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11339	CABLE	041255Z AUG 82 D 10/25/2007 NLRRF06-114/10	2	8/4/1982	B1
11340	MEMO	BAILEY TO CLARK RE "LEGAL CONSIDERATIONS PRESENTED BY SOVIET PIPELINE EXPORT CONTROLS" R 1/2/2008 NLRRF06-114/10	1	8/9/1982	B1
11347	PAPER	LEGAL CONSIDERATIONS PRESENTED BY SOVIET PIPELINE EXPORT CONTROLS R 1/2/2008 NLRRF06-114/10 DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	6	ND	B1

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11348	PAPER	LEGAL CONSIDERATIONS PRESENTED BY SOVIET PIPELINE EXPORT CONTROLS	9	8/11/1982	B1	
		R 1/2/2008 NLRRF06-114/10				
		DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233				
11341	MEMO	ROBINSON TO CLARK RE LEGAL ANALYSIS OF EXPORT CONTROLS ON OIL AND GAS EQUIPMENT AND TECHNOLOGY	2	8/17/1982	B1	
		R 1/2/2008 NLRRF06-114/10				
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11349	PAPER	SAME TEXT AS DOC #11348	9	8/11/1982	B1	
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11353	CABLE	USSR	3	ND	B1	B3
		D 7/18/2008 F06-114/10				
11350	MEMO	SHULTZ TO PRESIDENT REAGAN RE PIPELINE SANCTIONS	1	ND	B1	
		R 1/2/2008 NLRRF06-114/10				
		DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233				
11342	MEMO	PIPES TO CLARK RE CDU STATEMENT ON SOVIET SANCTIONS	1	9/21/1982	B1	
		R 1/2/2008 NLRRF06-114/10				
11354	CABLE	031433Z FEB 83	1	2/3/1983	B1	B3
		D 7/18/2008 F06-114/10				

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11343	PAPER	USSR; BERMUDA; TURKEY; FRANCE ***R 10/3/2012 F2006-114/10***	1	2/4/1983	B1

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C O N F I D E N T I A L SECTION Ø1 OF Ø2 ROME 17331

E.O. 12065: GDS, 7/27/88 (BRIDGES, PETER S.) OR-M
TAGS: EEWT, ENRG, IT, US, UR
SUBJECT: ITALY AND THE SIBERIAN GAS PIPELINE
REF: 81 ROME 30120

1. (U) SUMMARY. FOREIGN MINISTER COLOMBO'S JULY 24 NOTE THAT ITALY WOULD HONOR ALL SIGNED CONTRACTS FOR THE SIBERIAN GAS PIPELINE DREW AN IMMEDIATE ATTACK FROM SOCIAL DEMOCRATIC PARTY LEADER LONGO THAT COLOMBO HAD ENDED THE "PAUSE FOR REFLECTION" WITHOUT THE NECESSARY CONSULTATIONS WITH THE COALITION PARTIES. COLOMBO'S JULY 25 CLARIFICATION THAT HIS STATEMENT APPLIED ONLY TO THE EQUIPMENT CONTRACTS AND NOT THE GAS SUPPLY CONTRACT LED TO LONGO'S JULY 27 STATEMENT THAT THE "PAUSE FOR REFLECTION" HAD ALWAYS COVERED BOTH EQUIPMENT AND GAS SUPPLIES AND HIS THREAT TO TUMBLE THE GOVERNMENT IF IT WENT AHEAD WITH EITHER ONE. IN THE WAKE OF LONGO'S ATTACKS AND CRITICISM OF THE PIPELINE DEAL BY THE SOCIALISTS AND LIBERALS, SPADOLINI WILL HOLD MEETINGS JULY 27 AND 29 WITH PARTY LEADERS ON THE ISSUE. ENI NOTES THAT THE GOVERNMENT ISSUED THE LICENSES AND APPROVED THE CREDITS FOR THE EQUIPMENT SALES IN NOVEMBER 1981, WELL BEFORE THE ANNOUNCEMENT OF THE "PAUSE FOR REFLECTION" AT THE END OF DECEMBER. END SUMMARY.

2. (U) WHAT HAPPENED? ITALIAN FOREIGN MINISTER COLOMBO ISSUED A NOTE JULY 24 CONCERNING EUROPEAN RELATIONS WITH THE U.S. AND THE SIBERIAN GAS PIPELINE QUESTION. THE NOTE SAID "THE CONTRACTS ALREADY SIGNED WILL BE HONORED AS THEY WERE APPROVED AND ACCOMPANIED BY THE NECESSARY AUTHORIZATION." IT WENT ON TO STRESS THAT EUROPE SHOULD SEEK A SOLUTION TO DISAGREEMENTS WITH THE U.S. THROUGH A DIALOGUE INVOLVING ALL CONCERNED PARTIES AS "THE RELATIONSHIP BETWEEN EUROPE AND THE UNITED STATES REMAINS FUNDAMENTAL" AND THAT EUROPE SHOULD ACT AFTER CLOSE CONSULTATIONS AND THE DEVELOPMENT OF COMMON POSITIONS. COLOMBO AND OTHER GOI OFFICIALS TOLD THE AMBASSADOR THAT THIS NOTE WAS INTENDED TO STRESS ITALY'S WILLINGNESS TO IMPROVE U.S.-EUROPEAN RELATIONS (UNLIKE THE FRENCH) BUT THAT FOR COMMERCIAL REASONS, THE GOI HAD TO TAKE A STAND ON GOING AHEAD WITH THE CONTRACTS. WHEN THE PSDI CRITICIZED THIS STATEMENT ON JULY 25, ACCUSING COLOMBO OF ENDING THE "PAUSE FOR REFLECTION" WITHOUT ANOTHER REVIEW OF THE ISSUE BY THE COALITION PARTIES, COLOMBO ISSUED A CLARIFICATION THAT HIS STATEMENT REFERRED ONLY TO THE GAS EQUIPMENT CONTRACTS AND THE GAS SUPPLY CONTRACT WAS STILL SUBJECT TO THE "PAUSE FOR REFLECTION."

3. (U) LONGO ATTACKS. IN A LENGTHY STATEMENT PUBLISHED IN THE JULY 27 SOCIAL DEMOCRATIC NEWSPAPER, "L'UMANITA," LONGO ASSERTED THAT THE "PAUSE FOR REFLECTION" HAD ALWAYS COVERED BOTH EQUIPMENT AND GAS SUPPLY CONTRACTS. HE ATTACKED THE SIBERIAN PIPELINE DEAL STRONGLY, SAYING THAT PROVIDING SUBSIDIZED CREDITS TO MOSCOW AFTER THE EVENTS IN AFGHANISTAN AND POLAND WAS A GRAVE ERROR, ESPECIALLY WHEN THERE ARE NOT ENOUGH FUNDS TO HELP THE REALLY POOR COUNTRIES. HE SAID THAT IF THE GOVERNMENT INTENDS TO GO AHEAD WITH THE SIBERIAN PIPELINE, THE SOCIAL DEMOCRATS WILL TAKE THE ISSUE FOR PARLIAMENTARY REVIEW.

