimal economic impact but would be a political statement putting Libya on notice of US resolve. The impact of a unilateral US oil boycott on the allies would be minimal because it will not affect specific allied economic concerns.

The legal authority for an oil embargo would be the International Economic Emergency Powers Act (IEEPA), and a draft Executive Order has been prepared on this basis. IEEPA gives the President broad discretionary authority to respond to "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency" with respect to that threat. Thus, the President must find that there is an "unusual and extraordinary threat." These are words of judgment. Courts will be extremely loathe to question a reasoned decision by the President that the statutory standard has been met.

The statutory standard could be satisfied by the circumstances of U.S. relations with Libya. Libyan adventurism and support for terrorism can quite reasonably be characterized as an "unusual and extraordinary threat" to U.S. national security and foreign policy. The statute, however, requires consultations with Congress in every possible case before invoking IEEPA.

The December 8 analysis of an embargo on exports to Libya remains valid. U.S. exports through November 1981, mostly of machinery and transportation equipment, amounted to $772 million.*

The political issues surrounding an embargo on Libya have become somewhat more sensitive than before because of the Polish crisis. The allies have criticized the extraterritorial implications of our new export controls on oil and gas technology to the Soviet Union. A new U.S. economic sanctions program against Libya, although unilateral, would raise concerns about extraterritorial application to make the embargo effective. These could add to Alliance strains and could weaken allied willingness to cooperate in economic actions against the USSR. It should be noted, however, that we can minimize conflicts with our allies by designing this option to explicitly forego extraterritorial application.

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*Treasury believes this paper to understate the negative economic effects on U.S. business of an export embargo and may communicate its views to the President in a separate memorandum.

ADDITIONAL MEASURES

Transaction Controls

IEEPA permits the President to prohibit U.S. citizens and firms from engaging in commercial transactions in Libya and with Libyans, on foreign policy grounds. Such as application of IEEPA could be undertaken in conjunction with the oil embargo and an embargo of exports or with the oil embargo alone.

Selective Export Controls

Should a decision be made not to have a total embargo or to implement transaction controls, steps could be taken to control selected exports. At present, export controls now in effect do not allow the U.S. to deny dual use technology, including computers, communications equipment, and aircraft ground equipment, destined to the Libyan government.

Export Licensing Requirements

An additional option, also in lieu of an export embargo, would be to require licensing of all items for export to Libya. A general licensing requirement could be announced as a measure to monitor exports to Libya and to provide the Administration with the authority to deny any item which could be used by Libya to support its terrorist or military activities.

Responding to Libyan Provocations

The JCS have reconfirmed that the courses of action presented in the paper for the NSC meeting of January 21, 1982 remain feasible. Soviet, regional, and allied reactions to the use of American force in response to a Libyan provocation will vary according to the nature of the Libyan attack. An attack that is unquestionably Libyan and that is extreme would result in minimal support for Libya; if the US reaction is disproportionate to the Libyan provocation, e.g., high civilian casualties, Libya would receive more support. A failed US military action would raise the costs of cooperating with the US for Arab states most willing to do so such as Egypt and Oman.

<u>Continuing Libyan Threats in the Region</u> could be addressed by: 1) providing greater assistance to local states threatened by Libya; 2) increasing US military presence in the area; 3) expanding military and intelligence cooperation with regional governments; and 4) engaging in joint contingency planning, at least in Egypt.

Regarding increased assistance, the allies could be asked to provide more economic assistance rather than requesting that they cooperate in a US sanctions program against Libya. An enhanced US military presence includes a return to semi-annual exercises in the Gulf of Sidra; an increase in Special Forces, Airborne, Marine, Navy, and Tactical Air exercises, some jointly with friendly local states. Expanded security cooperation could include agreeing to an Egyptian proposal for a Regional Training Center in Egypt; initiation of military unit exchanges with regional states; as well as enhanced intelligence collection and more sharing of the product with friendly states in the region. Since the Mubarak government in Egypt seeks no military confrontation with Libya, joint US-Egypt contingency planning is less relevant than it was during the era of President Sadat. Nevertheless, the US must remain in a position to respond to Egyptian requests for joint contingency planning.

CONGRESSIONAL AND PUBLIC AFFAIRS STRATEGY

There should be a public affairs and Congressional strategy that prepares the ground for the announcement of new measures directed at Libya. The announcement should be formulated so that it reflects a balanced and well-rounded approach, rather than a set of random negative sanctions.

In preparing for the announcement of the initial decisions on Libya, there are two constraints -- time and the fear of leaks. These constraints could cause harm to American citizens in Libya and inhibit the Administration from engaging in a serious dialogue with the Congress prior to action. There are two distinct phases of consultation.

The first phase would be educational and designed to give key members a sense of involvement in our decision process and -- thereby -- a stake in the outcome. The second phase would, then, consist of standard, courtesy calls a day or so before the actual announcement of new measures.

TIMING

Except for the Gulf of Sidra exercise, the military measures are all either in various stages of implementation or are planned on a contingency basis.

Crucial decisions will have to be made regarding the timing of the economic steps. The oil embargo and export controls, if decided upon, could be implemented simultaneously for maximum impact and to demonstrate that the U.S. is ending "business as usual" with Libya. The same can be said if transaction controls are added to this list. Alternatively, there could be a phased program: oil embargo now, export embargo later, transaction controls still later.