4. (U) OTHER PARTIES' VIEWS. LONGO'S RENEWED ATTACK ON THE SIBERIAN PIPELINE DEAL HAS REVIVED CRITICISM OF THE TRANSACTION BY OTHER PARTIES; THE SOCIALISTS CONFIRM THEY OPPOSE THE SIBERIAN DEAL BEFORE THE ALGERIAN ONE IS CONCLUDED, THE LIBERALS SPEAK OF POLITICAL PRISONERS IN SIBERIA, AND THE CHRISTIAN DEMOCRATS HAVE REMAINED RATHER QUIET.

5. (C) ENI'S POSITION. NUOVO PIGNONE, THE ENI FIRM WITH THE EQUIPMENT CONTRACTS, HAS CALLED ON THE GOVERNMENT TO TAKE A DECISION VERY QUICKLY ON THIS ISSUE, CALLING IT AN "ECONOMIC DISASTER TO RENOUNCE THE SIBERIAN PIPELINE." ENI'S AREA MANAGER FOR EASTERN EUROPE CONFIRMED JULY 27 TO EMBOFF THAT NUOVO PIGNONE HAD BEEN GRANTED ALL THE NECESSARY EXPORT LICENSES AND CREDITS FOR THE EQUIPMENT SALE BY THE FOREIGN TRADE MINISTRY IN NOVEMBER 1981. HE SAID HE COULD NOT UNDERSTAND THE CURRENT "CONFUSION;" HE WONDERED WHETHER SOME PEOPLE HAD FORGOTTEN THAT WHEN

SPADOLINI DECLARED IN DECEMBER THE FIVE-PARTY DECISION ON A "PAUSE FOR REFLECTION," HE SPECIFICALLY SAID IT DID NOT APPLY TO THE EQUIPMENT CONTRACTS ALREADY SIGNED (REPORTED REFTEL), OR WHETHER SOME PEOPLE WERE JUST USING THIS ISSUE FOR THEIR OWN POLITICAL ENDS.

6. (C) COMMENT. LONGO'S CRITICISM HAS MADE THE SIBERIAN PIPELINE ONCE AGAIN AN ISSUE IN PRESENT ITALIAN POLITICAL DISCUSSIONS. IT ENDED COLOMBO'S EFFORT TO SIT ON BOTH
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C O N F I D E N T I A L SECTION Ø2 OF Ø2 ROME 17331

SIDES OF THE FENCE--GOING AHEAD WITH THE EQUIPMENT CONTRACTS WHILE UNDERLINING THE IMPORTANCE OF U.S.-ITALY RELATIONS. THE JULY 27 PRESS HAS FOCUSED ON THE FACT THAT ITALY FOR THE MOMENT STANDS ISOLATED FROM THE REST OF EUROPE WHICH HAS ANNOUNCED PLANS TO DEFY THE U.S. EMBARGO AND GO AHEAD WITH EQUIPMENT TRANSFERS TO THE USSR, DRAWING A PARALLEL TO ITALY'S DECISION TO WITHDRAW FROM THE EC IMPOSITION OF SANCTIONS ON ARGENTINA. END COMMENT. RABB
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Sanchez Alsthom-5 Atlantique

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E.O. 12Ø65: N/A
TAGS: ENRG, EEWT, ESTC, FR, UR, EC
SUBJECT: SOVIET GAS PIPELINE: ALSTHOM-ATLANTIQUE OFFICIALS VISIT AMBASSADOR
REF (A) BONN 16Ø45 (NOTAL) (B) MOSCOW 8982 (NOTAL)

1. SUMMARY: ALSTHOM-ATLANTIQUE OFFICIALS VISITED AMBASSADOR JULY 26 TO EXPRESS CONCERN RE U.S. SANCTIONS ON SOVIET PIPELINE AND APPARENT TARGETING OF FRANCE AND FRENCH FIRMS BY U.S. GOVERNMENT. AMBASSADOR ASSURED THEM THAT IN ENFORCING U.S. EXPORT CONTROL REGULATIONS U.S. WOULD NOT DISCRIMINATE AMONG COUNTRIES OR COMPANIES. OFFICIALS WERE REASSURED BUT NOTED INTENSITY OF PRESS COVERAGE OF U.S.-FRENCH DISCORD OVER THIS MATTER. END SUMMMRY.

2. VICE PRESIDENT DIRECTEUR-GENERAL OF ALSTHOMMATLANTIQUE (AA), PAUL COMBEAU, ACCOMPANIED BY DIRECTOR IN CHARGE OF AA'S SOVIET TURBINE ROTOR CONTRACT, JEAN-PIERRE POUCHOL, CALLED ON AMBASSADOR JULY 26 TO EXPRESS THEIR CONCERN REGARDING THE IMPACT OF U.S. SANCTIONS AGAINST THE SOVIET GAS PIPELINE ON U.S.-EUROPEAN BUSINESS RELATIONS. THEY WERE DISTURBED BY THE ATTENTION GIVEN TO AA'S SOVIET ROTOR CONTRACT IN THE PRESS. AMBASSADOR EXPLAINED THE POLITICAL AND SECURITY CONSIDERATIONS THAT HAD ENTERED INTO U.S. DECISION. AFTER AN EXPLORATION OF THE DIFFERING POINTS OF VIEW ON THE U.S. EXPORT CONTROL ACTION, COMBEAU ASKED DIRECTLY WHY FRANCE AND FRENCH COMPANIES WERE BEING SINGLED OUT BY THE U.S. GOVERNMENT WITH THREATS OF THE APPLICATION OF PENALTIES. HE RECALLED THAT JOHN BROWN, AEG-KANIS AND NUOVO PIGNONE ARE USING GE TECHNOLOGY IN THE MANUFACTURE OF TURBINES FOR THE SOVIETS, AND ARE ALSO INSTALLING IN THE TURBINES GE-MANUFACTURED ROTORS WHICH THEY HAD HAD IN STOCK. MOREOVER, WHEREAS AA WAS NOT SCHEDULED TO DELIVER ITS FIRST ROTOR UNTIL OCTOBER 1983, THE FIRST TURBINES ARE SCHEDULED FOR DELIVERY IN AUGUST 1982.