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NATIONAL SECURITY COUNCIL

January 29, 1982

NOTE FOR SIT ROOM

FROM: KATHY McGRAW

SUBJECT: LDXing

Please LDX the attached to:

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Smith
Cormack
Tillman
Stebbins

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

~~CONFIDENTIAL~~ February 2, 1982

MEMORANDUM FOR MS. NANCY BEARG DYKE
Assistant to the Vice President for
National Security Affairs

MR. L. PAUL BREMER III
Executive Secretary
Department of State

MR. DAVID PICKFORD
Executive Secretary
Department of the Treasury

LIEUTENANT COLONEL ROBERT T. MEEHAN
Assistant for Interagency Matters
Office of the Secretary of Defense

MR. F. HENRY HABICHT
Special Assistant to the Attorney General
Department of Justice

MS. JEAN JONES
Director, Executive Secretariat
Department of Commerce

MR. WILLIAM VITALE
Executive Secretary
Department of Energy

DECLASSIFIED
White House Guidelines, August 28, 1997
By CAS NARA, Date 12/4/04

MR. THOMAS B. CORMACK
Executive Secretary
Central Intelligence Agency

MS. JACKIE TILLMAN
Executive Assistant to the United States
Representative to the United Nations

COLONEL CHARLES F. STEBBINS
Executive Assistant to the
Chairman, Joint Chiefs of Staff

SUBJECT: NSC Meeting -- Libya (C)

Subject NSC meeting originally scheduled for Thursday, February 4, has been rescheduled in the Cabinet Room for 10:30 p.m., Friday, February 5, 1982, to address the issues relating to the above subject. Papers will be circulated as soon as possible.

Michael O. Wheeler

Michael O. Wheeler
Staff Secretary

~~CONFIDENTIAL~~
Review February 2, 1983

CONFIDENTIAL

Libya

NATIONAL SECURITY COUNCIL

February ~~1~~ 2, 1982

NOTE FOR SITUATION ROOM

FROM: KATHY McGRAW

SUBJECT: LDXing

Please LDX the attached ~~one~~ two* pages to:

L. Paul Bremer

David Pickford
Room 3408, Main Treasury Bldg.
566-2269

Lieutenant Col Meehan
Room 3E-941
695-0028

Mr. Thomas Cormack

Ms. Jackie Tillman
632-8647

Col Stebbins
Room 2E-872
697-9121.

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Thanks much,

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Poland
Libya

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WASHINGTON, D.C. 20506

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February 3, 1982

MEMORANDUM FOR MS. NANCY BEARG DYKE
Assistant to the Vice President for National Security Affairs

MR. L. PAUL BREMER III
Executive Secretary
Department of State

MR. DAVID PICKFORD
Executive Secretary
Department of the Treasury

LIEUTENANT COLONEL ROBERT T. MEEHAN
Assistant for Interagency Matters
Office of the Secretary of Defense

MR. F. HENRY HABICHT
Special Assistant to the Attorney General

MS. JEAN JONES
Director, Executive Secretariat
Department of Commerce

MR. WILLIAM VITALE
Executive Secretary
Department of Energy

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White House Guidelines, August 28, 1997
By CT NARA, Date 12/4/04

MR. THOMAS B. CORMACK
Executive Secretary
Central Intelligence Agency

MR. DENNIS WHITFIELD
Executive Assistant to the United States Trade Representative

MS. JACKIE TILLMAN
Executive Assistant to the United States Representative to the United Nations

COLONEL CHARLES F. STEBBINS
Executive Assistant to the Chairman, Joint Chiefs of Staff

SUBJECT: National Security Council Meeting, Thursday, February 4, 1982

Attached are the agenda and additional papers for the NSC Meeting on Poland and Libya, 3:30-5:30 p.m., tomorrow, February 4, 1982, the Cabinet Room. ~~(C)~~

Michael O. Wheeler

Michael O. Wheeler
Staff Secretary

SECRET
Review February 3, 1988

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NATIONAL SECURITY COUNCIL

MFR

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DEPARTMENT OF STATE

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SUBJECT: Libya: Next Steps

Issues

- Now that most Americans are out of Libya, can economic and security measures be taken that will have the political effects of: 1) making US policy coherent; 2) demonstrating US determination; and 3) pressing Libya to cease such policies as international terrorism and subversion of regimes friendly to the US?

- In the absence of some unequivocal Libyan provocation, is there adequate legal authority and political justification to impose sanctions against Libya?

Facts

- Changes since December. Since you issued National Security Decision Directive 16 on December 10, 1981, developments in Poland and in the Middle East have increased somewhat the political costs to the US of sterner actions against Libya.

- US objectives in December were limited to deterring Libyan attacks and ensuring the safety of departing Americans so that future US freedom of action would be greater.

- US objectives now are broader -- to coerce Libya to cease international terrorism and subversion of regimes friendly to the US while isolating Libya as an outlaw regime.

Discussion

- Interagency consensus: Although the economic effects of a unilateral American boycott of Libyan oil and ban on US exports to Libya remain negligible on both countries, the political benefit of sterner actions remains high.

- Dissent: Treasury. In the absence of some unequivocal Libyan provocation there is inadequate legal authority or political justification to impose sanctions on Libya by invoking the International Economic Emergency Powers Act (IEEPA).

- Dissent: US Special Trade Representative makes the case (with Treasury concurrence) that since economic sanctions will have a negligible economic impact on Libya, they are not worth implementing, especially given the political costs of implementation vis a vis the western allies and the Arab countries with investments in the US.

~~TOP SECRET~~
Cl. by William P. Clark
Rvw. on Feb. 3, 1988

- Dissent: Commerce doubts the efficacy of economic sanctions but is less concerned with efficacy since the goals are to demonstrate resolve and to pressure Libya. Commerce also doubts that there is enough support in the nation and among the allies to impose sanctions successfully.

- The Bottom Line Consensus: Stern actions, such as embargoing Libyan oil, set the context for even tougher actions later, and the public can be brought along to support sterner actions.

At Tab I is a summary of the interagency consensus in a paper drafted by State.

At Tab II is a Summary Decision Sheet listing 12 options concerning Libya. After the discussion at the NSC meeting on Thursday, February 4, recommendations will be made to you concerning these 12 options.

February 3, 1982

ECONOMIC AND SECURITY POLICY TOWARD LIBYA
SUMMARY DECISION SHEET

Option	Approve	Disapprove
1. Implement Unilateral US Oil Embargo Immediately (NSDD 4a)	______	______
2. Implement Tightened Export Controls Against Libya (Prohibiting Export of Dual Use Items; Instituting Licensing Requirements).	______	______
3. Implement Full Embargo of US Exports to Libya (NSDD 4b)		
a. With extraterritorial enforcement	______	______
b. Without extraterritorial enforcement	______	______
4. Mandatory Withdrawal of Americans		
a. Unnecessary	______	______
b. Combine with other IEEPA-mandated Restrictions (Oil Embargo and/or Embargo of US Exports)	______	______
5. Implement Transaction Controls on US Firms Doing Business in Libya	______	______
6. Timing of Economic Measures		
a. Simultaneous	______	______
b. Phased	______	______
c. Implementation Delayed While Building Public Support	______	______
7. Enhanced US Security Assistance		

	Approve	Disapprove
8. Enhanced US Economic Assistance	______	______
9. Increased US Military Presence		
a. Special Forces, Airborne, Marine, Navy and Tacair Exercises, some Jointly with Friendly States	______	______
b. Semiannual Exercises in the Gulf of Sidra	______	______
1. Resume as soon as possible	______	______
2. Delay so as not simultaneous with Economic Measures	______	______
10. Expanded Security Cooperation with Local States (e.g., Regional Training Center in Egypt)	______	______
11. Contingency Planning with Egypt to Respond to Libyan Threat	______	______
12 Validation of JCS Contingency Plans for Responding to a Libyan Provocation Against US Targets (NSDD Item 5)	______	______

TABLE OF CONTENTS

(Recommend reading * Items)

NSC/S PROFILE ~~TOP SECRET~~ ID 8290050

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TO CLARK FROM TANTER DOCDATE 03 FEB 82

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White House Guidelines, August 28, 1997
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KEYWORDS: LIBYA POLAND

SANCTIONS EXPORT CONTROLS

GAS OIL

SUBJECT: AGENDA & PRES BRIEFING BOOK FOR 4 FEB NSC MEETING

ACTION: FWD TO PRES FOR INFO DUE: STATUS C FILES IFM O

FOR ACTION	FOR CONCURRENCE	FOR INFO
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THE WHITE HOUSE

NATIONAL SECURITY COUNCIL MEETING

3:30 PM

Thursday, February 4, 1982

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MEMORANDUM

II-90050

THE WHITE HOUSE

WASHINGTON

~~TOP SECRET~~ ATTACHMENTS

February 3, 1982

MEMORANDUM FOR THE PRESIDENT

FROM: WILLIAM P. CLARK

SUBJECT: NSC Meeting, Thursday, February 4, 1982, 3:30 to 5:30 p.m.

You are scheduled for an NSC meeting tomorrow afternoon. There are two agenda items:

1. Poland
2. Libya

Recommend you read the Tabs that follow which are marked with an asterisk.

cc: The Vice President
Ed Meese
Jim Baker
Mike Deaver

~~TOP SECRET~~ ATTACHMENTS

~~SECRET~~ ~~SECRET~~ 2585

<u>A G E N D A</u>

National Security Council Meeting
3:30-5:30 p.m.
Thursday
February 4, 1982

I. <u>POLAND</u>

A. Introduction of Issue on Scope of Sanctions - Bill Clark

B. Intelligence Update - Bill Casey

C. Background on Further Sanctions - Al Haig

D. Commerce Requirements - Mac Baldrige

E. Discussion of Scope and Further Sanctions

II. <u>LIBYA</u>

A. Introduction of Issue on Next Steps - Bill Clark

B. Intelligence Update - Bill Casey

C. Background on Next Steps - Al Haig

D. Discussion of Next Steps

E. Decision on Next Steps

(Break up into NSPG in Oval Office)