3. AMBASSADOR ASSURED COMBEAU THAT THE U.S. IS NOT DISCRIMINATING AGAINST FRANCE OR FRENCH FIRMS AND THAT HE ASSUMED USG ACTION WOULD BE THE SAME TOWARD ANY FIRM THAT VIOLATED U.S. EXPORT CONTROL REGULATIONS. ON HIS DEPARTURE COMBEAU REMARKED THAT AMBASSADOR'S STATEMENT ON THIS POINT WAS MOST IMPORTANT AND, THAT AA HAD HAD THE IMPRESSION FROM PRESS REPORTS THAT FRANCE AND FRENCH FIRMS WERE BEING SINGLED OUT FOR HARSH TREATMENT. COMBEAU TOLD THE AMBASSADOR THAT FOR THE TIME BEING AA WILL GO AHEAD WITH PRODUCTION OF THE ROTORS FOR THE SOVIET CONTRACT WITH THE IDEA THAT IF THE CONTRACT WERE BLOCKED DEFINITIVELY AA COULD EVENTUALLY SELL THE ROTOR KITS TO OTHER CUSTOMERS.

4. ACTION REQUESTED: EMBASSY HAS NOTED REF. A RE AEG'S INTENTIONS, BUT WE ARE NOT CLEAR ON INTENTIONS OF JOHN BROWN AND NUOVO PIGNONE. EMBASSY WOULD APPRECIATE VERIFICATION OF COMBEAU'S BELIEF THAT THE G.E. TECHNOLOGY BEING USED BY JOHN BROWN, AEG-KANIS AND NUOVO PIGNONE IS COVERED BY U.S. EXPORT CONTROL REGULATIONS. MARESCA
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Sanctions 7

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S E C R E T BONN 16619

ALSO FOR USOECD AND USEC
E.O. 12356: DECL: OADR
TAGS: ENRG, EEWT, GE, US, SU
SUBJECT: AEG REPEATS NO DECISION YET ON COMPRESSOR EXPORT
REFS: (A) BONN 16Ø45, (B) LONDON 16782, (C) LONDON 16575

1. S - ENTIRE TEXT.

2. SENIOR AEG OFFICIALS HAVE TOLD US THAT THEY HAVE YET TO MAKE A DECISION ON THE POSSIBLE EXPORT OF COMPRESSORS FOR THE SOVIET GAS PIPELINE. THEY AGAIN CONFIRMED THAT THEY WILL WAIT UNTIL THEY HAVE DISCUSSED THE MATTER WITH FRG ECONOMICS MINISTER LAMBSDORFF AND POSSIBLY WITH CHANCELLOR SCHMIDT. THESE DISCUSSIONS ARE NOT EXPECTED TO TAKE PLACE BEFORE AUGUST 9 OR 1Ø.

3. AEG IS WATCHING CLOSELY THE ACTIONS OF ALTHSOM-ATLANTIQUE (A-A) AND JOHN BROWN ENGINEERING (JBE). THEY POINT OUT THAT DESPITE PRESIDENT MITTERRAND'S INTERVENTION, A-A HAS NOT YET DECIDED TO PRODUCE ROTORS TO REPLACE THOSE MADE BY GENERAL ELECTRIC. A-A APPEARS TO BE RELUCTANT ON COMMERCIAL GROUNDS (IN ADDITION TO CONCERN ABOUT ANY ENFORCEMENT ACTION THE U.S. MAY TAKE). THE FIRM'S EARLIER OFFER TO SUBSTITUTE FOR GE WAS REJECTED AS TOO COSTLY BY ALL POSSIBLE EUROPEAN PURCHASERS, AND AEG DOES NOT THINK IT LIKELY THAT A-A WILL OFFER ROTORS AT A REALISTIC PRICE. (THEY ALSO BELIEVE, ALTHOUGH WE DO NOT KNOW ON WHAT BASIS, THAT THE SOVIETS WILL NOT AGREE TO AN INCREASE IN COMPRESSOR PRICES OR OTHER SUBSIDY SUFFICIENT TO INDUCE A-A TO START LARGE-SCALE PRODUCTION.)

4. IN THE OPINION OF OUR CONTACT, JBE IS ALSO IN A DIFFICULT POSITON IN LIGHT OF LORD COCKFIELD'S AUGUST 2 DECISION. THEIR REASONING CLOSELY PARALLELS THAT GIVEN BY JBE TO EMBASSY LONDON (REF C). AEG ALSO POINTS OUT THAT EACH EUROPEAN FIRM HAS ONLY ONE MANUFACTURING ASSOCIATION AGREEMENT WITH GENERAL ELECTRIC. COOPERATIVE PRODUCTION OF FRAME 3 AND FRAME 5 COMPRESSORS CANNOT BE SEPARATED FROM OTHER COOPERATIVE PRODUCTION EFFORTS, INVOLVING FOR EXAMPLE FRAME 7 AND FRAME 9 TURBINES. THUS, ANY DISAGREEMENT WITH GE COULD COVER THE ENTIRE RANGE OF INDUSTRIAL COOPERATION BETWEEN THE FIRMS IN THIS AREA AND WILL PUT AT RISK MUCH MORE THAN JUST THE PRODUCTION OF COMPRESSORS ASSOCIATED WITH THE PIPELINE.

5. NO DATE HAS BEEN SET FOR FURTHER DISCUSSION WITH THE SOVIETS, DESPITE THE "DEADLINE" GIVEN AT THE JULY 6 MEETING IN MOSCOW. ACCORDING TO AEG, THE SOVIETS WILL HAVE TO WAIT UNTIL ALL FIRMS HAVE MADE THEIR DECISION (AND, WE SUSPECT, UNTIL THERE HAS BEEN TIME FOR FULL INTRA-EUROPEAN COORDINATION).
WOESSNER
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MEMORANDUM

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NATIONAL SECURITY COUNCIL

August 9, 1982

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INFORMATION

MEMORANDUM FOR WILLIAM P. CLARK

FROM: NORMAN A. BAILEY

SUBJECT: "Legal Considerations Presented by Soviet Pipeline Export Controls"

Attached (Tab I) is the controversial paper of the above title produced by Sherman Unger of Commerce and Davis Robinson of State. It points up the difficulties of enforcing the June 18, 1982 sanctions expansion. It does not outline a strategy for enforcing them, although it goes into various alternatives. As a purely legal document, it appropriately ignores the value to Alsthom of its relations with G.E. but then inappropriately goes into various negative policy considerations.