~~SECRET~~
Review on February 4, 1988

~~SECRET~~

2586

A G E N D A

National Security Council Meeting
3:30-5:30 p.m.
Thursday
February 4, 1982

I. POLAND

A. Introduction of Issue on Scope of Sanctions - Bill Cla

B. Intelligence Update - Bill Casey

C. Background on Further Sanctions - Al Haig

D. Commerce Requirements - Mac Baldridge

E. Discussion of Scope and Further Sanctions

McFarlane

~~F. Decision on Scope of Sanctions~~ PG

II. LIBYA

A. Introduction of Issue on Next Steps - Bill Clark

B. Intelligence Update - Bill Casey

C. Background on Next Steps - Al Haig

D. Discussion of Next Steps

E. Decision on Next Steps

NSPG

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MEMORANDUM

II 90050

THE WHITE HOUSE

WASHINGTON

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February 3, 1982

MEMORANDUM FOR THE PRESIDENT

FROM: WILLIAM P. CLARK WPC

SUBJECT: February 4, 1982, NSC Meeting

This NSC Meeting has been called to address items relating to Poland and Libya and to help you reach decision in two areas:

-- The scope of oil and gas equipment sanctions;

-- Next steps toward Libya.

Issues, facts, and background materials are arranged in your book as follows:

-- *Tab A: Issue-fact paper on scope of oil and gas equipment sanctions

*Tab I - summary of Commerce/State papers on extraterritorial extension of export controls

Tab II - detailed Commerce/State positions

-- *Tab B: Issue-fact paper on further sanctions against the Soviet Union and Poland (Note: This agenda item is for discussion only.)

*Tab I - summary of State paper on further sanctions

Tab II - State paper

-- *Tab C: Issue-fact paper on next steps toward Libya

*Tab I - summary of paper on next steps toward Libya

*Tab II - summary decision sheet on economic and security policy

Two hours have been reserved for the above topics. Recommend reading those tabs with asterisks.

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BY LOT, NARA, DATE 2/22/08

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SUBJECT: The Scope of Oil and Gas Equipment Sanctions

Issue

Should expanded export controls on oil and gas equipment for the USSR be interpreted to include U.S. subsidiaries abroad and/or equipment manufactured by U.S. licensees abroad under technology transferred before December 30, 1981?

Facts

The Commerce Department must have a decision on this matter in order to issue definitive regulations.

Discussion

The Commerce Department (supported by Defense, CIA, and USUN) argues that sanctions should be interpreted to include subsidiaries and licensees:

-- Only in this way will the sanctions be effective in slowing or stopping development of the Siberian Pipeline.

-- If not so interpreted, the sanctions will only harm U.S. exports and U.S. workers.

-- Even if litigation results, the uncertainty will damage the pipeline project.

-- Not interpreting the sanctions this way will be publicly perceived as gutting our own sanctions.

The State Department argues that sanctions should not be interpreted in this way at this time:

-- To do so would be extremely divisive to the alliance at a time when we still are trying to get our allies to agree to similar measures with some success. Additionally, our allies do not accept use of the Polish crisis to attack the Siberian Pipeline.

-- Our legal authority over technology transferred prior to December 30, 1981, is questionable.

Treasury believes we should take all effective measures, but questions whether court rulings in the affected countries might not make the controls unenforceable.

All agree that if we do decide to expand export controls this should be done after an attempt is expeditiously made to ask the allies to apply the controls themselves in our subsidiaries and licensees in implementation of their promise not to undercut our sanctions.

At Tab I is a summary of the detailed Commerce and State arguments. The detailed Commerce/State position is at Tab II.

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Summary of Commerce and State Department
Papers on the Extraterritorial Extension of Export Controls

I. Subsidiaries

Commerce Position

Applying the controls to foreign subsidiaries would significantly increase our chances of delaying or blocking the pipeline. It would also blunt criticism by the press and the AFL-CIO. The application of controls to foreign subsidiaries is necessary if the USG is to stop compressor sales. It may be possible to get voluntary allied cooperation to prevent sales of relevant equipment. Voluntary compliance should be discussed before action is taken.

Our allies would object strongly to such an application of controls and the move would cause harm to U.S. businesses in several ways: (1) Subsidiaries of U.S. firms would lose around $200 million annually over the next 2-3 years in signed or projected contracts; (2) foreign businesses would have greater incentives to seek non-U.S. suppliers in an effort to avoid U.S. export controls; (3) U.S. corporations may find acquisition of West European firms less attractive, as host countries become reluctant to extent national treatment to U.S. subsidiaries; and (4) Dresser Industries' French subsidiary may be nationalized.

The Export Administration Act can be interpreted to authorize application of the controls to foreign subsidiaries. Such authority has been exercised only once, when it provided grounds for blocking delivery of foreign-manufactured Levi's uniforms for Moscow Olympics participants. Consideration of this issue should involve not only the likely diplomatic protests and the non-cooperation of foreign courts, but also the use by foreign governments of statutes that would bloc U.S. enforcement actions. As demonstrated in the 1965 Fruehauf case in France, a foreign government has the power to interfere with a claim of U.S. jurisdiction by having a receiver appointed to end "U.S. control" of a given subsidiary.

State Position

The French and others deny our legal right to regulate subsidiaries, viewing such regulation as an affront to their economic interests and sovereignty. France, the home of the only subsidiary (Dresser Industries, France) holding a substantial pipeline contract, has been especially sensitive about extraterritoriality. In the 1960s, French courts took over operation of a U.S. firm's subsidiary to prevent it from complying with the U.S. embargo against China.

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BY HDJ NARA, DATE 6/6/06

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Even a successful extraterritorial application of U.S. controls in this case would affect only 21 of the 125 compressors needed for the pipeline.