The operative section is on page 3 where it points out that: "An Alsthom violation of valid export controls would be a breach of its agreement with G.E., but this contract clause does not make the controls valid or bar Alsthom from challenging their validity."

A new paper focusing on legal strategies is being prepared by the legal offices of State, Treasury, Justice, Defense and Commerce. You will see it as soon as it is produced.

Attachment
Tab I "Legal Considerations Presented by Soviet Pipeline Export Controls"

cc w/o attachment: Roger Robinson
Henry Nau

w/attachment: Richard Pipes
Jim Rentschler

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11

Legal Considerations Presented by Soviet Pipeline Export Controls

This memorandum reviews the legal considerations presented by the June 18, 1982 extension of the December 30, 1981, export controls over oil and gas production and transmission goods and technology destined for the Soviet Union. That extension imposed controls over foreign subsidiaries of U.S. firms and over foreign products of U.S. oil and gas technology exported before December 30, 1981, ("technology products"). Prior to that extension, foreign subsidiaries of U.S. firms were permitted to export non-U.S. origin oil and gas equipment and technical data related thereto. Furthermore, prior to the President's June 18, announcement, exports of foreign produced oil and gas equipment which were a product of U.S. technical data were prohibited only if (i) the export of the technical data from which the equipment was produced occurred after December 31, 1981, (in the case of transmission and refining equipment) or after August 1, 1978, (in the case of exploration and production equipment), or (ii) a "written assurance" that the data and the direct product of that data would not be exported to the Soviet Union and certain other countries was required under the export control regulations - for national security reasons - when the data were initially exported from the U.S.

I. Legal Basis of Sanctions

Regulations prohibiting the export of foreign-produced equipment which is the product of U.S. technology are based upon broad authority in the Export Administration Act (EAA) to prohibit the export of goods or technology which are "subject to the jurisdiction of the United States." While a case can be made for placing new and more restrictive controls on either the re-export from a foreign country of technology which was originally subject to U.S. export controls when it was initially exported, or the export of products of such technology, the novel element of the June 18, 1982 extension is the effort to cover the products of technology which was not controlled at the time of export. In the specific case of the Alsthom-Atlantique rotors, the technology licensed by GE was not controlled at the time of initial export.

It is not possible as a legal matter to say that this extension of authority is valid or invalid under U.S. law; its legal basis is subject to even greater challenge as a matter of international law.

By contrast, regulations prohibiting exports to the U.S.S.R. by foreign subsidiaries of U.S. companies are clearly within the authority conferred by the EAA, and a case can be made that

they should be recognized as legitimate extensions of national sovereignty under international law. Nevertheless, the issue is not free from doubt as a matter of international law because the regulations treat foreign subsidiaries as U.S. persons, while the foreign countries in which these subsidiaries are incorporated usually regard them as juridical persons created and subsisting under their laws. In this connection, our position is undermined by a recent U.S. Supreme Court case holding that a wholly-owned U.S. subsidiary of a Japanese company was a U.S. company within the meaning of a treaty with Japan for purposes of applying U.S. civil rights laws.

The controls of exports from foreign countries of foreign products produced through the application of U.S. manufacturing technology poses a difficult legal question. Unlike controls on the re-export of parts and components, the Export Administration Regulations (EAR) have not expressly reserved the right to subject foreign products of U.S. manufacturing technology to subsequently imposed U.S. controls as for example, over exports from a foreign country to the U.S.S.R. In the case of the extended Soviet sanctions, regulatory control was not imposed prior to the original transfer of the technology. A claim to U.S. jurisdiction over the products of this previously transferred U.S. technology would, as far as we can judge, have to be predicated upon a claim to continuing U.S. jurisdiction over the previously exported technology solely on the basis of its U.S. origin. We are not aware of any support in international law for such a claim. Indeed, the American Law Institute's Restatement (Second) of the Foreign Relations Law of the United States does not recognize U.S. origin of goods or technology as a source of jurisdiction under international law. In this connection the D.C. Circuit recently reiterated in F.T.C. v. Compagnie de Saint-Gobain-Pont-A-Mousson 636 F.2d 1300 D.C. Cir., 1980) that U.S. statutes posing potential conflicts with foreign jurisdictional interests must be construed so as to ensure consistency with international law in the absence of a clear contrary Congressional intent.

II. Contractual Remedies

There is little prospect of enforcing the June 18, 1982, sanctions through the enforcement of contractual licensing provisions, particularly in the case of the key General Electric/ Alsthom-Atlantique license agreement.

Assertions that supply of turbines to the U.S.S.R. by Alsthom would be contrary to paragraphs A.2 and A.3 of Article VII of the license agreement are incorrect. By these provisions Alsthom agrees not to make certain exports to specified countries without

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Commerce authorization, but neither paragraph covers the situation at hand. Paragraph A.2 deals with Country Group "Z" (Vietnam, North Korea, etc.) and does not relate to the U.S.S.R. Paragraph A.3 does cover shipments to the U.S.S.R., but only of "A" items, i.e., those that are COCOM controlled. The turbines in question are not "A" items.

The other provision to be considered is Article VII.C of the licensing agreement, which states:

> Alsthom further undertakes to keep itself fully informed of the Regulations (including amendments and changes thereto) and agrees to comply therewith.

An Alsthom violation of valid export controls would be a breach of its agreement with GE, but this contract clause does not make the controls valid or bar Alsthom from challenging their validity.

Obstacles to GE's getting a U.S. court to enjoin shipment by Alsthom include:

- GE's inability to show that such shipment would injure GE (GE would also be hard put to show damages in a breach of contract action).

- The reluctance of a court to use its injunctive power to order conduct abroad because of difficulty in monitoring and compelling compliance.

- The impact of the "retroactive regulation" agrument on GE's ability to make the required showing of probability of success on the merits (A GE application for an injunction involves exceptional risk of an early, negative U.S. court statement concerning the validity of the controls, as a court intending to deny an injunction on a combination of grounds might well question the authority for the regulations without having to resolve the issue).

- The uncertain ability to effect valid service of process upon Alsthom within the U.S.

It is unrealistic to expect a French court to enforce such a contractual bar to shipment in light of declared French public policy on the matter. Indeed, as noted in the following section, service of process in France is a major enforcement obstacle.

Ignores value of GE connection for Alsthom

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III. Retaliation by and Against Foreign Governments

It is likely that France, the U.K. and possibly other nations will act to frustrate the effectiveness of these sanctions as they affect firms within their respective jurisdictions. In response, the U.S. could impose controls on exports to such countries under the authority of the EAA, as well as the financing, transporting or other servicing of such exports.

Such controls could apply not only to U.S. nationals and U.S-owned corporations in the United States, but also to foreign-owned or controlled firms doing business in the United States or U.S.-owned or controlled firms abroad. In order to impose these non-emergency controls, the President would have to comply with certain procedural requirements. Such controls would expire one year after imposition, unless extended by the President.

The statutory justification for such controls would be to further and to support the foreign policy objective relating to the U.S.S.R. pipeline controls. Such controls could be pinpointed to reach only particular items for which the U.S. is the sole source of supply or which provide infrastructure for performance of Soviet pipeline contracts. However, making an ally the target of U.S. export controls would be a significant departure from the current export control scheme. Allied reaction to such controls could also disrupt the effort in COCOM to tighten multilateral controls on exports of militarily critical goods and technology to the U.S.S.R. and other Warsaw Pact countries.

More radical sanctions could be imposed under the authority of the International Emergency Economic Powers Act (IEEPA) but their use would require a Presidential declaration of a national emergency and would seem excessive in view of the ample authority provided by the EAA.

U.S. restrictions on the export or import of products to and from trading partners are vulnerable to challenge under the GATT. Before any such measures are taken against France, Germany, Italy or the U.K., their legality under applicable bilateral treaties would have to be examined.

Even if the U.S. were able to defend its export controls under Article I of the GATT, (requiring equality of treatment vis-a-vis imports from foreign countries) on the basis of the Article XXI "national security" exception, the U.S. could still be vulnerable to charges of nullifying or impairing benefits accruing to its trading partners under the GATT. In short, such measures would exacerbate current international trade tensions.

policy issues

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IV. Enforcement Measures

Beyond remedies based upon the terms of the GE/Alsthom-Atlantique license agreement, certain measures are available to the United States under the EAA in anticipation of Alsthom-Atlantique's compliance with the French government's order to ship pipeline - related items to the U.S.S.R. These actions may be directed at Alsthom itself, or they may be directed at Alsthom's U.S. suppliers in an effort to cut off the company's access to needed sources.

With respect to Alsthom itself, possible actions include:

1. Notification to the company that continuing to purchase or use U.S.-origin commodities and/or technical data could result in an enforcement action.

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2. Under Section 387.8 of the Regulations, the Office of Export Enforcement (OEE) can send interrogatories and/or requests for production of documents or admission of facts to Alsthom "during the course of an investigation, other proceeding or action . . .". If Alsthom fails or refuses to respond within a specified time, the Regulations (Section 387.8(a)) provide that it may be denied export privileges for five years or until it responds or gives adequate reasons for its failure or refusal to respond. (Note that French law imposes criminal sanctions on persons gathering evidence in France pursuant to legal or administrative proceedings in a foreign country).

This authority has been used to deny export privileges in the past, but, as the Department has never been challenged by the denied party in this type of circumstance, this regulatory provision has never been scrutinized by the courts. In addition, the initial hurdle of effecting service on Alsthom in France would have to be overcome. Finally, Alsthom could cite the French blocking statute as its basis for failing or refusing to respond. Such a claim may well be viewed as "adequate reason" for not responding.

there is none

3. OEE could, in carrying out its responsibility for preventive enforcement, initiate an investigation of Alsthom. In accordance with Section 388.19(a)(2) of the Regulations, persons under investigation may be temporarily denied export privileges, on an ex parte basis, upon a showing that such a denial order "is required in the public interest to permit or facilitate enforcement" of the Act or Regulations.

A denial order prevents the denied party from participating in any export-related transaction involving U.S.-origin commodities or technical data. In addition, it prevents all other persons, wherever located, from dealing with the denied party in any transaction involving U.S.-origin goods or technology.

To the best of our knowledge, this authority has not been used in anticipation that a violation will occur. Rather, it is used when there is reasonable evidence that a violation has occurred and there is reason to believe additional violations will take place.

Actions available involving Alsthom's potential U.S. suppliers include:

1. Require reporting of anticipated sales to Alsthom. This could include existing contracts, sales being negotiated, shipment dates, etc.

2. Inspect U.S. suppliers' records of past sales to Alsthom. If a request to inspect is refused, the Department may issue a subpoena, which it may seek to have enforced, if necessary, in federal court.

3. Alert potential U.S. suppliers to possible enforcement actions which may be brought against them if they continue to sell pipeline-related commodities and technical data to Alsthom. Any U.S. supplier who sells to Alsthom, with reason to know that Alsthom will in turn sell to the Soviet Union in violation of the new controls, is subject to possible administrative or criminal sanctions. In addition, if a U.S. supplier decides to cooperate with Alsthom by assisting Alsthom in the manufacture of pipeline -related equipment for sale to the Soviet Union in compliance with the French government directive that supplier may be charged administratively with a conspiracy violation. Any criminal conspiracy charges would lie under the criminal conspiracy statute (18 U.S.C. §371).

4. Commodities or technical data which have been, are being or are intended to be, exported or shipped from the United States in violation of the Act or any Regulation (including those Regulations described above) are subject to seizure and forfeiture Thus, if any U.S. supplier attempts to export illegally, his goods may be seized and forfeited and, in addition, he may be subject to separate administrative or criminal sanctions.

NSC/S PROFILE SECRET ID 8205576

RECEIVED 13 AUG 82 11

TO CLARK FROM PICKFORD, D DOCDATE 12 AUG 82 17

USSR Sanctions

KEYWORDS: EAST WEST ECONOMICS SANCTIONS

USSR LEGAL

SUBJECT: SIG-IEP ANALYSIS OF LEGAL ISSUES RAISED BY US CONTROLS ON EXPORT OF OIL & GAS GOODS & TECHNOLOGY

ACTION: PREPARE MEMO FOR CLARK DUE: 15 AUG 82 STATUS S FILES

FOR ACTION		FOR CONCURRENCE	FOR INFO
ROBINSON	NAU	BAILEY	MCGAFFIGAN
	PIPES	DOBRIANSKY	MYER

N.C. 8/16

COMMENTS

REF# LOG NSCIFID (V /)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO

DISPATCH _____ W/ATTCH FILE _____ (C)

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THE SECRETARY OF THE TREASURY

WASHINGTON

AUG. 12 1982

UNCLASSIFIED
(With Secret Attachment)

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE ATTORNEY GENERAL
THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
CHAIRMAN, COUNCIL OF ECONOMIC ADVISORS
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
ASSISTANT TO THE PRESIDENT FOR POLICY DEVELOPMENT
UNITED STATES TRADE REPRESENTATIVE
DIRECTOR OF CENTRAL INTELLIGENCE