Extraterritorial application of the controls would (1) render less likely allied cooperation in an effective sanctions program, (2) invite renewed French action to thwart our controls, (3) invite further heavy foreign regulation of U.S. investment around the world, and (4) place the affected subsidiary between conflicting U.S. and French policies, laws, and requirements.

II. Licensees

Commerce Position

No precedent exists for the application of controls to foreign-made products based on U.S. technology that was transferred before the date (in this case, December 30, 1981) on which the controls were announced. The allies argue that we should include only products based on U.S. technology transferred after December 30, 1981, and that covering earlier technology amounts to improper retroactive application of U.S. law.

There is a very high risk that an attempt to exert "retroactive" control would not be sustained if challenged in U.S. courts. Furthermore, foreign countries could block U.S. enforcement of such controls. Such an application of controls to licensees would, however, if successful, provide the USG with significant leverage to delay or block the pipeline.

State Position

The USG has authority to control products based on U.S. technology transferred after December 31, 1981. Regarding products based on technology transferred before that date, however, it is highly questionable whether we have such authority.

The purpose of such controls would be to reach all firms that use G.E. technology to manufacture pipeline equipment. The controls would cripple, among others, a certain British firm. According to information from G.E., however, the controls would not affect the ability of Rolls Royce, a competitor of that certain British firm, to manufacture a different type of turbine as a substitute.

Applying the controls to licensees would (1) ensure that the British would not cooperate in controlling Rolls Royce exports, and (2) harm U.S. trade, as foreign firms would minimize purchases of U.S. technology.

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Positions of Commerce Department and State Department on Application of U.S. Oil and Gas Equipment Export Controls to Foreign Subsidiaries and Licensees of U.S. Firms

Issue I. Whether U.S. export controls on oil and gas equipment should be applied to foreign subsidiaries of U.S. firms.

A. Policy considerations

1. Commerce Department

The President announced sanctions on December 29, 1981 against the USSR that broadened oil and gas controls to include refining and transmission equipments. The controls prevent the export or reexport of U.S. origin commodities and technology to the USSR. Commerce Department specialists maintain that the broadened controls require additional extension to block or delay the construction of the West Siberian Pipeline. Among the proposed extensions are:

I. Barring of all "U.S. Persons" (controlled foreign subsidiaries of U.S. corporations) from exporting oil and gas equipments to the USSR regardless of U.S. context, . . .

* * *

By further extending the controls, the U.S. will have a significantly higher probability of delaying or blocking the pipeline; our allies are expected to object strongly, however. New controls would also blunt criticism by the press and the AFL-CIO. On the other hand, these extensions could cause long-term U.S. business losses as foreign customers turn in the future to non-U.S. suppliers of technology and components. Decisions need to be taken regarding the extension of the new controls.

* * *

Although authority exists to control subsidiaries, it has been used only once (Levi's uniforms for the Moscow Olympics). If this action is taken, the major contracts affected include Dresser Industries' French subsidiary ($30 million contract for the sale of 21 compressors) and Howmet Turbine Components

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RDS-1

Corporation's U.K. and French subsidiaries ($4 million contract under negotiation). This option provides the President significant leverage to delay or even block the pipeline. Allied reaction is expected to be strong but this step is necessary if we are to stop compressor sales. It may be possible to get voluntary allied cooperation to prevent sales of relevant equipment. Voluntary compliance should be discussed before action is taken.

* * *
* * *

The extraterritorial application of oil and gas controls will have an immediate impact on a number of American firms. We estimate that subsidiaries of American firms would lose about $200 million annually over the next 2-3 years in signed or projected contracts for delivery of goods to the Soviet Union. This cost would be added to the impact of the December 30 controls, i.e., loss of perhaps $150-250 million annually in exports and reexports to USSR. Soviet orders for Western oil and gas equipment and pipe totalled about $7.4 billion in 1976-80.

In the longer term the cost could be substantially more. In Western Europe, Japan, and elsewhere potential purchasers of technology and equipment and manufacturing partners could be motivated to seek non-U.S. suppliers in an effort to avoid U.S. export controls.

* * *

American corporations may find acquisition of West European firms less attractive as host countries become reluctant to extend national treatment to U.S. subsidiaries. One company, Dresser, reportedly fears that its French subsidiary would be in greater danger of being nationalized if the U.S. attempts to prevent the latter from fulfilling its contract to supply compressors for the Yamal pipeline.

2. State Department:

First, Commerce proposes that foreign subsidiaries of U.S. firms be deemed to be U.S. persons and made subject to the U.S. oil and gas controls imposed on December 30, 1981. We are not sure that this measure would substantially increase the effectiveness of our controls; we are sure that it will raise the allies' ire.

* * *

Even a successful extraterritorial application of U.S. controls in this instance would affect only 21 of the 125 compressors needed for the pipeline.

Attempting to stop Dresser France from exporting compressors to the USSR would almost certainly invite renewed French action to thwart our controls.

Moreover, asserting jurisdiction over subsidiaries for export control purposes would invite further heavy foreign regulation of U.S. investment around the world. Our efforts to obtain national treatment for U.S. subsidiaries would be undercut, and foreign companies would have a powerful incentive to avoid U.S. partners because of the threat of export control restrictions.

* * *

Many governments view our claim to jurisdiction over subsidiaries as contrary to international law and as an affront to their sovereignty and economic independence. Even governments which tend to be much closer to our assessment of the Polish situation, such as the United Kingdom (which has domestic legislation which could block some U.S. embargo measures), would be much less likely to cooperate with us in an effective sanctions program were we to provoke a dispute through the extraterritorial application of our export controls to subsidiaries. Such a dispute over issues of national sovereignty and the allegiances of transnational companies would distract us from our efforts to reach agreement in dealing with the developments in Poland.

The Department of State believes that the benefits to be gained from the extraterritorial application of our controls to U.S. subsidiaries and licensees in the case of the gas pipeline are outweighed by the political costs of a major dispute with key allies over this issue. We would obtain virtually no additional leverage over the pipeline at the cost of considerable ill will. Rather than being seen as a sign of U.S. determination to deal effectively with the Soviet Union in light of the repression in Poland, this move would be seen as an affront to the sovereignty of the European countries involved. If we pressed our case, this could well lead to further efforts by the European governments involved to restrict U.S. investment or to circumscribe the actions of European subsidiaries of U.S. companies.

B. Legal Considerations

1. Commerce Department

The legal issue posed by the use of this option is whether there is authority under the Export Administration Act to control exports by U.S.-controlled foreign firms. The EAA provides authority to control exports from foreign countries that are sent by "any person subject to the jurisdiction of the United States." (EAA §§ 5(a) (national security) and 6(a) (foreign policy); 50 U.S.C.A. App. §§ 2404(a) and 2405(a)). This phrase could be interpreted to include U.S. owned or controlled foreign companies. There is no requirement under the statute that U.S. origin goods or technology be involved.

The authority was added to the EAA in 1977, with legislative history that it was to be used sparingly in view of international repercussions. The effect of that 1977 amendment has been "to broaden the potential reach of peacetime, non-emergency foreign policy controls to exports by foreign subsidiaries of all products and data (not merely strategic) to all destinations (not merely the embargoed nations and other Communist countries)." (Abbott, Linking Trade to Political Goals: Foreign Policy Export Controls in the 1970s and 1980s, 65 Minn. L. Rev. 739, 847 (1981). During consideration of the EAA in 1979, the Senate acknowledged that the arguably broadened effect "may not have been considered adequately by the Congress at the time the provision was adopted;" however, it withdrew an amendment that would have eliminated the 1977 authority "pending further study." (S. Rep. No. 169, 96th Cong., 1st Sess. 11 (1979)). The authority to date has been exercised only once. Its use was pinpointed to provide a contractual defense for nondelivery of foreign manufactured Levi's uniforms for Moscow Olympics participants (15 C.F.R. § 385.2(d) (1981)).

Controls on exports by U.S.-controlled foreign firms have been imposed by Treasury under the authority of the Trading with the Enemy Act (50 U.S.C.A. App. § 5(b)). The same jurisdictional reach is in the International Emergency Economic Powers Act (Id. § 1703(a)(1). In practice, the extraterritorial reach of the Treasury-administered controls, such as the Cuban embargo, has been cut back over the years in the face of foreign government protests and challenges (Compare 31 C.F.R. § 515.541 (1975) with id. § 515.559 (1981)). The more recent Iranian Assets Control Regulations did not require licenses for exports of goods and technology by non-banking U.S.-controlled foreign firms (31 C.F.R. §§ 535.207, .429, and .430 (1980)).

The legislative history and past practice of administering similar controls under analogous statutes raises the issue of whether such option would be effective in light of predictable negative foreign reactions. Consideration of the issue should involve not only likely diplomatic protests and non-cooperation of foreign courts but also the use by a foreign government of statutes that would block U.S. enforcement actions of suspected unauthorized exports. Foreign statutes would also subject persons in the foreign country to penalties for making or for responding to U.S. inquiries. A foreign government could also use these laws to prohibit firms doing business in its territory (including U.S.-controlled foreign firms) from complying with U.S. exports controls (See e.g., Protection of Trading Interests Act, 1980, c. 11 (United Kingdom); Law 80-538, (1980) J.O. 1799 (France). It should be noted that, as in the Fruehauf case, a foreign government has the power to finesse that claim of jurisdiction by simply having a receiver appointed which would end "U.S. control" (Fruehauf Corp. v. Massardy, (1965) La Semaine Juridique II 14274 (bis) (Cour d'appel, Paris), (1965) Gaz. Pal. II 86, 5 Int'l Legal Mat'ls 476, reprinted in A. Lowenfield, Trade Controls for Political Ends § 3.3 at 81 (1977).)

The United States could counter these potential foreign reactions by suspending the U.S. export privileges of foreign firms violating U.S. controls (15 C.F.R. §§ 387.1(b), 388.3 (1981)). This suspension can be achieved through administrative hearings and would not require the gathering of evidence abroad. This U.S. sanction might induce a foreign company that is dependent upon continued access to U.S. goods and technology to persuade its government to moderate its response to U.S. controls, however, such unilateral action on our part could well lead to serious trade problems in the future.

2. State Department

Foreign subsidiaries are incorporated where they operate, and are citizens of the country of incorporation. The French and others therefore deny our legal right to regulate subsidiaries and see such regulations as an affront to their economic interests and sovereignty. Moreover, past jurisdictional conflicts with the U.S. have led several of our allies, including the U.K. and France, to pass or threaten special legislation to block their nationals -- including U.S. subsidiaries -- from honoring U.S. requirements.