SUBJECT Senior Interdepartmental Group on International Economic Policy (SIG-IEP)

Attached is an analysis of the legal issues raised by U.S. controls on exports of oil and gas goods and technology to the Soviet Union. This analysis reflects the shared views of the appropriate senior legal officers of the State, Defense, Commerce and Treasury Departments, as well as the views of the Office of Legal Counsel of the Justice Department and incorporates portions of earlier memoranda prepared by the Departments of State, Commerce, and Treasury.

for Joanna R. Shelton
David E. Pickford
Executive Secretary

Attachment

UNCLASSIFIED
(With Secret Attachment)

Legal Considerations Presented by Soviet Pipeline Export Controls

Part One: Issues

This memorandum, dealing with basic legal issues and enforcement obstacles, is the first part of a two-part legal analysis of U.S. export controls over oil and gas goods and technology destined for the U.S.S.R. A second memorandum, currently in preparation, will review the facts of particular cases and assess U.S. enforcement strategy, discussing the administrative and judicial steps which are available to achieve U.S. objectives.

I. History of U.S.S.R. Oil and Gas Controls

The first controls directed specifically at the Soviet oil and gas industry were imposed (on foreign policy grounds) on August 1, 1978. These controls required validated licenses for the export from the United States (or the re-export from any foreign country) to the Soviet Union, of (i) U.S.-origin oil and gas exploration and production equipment; (ii) U.S.-origin exploration and production technology; and (iii) the direct foreign products of U.S.-origin oil and gas exploration and production technology, if the technology was exported on or after August 1, 1978. The 1978 controls applied to exports of U.S.-origin equipment exported from the U.S. prior to August 1, 1978, but did not apply to the products manufactured abroad if based on technology exported from the U.S. prior to that date. License applications were subject to interagency review, with significant cases referred to the NSC. Licenses were generally granted.

The invasion of Afghanistan resulted in suspension of all Soviet licenses in January 1980. Following a high level review, a decision was made to approve oil and gas equipment exports and re-exports on a case by case basis, but to deny technical data for manufacture in the U.S.S.R. of oil and gas equipment.

In response to events in Poland, new regulations were issued on December 30, 1981. These regulations took two new steps: (i) expanded the 1978 regulations beyond exploration and production to include exports and re-exports of U.S.-origin equipment and technology used in connection with transmission and refining; and (ii) extended controls to the foreign direct

products of U.S.-origin transmission and refining technology, but only if the U.S. technology had been exported from the U.S. on or after December 30, 1981.*

The Regulations which were made effective on June 22, 1982, amended the scope of controls in two principal ways: (i) prohibited the foreign subsidiaries of U.S. firms from exporting to the U.S.S.R. oil and gas equipment and technology which were not of U.S. origin; and (ii) prohibited the export by foreign firms of direct products of U.S. technology, regardless of when the technology was exported, if (a) the technology is subject to an ongoing licensing or compensation agreement, or (b) the recipient of the technology has agreed to abide by U.S. export regulations.

Prior to the June 1982 controls, foreign subsidiaries of U.S. firms were permitted to export oil and gas equipment and technology which was not of U.S. origin. Furthermore, prior to the June action, exports of foreign-produced oil and gas equipment which was a product of U.S. technology were prohibited only if (i) the export from the U.S. of the technology from which the equipment was produced occurred after December 31, 1981, (in the case of transmission and refining equipment) or after August 1, 1978, (in the case of exploration and production equipment), or (ii) the recipient of the technology had given, at the time of export from the United States, a "written assurance" (required by the Export Administration Regulations) that the technology and the direct products of that technology would not be exported to the Soviet Union and certain other countries.

Appendix A is a chart summarizing, in chronological sequence, the imposition of the controls described above.

Two points should be noted. First, the December 30, 1981 controls do not merely cover items to be used in the Urengoy to

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*In a parallel action on December 30, 1981, processing of all license applications for exports to the U.S.S.R. was suspended, and no licenses have been issued for oil and gas, or any other equipment or technology, since the end of 1981. However, some licenses issued prior to December 30, 1981, for oil and gas exploration and production equipment may still be valid.

Uzhgorod export pipeline (hereafter the "Soviet gas pipeline"). Rather, these controls as well as the controls imposed on June 22, 1981, actually apply to all oil and gas transmission equipment or technology destined for the U.S.S.R. -- whether or not related to the Soviet gas pipeline.

Second, although the legal validity of many of the controls outlined above has never been tested in court, portions of the June 1982 regulations are particularly subject to challenge for reasons outlined below. Although the Soviet gas pipeline export controls squarely raise some of these legal vulnerabilities, the number of potential litigants and enforcement actions could be reduced by limiting the scope of the June 1982 controls solely to equipment and technology affecting the Soviet gas pipeline and not to all oil and gas equipment and technology which might be exported to the Soviet Union.

II. Legal Basis of Sanctions

The following is a general assessment of the legal strengths and weaknesses, under domestic and international law, of the spectrum of U.S. export controls outlined above and summarized in Appendix A.

A. Exports from the U.S. (August 1978 and December 1981 sanctions)

There is ample authority under the Export Administration Act (EAA) for controlling exports from the United States to the U.S.S.R. of oil and gas production, exploration, transmission, and refining goods and technology (even if they are the subject of preexisting contracts). These controls are also defensible under international law.

B. Foreign Re-exports of U.S. Origin Goods and Technology (August 1978 and December 1981 sanctions)

There is a defensible basis in the EAA for controlling the re-export, from foreign countries to the U.S.S.R., of U.S.-origin goods and technology. For at least twenty years, U.S. exporters and foreign purchasers have been on notice that the United States asserts authority to control the subsequent re-export of U.S.-origin goods and technology from one foreign country to another. Although controversial under international law, controls on foreign re-exports of U.S.-origin goods and technology are defensible on the theory that if the United States can prohibit exports of goods and technology it can also impose conditions on those exports it permits, and that these conditions may follow the goods and technology into foreign jurisdictions.

C. Foreign Products of U.S. Technology (covered prospectively by the August 1978 and December 1980 regulations; covered "retroactively" by June 1982 regulations)

There is a significant risk that a U.S. court would rule that the EAA does not support our decision in June "retroactively" to assert jurisdiction over foreign products of U.S. technology where such jurisdiction was not clearly asserted or reserved (i.e., "part of the deal") at the time the technology was exported from the United States.

Regulations prohibiting the export of foreign-produced equipment which is the product of U.S. technology are based upon broad authority in the EAA to prohibit the export of goods or technology which are "subject to the jurisdiction of the United States." While a case can be made for placing new and more restrictive controls on either the re-export from a foreign country of technology which was subject to U.S. export controls when it was initially exported, or the foreign export of products of such technology, the novel element of the June expansion is the effort to cover the products of technology over which the U.S. did not explicitly retain authority at the time the technology was initially exported from the U.S. The technology exported by GE to Alsthom-Atlantique under their licensing agreement for production of turbine rotors falls into this category.

The "retroactive" control of exports from foreign countries of foreign products based upon U.S. manufacturing technology poses difficult legal questions. Unlike controls on the re-export of U.S.-origin items, including parts and components, the Export Administration Regulations have not expressly reserved the right to subject foreign products of U.S. oil and gas technology to subsequently-imposed U.S. controls. In the case of the expanded June restrictions, regulatory control was not imposed prior to the original transfer of the technology. The United States could try to claim an "implied reservation of authority" paralleling the explicit authority asserted over re-exports and over foreign products containing U.S. components, but the legal support for such a claim under the EAA is tenuous.

A claim to U.S. jurisdiction over the products of this previously-transferred U.S. technology would, as far as can be determined, have to be predicated upon a claim to continuing U.S. jurisdiction over the previously-exported technology solely on the basis of its U.S. origin. There appears to be no support in international law for such a claim. Indeed, the American Law Institute's Restatement (Second) of the Foreign Relations Law of the United States does not recognize the U.S. origin of goods or technology alone as a source of jurisdiction under international law. In this connection, it should be noted that the Circuit Court of Appeals for the District of Columbia recently reiterated

in F.T.C. v. Compagnie de Saint-Gobain-Pont-A Mousson, 636 F.2d 1300 (D.C. Cir. 1980) that, absent a clear, contrary Congressional intent, U.S. statutes posing potential conflicts with foreign jurisdictional interests must be construed so as to ensure consistency with international law.

D. Exports by foreign subsidiaries of U.S. companies. (June 1982 sanctions)

In contrast to the attempt to control retroactively the foreign products of U.S. technology, there is clear authority under the EAA to control exports by foreign subsidiaries of U.S. companies. Under international law, a good case can be made that, in protecting important national interests, the U.S. has authority to regulate foreign firms controlled abroad by U.S. nationals (at least where there is no clear conflict with foreign law).

However, even this approach is highly controversial. The British and others claim that corporations organized under their laws are juridical persons in the jurisdiction of incorporation and cannot be subject to control by the United States merely because they are owned or controlled by U.S. nationals.

With the exception of Treasury regulations imposed in the past under the President's statutory national emergency powers, the June 1982 regulations are the first broad extension of controls over exports of completely foreign-source items by U.S.-owned or controlled firms abroad. If other nations enact or enforce blocking statutes, these controlled U.S. subsidiaries may be placed in an awkward and costly jurisdictional tug-of-war.

III. Enforcement Issues

Whatever the legal merits and vulnerabilities of the oil and gas export controls, their successful enforcement will initially turn on issues of jurisdiction and leverage over offending entities. There are two ways in which the current controls may be enforced -- administrative procedures instituted by the Commerce Department and enforcement by a U.S. licensor or the United States Government of rights under contracts. Of these, the administrative course appears to us to have a far greater chance of success.*

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*There are likely to be many obstacles to criminal prosecution of violations of our controls by non-U.S. citizens in foreign countries. Criminal prosecutions involve a heavy burden of proof, require that the defendant be brought before the court, and would likely entail more rigorous judicial review of the legal authority for our regulations.

A. Administrative remedies

The following measures are available under the EAA and the Export Administration Regulations to deal with violations or threatened violations of the oil and gas controls.

1. Bringing an administrative enforcement action against any U.S. firm, or any foreign firm subject to the controls, which sells, purchases, or uses pipeline-related goods or technology with knowledge or reason to know that a violation (i.e., sale to the U.S.S.R.) is about to or is intended to occur. Administrative sanctions include civil fines and denial of export privileges. Denial orders typically prohibit U.S. exporters and foreign consignees of U.S. goods and technology from exporting or re-exporting U.S. origin items to the firm being sanctioned, thus effectively cutting off a foreign firm's access to all U.S.-origin goods and technology.

2. Temporarily denying export privileges, on an ex parte basis, to any U.S. or foreign firm which is under investigation for possible violation of the Regulations upon a showing that such action "is required in the public interest to permit or facilitate enforcement" of the EAA or Regulations.

3. Issuing interrogatories or requests for production of documents to affected foreign firms. Provided service can be validly obtained, failure or refusal to respond can result in the imposition of a total denial of export privileges for five years or until the interrogatories and requests are answered or adequate reason is given for failure to respond.

4. Requiring U.S. firms, through mandatory reporting requirements or compulsory process, to assist in gathering necessary information about existing and proposed contracts.

5. Seizing goods or technology which have been, are being, or are intended to be exported from the United States in violation of the EAA or Regulations. Items which are seized are subject to forfeiture.

Because these measures are administrative -- carried on within the Commerce Department -- they offer the possibility of initial enforcement of the controls without judicial involvement. The Commerce Department, in addition, may take some enforcement actions without having obtained jurisdiction through formal service of process.

However, after sanctions have been imposed, a complaining party may challenge the regulations or the method of their enforcement in court. In such a case, a complainant might attack, inter alia, the adequacy of the statutory support for the regulations, their constitutionality, their validity under international law, the jurisdiction of the Commerce Department, and the fairness of the administrative procedures which resulted in sanctions. All these grounds of attack are largely untested in U.S. courts. Where there is administrative precedent, it has generally involved persons, particularly foreign persons, who would be unlikely to appeal to U.S. courts. In deciding whether to assert particular regulatory provisions in the pipeline matter, Commerce will have to take into account the heightened likelihood of legal challenge and the consequences to enforcement efforts, generally, if a challenge succeeds.

B. Foreign Governments' Resistance to U.S. Controls

Even if these legal challenges are overcome, there is still the possibility that foreign violators will be able to escape U.S. sanctions by arguing to a U.S. court that the laws of their respective countries compel them to ignore the regulations. This "foreign sovereign compulsion" defense has never been tested in the export control area, but in any event the existence of some real legal compulsion will be necessary to give it force.