The French have been particularly sensitive about extraterritoriality. In a celebrated case in the 1960's, the French courts took over operation of a U.S. subsidiary to prevent it from complying with the U.S. embargo on China. This precedent is important, because it involves the only foreign country in which a U.S. subsidiary (Dresser Industries, France) has a substantial pipeline contract.

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The conflict with key European allies and Canada over such extraterritorial application of U.S. export controls goes back for many years. It reached a high point during the early 1960's over U.S. embargoes to Cuba and China. Jurisdictional conflicts led several of our allies to pass or threaten special legislation to block locally incorporated U.S. subsidiaries from honoring U.S. requirements. Indeed, in one case in the 1960's, the French courts took over the operation of a U.S. subsidiary of Freuhauf to prevent its compliance with the embargo on China trade.

Attempting to force the Western European subsidiaries of a U.S. company such as Dresser (France) to refuse to fulfill its contract for equipment to be installed on the West Siberian pipeline would place the subsidiary between conflicting U.S. and French policies, laws or requirements and could invite renewed French action to thwart our controls.

Issue II. Whether U.S. export controls on oil and gas equipment should be applied to foreign-made (i.e., licensee-made) products based on U.S. technology transferred before December 30, 1981.

A. Policy Considerations

1. Commerce Department

Several companies in Europe use General Electric's technology to produce gas turbines, and have signed contracts with the USSR to supply the pipeline's 41 compressor stations. No deliveries have been made. At the time of the technology transfers, no license nor written assurances were required. The G.E. Manufacturing Associates include AEG-KANIS Turbinehfabric (West Germany), John Brown Engineering (U.K.), and Nuovo Pignone (Italy). Alsthom-Atlantique (France) also has a license arrangement with G.E. to produce turbines. Lastly, Rolls Royce (U.K.) manufactures a turbine for which a coupling shaft is a product of U.S. technology, as is the compressor itself.

If these products could be prevented from going to the Soviet Union and option I is implemented, the President would be provided significant leverage to delay or block the pipeline. The allies argue that we should only include products of U.S. technology which is transferred after December 30, 1981, and that to cover earlier technology is retroactive application of U.S. law.

2. State Department

Commerce also proposes that we retroactively extend controls over exports by foreign licensees using U.S. technology exported before December 30, 1981. . . .

The purpose of these controls would be to reach all firms which use G.E. technology to manufacture pipeline equipment. If these controls work, they would cripple, among others, a British firm requiring such previously transferred G.E. technology. However, according to information from G.E., Rolls Royce's ability to manufacture a different type of turbine and a non-U.S. origin compressor would not be affected by our controls. Our attempt to control the British firm using G.E. technology would virtually ensure that the British would not cooperate in controlling Rolls Royce exports.

Moreover, action against licensees will bode ill for future U.S. trade potential. Foreign firms will avoid buying U.S. technology wherever possible to avoid the risk that U.S. export controls will reach out and cripple their business.

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As we have noted, both controls on subsidiaries and retroactive controls on licensees would have enormous political cost. The Europeans will see these controls as a U.S. effort to subject them to our export controls, and to transfer decision-making on export controls from their capitals to Washington. Other countries will not stand by while we attempt actions profoundly disruptive to their economies.

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Even if we could place legally effective extra-territorial controls reaching all firms which plan to use G.E. turbine technology for exports for the gas pipeline, they would not reach Rolls Royce which can supply turbines derived from the RB-211 jet engine. Furthermore, bringing foreign licensees under the controls umbrella, would post serious political and economic problems. Since World War II, Europe has been dependent on the U.S. for substantial imports of advanced industrial technology. If the U.S. were now to reach out and control retroactively European products made from U.S. technology transferred prior to the imposition of our own export controls, a large percentage of Europe's industrial output could be affected. The Europeans would undoubtedly view such a tactic as a heavy-handed attempt to force European countries into embargoing exports to the USSR. Moreover, in the longer run this would undercut the attractiveness and competitiveness of U.S. technology in Europe for years to come. They would find such an action intolerable. The result would be that it would create a great deal of ill will with very questionable results.

B. Legal Considerations

1. Commerce Department

The legal issue posed by the use of this option is whether the Export Administration Act (EAA) provides the authority for subsequently controlling the export from a foreign country of a foreign product of U.S. technology, if, at the time the U.S. technology was exported from the United States, there were no controls on the technology or its foreign direct product.

The EAA provides authority to license the export of goods or technology "subject to the jurisdiction of the United States" (EAA §§ 5(a), 50 U.S.C.A. App. § 2404(a) (national security); and _id._ 6(a), _id._ § 379.8) through conditions imposed by general regulation or specific licensing conditions at time of export from the United States, _i.e._, while the goods or technology are still under U.S. territorial jurisdiction. Such reexports are subject to controls existing _at the time of reexport_. Thus, the regulations "tie a string" on the U.S. goods or technology, reserving the right to bar later the reexport of an item to a destination to which it could have been freely exported when it left the U.S.

Such assertion of control over foreign transactions does not fit easily into internationally recognized principles of jurisdiction, but a "defensible" case can be made for the international legality of conditions of extraterritorial control imposed at the time of export. The ultimate issue under this option is whether the EAR provision controlling the export of foreign products of U.S. technology (_id._ § 379.8 (a)(3)) can be interpreted or amended to control foreign produced turbines or compressors on the basis of U.S. technology exported prior to the imposition of the December 30, 1981 controls. Section 379.8(a)(3) contains no express reservation of the right to subject such foreign products to U.S. controls in effect at the time of export from the foreign country, as is done in the previously mentioned EAR reexport sections. In addition, no precedent exists under the EAR for such an application of these controls (Carter Administration controls on oil and gas production and exploration equipment were applied prospectively).

The legal grounds for what amounts to retroactive control after technology is already abroad and outside U.S. territorial jurisdiction are tenuous. There is a very high risk that any attempt to interpret or amend the product of technology provisions to have them reach back to cover foreign exports involving technology exported prior to the new controls would not be sustained if challenged in U.S. courts. As discussed in Option I, if these controls were imposed, foreign countries could block enforcement by statutes or other legal means.

2. State Department

There is no precedent for such action and our domestic legal authority to do so is highly questionable.

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In the case of licensees, the situation is complicated by different types of licensing arrangements involved. We have U.S. legal authority to impose controls over products based on U.S. technology transferred after December 31, 1981, but legal authority over products based on technology previously transferred is difficult to enforce effectively.

SUBJECT: Further Sanctions Against the Soviet Union and Poland

Issue

Should further sanctions be declared against the Soviet Union and Poland, and if so, which?

Facts

The Department of State has forwarded a discussion paper on this issue to serve as background for Agenda Item #1 at the NSC meeting on Thursday, February 4, 1982.

Discussion

-- The paper has not been completely commented upon by the other agencies and will be further revised and tightened subsequent to the meeting.

-- Five options are presented:

- To hold in abeyance new unilateral measures, while we continue to seek Allied agreement on specific actions.
- To take new intermediate steps against the USSR, possibly including a selective embargo on non-agricultural exports.
- To ban all exports to the USSR not covered by existing contracts, including or exempting grain.
- To impose a total export embargo against the USSR.
- To take actions to hit the Soviets in other regions, such as Afghanistan, Cuba, and Libya.

At Tab I is the Executive Summary of the State paper. The State paper is at Tab II.

Executive Summary

We are approaching an important crossroads in response to the situation in Poland. Our response will have a critical impact on our relations with the Allies, the Soviets and the Poles. The Soviets consider a "friendly" Poland vital to their security interests and unless they accurately perceive the seriousness with which we view their actions, we will lose any chance for influence over the outcome of the Polish crisis and undermine our international credibility.

The situation in Poland is deteriorating. We foresee four general types of scenarios: 1) large scale bloodshed followed by a Soviet invasion; 2) short term maintenance of order by force but longer term instability; 3) an incremental but largely cosmetic restoration of human rights; 4) return to dialogue and reform;

The overall objective of the US is to maintain our capacity for world leadership by countering adverse trends in the world power balance. Our specific objectives for the Polish crisis are:

--To induce the Soviets and Poles to permit a restoration of important pre-December 13 gains in Poland.

--To drive home to Moscow that the price will be high in U.S.-Soviet relations if it stays on its present course. We should not be diverted by cosmetic adjustments of martial law.

--To gain allied support for strong action against Moscow, such as a selective embargo or a halt of the pipeline.

--To demonstrate to the American people that we are living up to our moral and political responsibilities.

The measures we have already taken have sent a strong political signal to Moscow and have imposed some cost. Our Allies are moving in the right direction, although slowly and unevenly. In considering options for next steps we must realize that:

--It is possible that nothing we do in the short-term may be enough, but over the longer-term united Western action can have an important impact.

--There is no compelling reason to hold back on tough measures. The time to exercise maximum leverage is now.

--The West's primary leverage is economic, but it is effective only if the Alliance is united.

--There is no hope of getting tough Allied action unless we are willing to take new tough steps ourselves.

--Our sanctions--and those of the Europeans--will have to be linked to Poland. Thus we will have to accept the principle of reversibility, while making clear that we continue to object to the pipeline.

--We are facing considerable domestic pressure to move forward with more energetic measures.

Beyond judicious use of the limited leverage inherent in the massive Polish debt to the West, our options are:

(1) To hold in abeyance new unilateral measures, while we continue to seek Allied agreement on specific actions. This would maximize the likelihood of united Western action. We would, however, be vulnerable to the charge that we are long on rhetoric and short on action.

(2) To take new intermediate steps against the USSR, possibly including a selective embargo on non-agricultural exports. This would have an economic impact on the Soviets with a minimal cost to us. This would not entail U.S. sacrifices sufficient to induce strong action by our Allies.

(3) To ban all exports to the USSR not covered by existing contracts, including or exempting grain. If grain were included and other exporters cooperated, this would impose substantial economic costs on the Soviets. Without such cooperation, it still increases our chances of strong Allied actions. In either case it could trigger the Farm Bill parity payment provision.

(4) To impose a total export embargo against the USSR. This would have the greatest economic impact on the Soviets with Allied support and could influence the course of events in Poland. U.S. farmers would be hurt and if the Allies did not join us, anti-European sentiments in the U.S. would grow.

FOIA(b)(1)

[redacted]