Only Britain has thus far taken definitive action under its laws to prohibit compliance with the U.S. oil and gas controls. It is not entirely clear at this point to what degree France, Italy or West Germany presently have (or could quickly put into place) the domestic legal authority necessary to prohibit compliance with the controls. These three governments have, with varying degrees of firmness, expressed an official policy that their companies should proceed to perform their pipeline contracts. But, as far as we know, none has yet issued anything that purports to be a legally binding directive comparable to the measures taken by the British. Actions by these governments which fall short of legally effective compulsion of the relevant licensees or subsidiaries would substantially reduce the effectiveness of the foreign sovereign compulsion defense if asserted by any of the nationals of these three countries in the U.S. courts.

Nevertheless, the British actions on June 30 and August 2 under their Protection of Trading Interests Act appear to operate as a direct compulsion, under penalty of unlimited fines, on the four companies specified by the British Secretary of State, not to comply with U.S. oil and gas controls (although copies of the actual "directions" issued by the British Government to the individual companies have not yet been obtained by the U.S. Government). While the British action does not appear directly to compel the four British companies to respect their pipeline-related contracts, and while there is some doubt whether the

British statute would even provide authority for such direct compulsion, the steps appear at a minimum to have the effect of removing any valid excuses under UK law for non-delivery that the four companies might otherwise have derived from the expansion of the U.S. export controls.

With respect to U.S. investigations to enforce U.S. controls, French and British blocking statutes would in all probability be used to bar companies within their territories (under pain of criminal penalties) from providing documents or information to U.S. enforcement officials. Official cooperation from any of the European governments (as in the service of interrogatories or compelling the production of documents) could not be expected in enforcing U.S. controls, and U.S. investigatory activity could be seriously complicated.

C. Contractual Remedies

The second memorandum in this two-part legal analysis will address, among other matters, the specific terms of the contracts relating to the particular equipment and technology covered by export controls. While it is possible that some of these contracts may afford the U.S. contracting party a remedy if the foreign purchaser of U.S. goods or technology disregards U.S. export controls, the usefulness of such a remedy is subject to question. Where the remedy is solely that of the U.S. contracting party we will have to determine whether the U.S. person can be compelled to pursue it (or is likely to do so voluntarily) and if not, whether the U.S. Government can bring a suit as an interested third party to enforce that U.S. party's contractual remedy. In short, it is not yet clear that any remedies provided in particular contracts will provide the U.S. Government a means of enforcing current oil and gas export controls. Moreover, any available contractual remedies will be difficult to enforce as a practical matter, because such enforcement may depend on the assistance of a foreign court.

IV. Conclusion

This memorandum has attempted to identify in general terms the strengths and weaknesses of the U.S. position and the difficulties which may be faced in enforcement. The second part of this analysis will explore enforcement strategies in particular types of cases.

DATE OF REGULATIONS	U.S.-ORIGIN ITEMS	NON-U.S.-ORIGIN ITEMS	DIRECT FOREIGN PRODUCTS OF U.S. TECHNOLOGY
	Licensing Requirements Imposed on Exports From the U.S. and Re-exports From Outside the U.S. of U.S. Origin Items by All Firms to USSR	Licensing Requirements Imposed on Exports From Outside the U.S. of Non-U.S. Origin Items by U.S. Firms or Their Foreign Subsidiaries to USSR	Licensing Requirements Imposed on Exports From Outside the U.S. of Foreign Products of U.S. Technology by All Firms to USSR
August 1, 1978	Oil and gas exploration and production equipment and technology	No restrictions	Direct products of specified U.S. exploration and production technology exported from U.S. after August 1, 1978
December 30, 1981	Oil and gas transmission and refining equipment and technology	No restrictions	Direct products of specified U.S. transmission and refining technology exported from U.S. after December 30, 1981
June 22, 1982	No new restrictions	Oil and gas exploration, production, transmission and refining equipment and technology	Direct products of U.S. technology relating to oil and gas exploration, production, transmission and refining -- regardless of when the technology was exported -- if such technology is currently subject to a license agreement or if foreign exporter agreed to abide by U.S. export controls.

SECRET

5576

MEMORANDUM

NATIONAL SECURITY COUNCIL

August 17, 1982

SECRET

INFORMATION

MEMORANDUM FOR WILLIAM P. CLARK

FROM: ROGER W. ROBINSON

SUBJECT: Legal Analysis of Export Controls on Oil and Gas Equipment and Technology

Attached (Tab I) is an analysis of the legal issues raised by U.S. controls on exports of oil and gas equipment and technology to the Soviet Union. This analysis reflects the shared views of the appropriate senior legal officials of the Departments of State, Commerce and Treasury as well as the Office of Legal Counsel of the Justice Department. It also incorporates portions of an earlier memorandum prepared by the Departments of State, Commerce and Treasury. This paper was presented at the SIG-IEP of August 16.

Its findings indicate that there is ample authority under the Export Administration Act (EAA) for controlling exports from the U.S. and a defensible basis in the EAA for controlling the re-export from foreign countries to the USSR of U.S.-origin goods and technology. However, the paper asserts there is "a significant risk" that a U.S. court would rule that the EAA does not support the June 18 decision to assert retroactively jurisdiction over foreign products of U.S. technology where such jurisdiction was not clearly established or reserved at the time the technology was exported from the U.S. A claim to U.S. jurisdiction in this circumstance would, as far as can be determined, have to be predicated upon a claim to continuing U.S. jurisdiction over the previously-exported technology solely on the basis of its U.S. origin. According to this assessment, there appears to be no support in international law for such a claim. In short, they imply we will lose.

A second paper outlining the specific legal options available to the President will be generated this week along with an advocacy paper for the Administration's position. In addition, a range of administrative enforcement measures will be assembled by Commerce. These new papers will be discussed at a SIG-IEP scheduled for Monday, August 23, at which time decisions will be made concerning the NSC process and a presentation of options for the President. The need for expeditious consideration of these issues results from John Brown's expressed intention to ship turbines with G.E. rotors at the end of this month.

SECRET

DECLASSIFY ON: OADR

SECRET

Norman Bailey, Henry Nau, Dick Pipes, Jim Rentschler and Paula Dobriansky concur.

Attachment
Tab I Legal Considerations Presented by Soviet Pipeline Export Controls

SECRET

August 11, 1982

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Legal Considerations Presented by Soviet Pipeline Export Controls

Part One: Issues

This memorandum, dealing with basic legal issues and enforcement obstacles, is the first part of a two-part legal analysis of U.S. export controls over oil and gas goods and technology destined for the U.S.S.R. A second memorandum, currently in preparation, will review the facts of particular cases and assess U.S. enforcement strategy, discussing the administrative and judicial steps which are available to achieve U.S. objectives.

I. History of U.S.S.R. Oil and Gas Controls

The first controls directed specifically at the Soviet oil and gas industry were imposed (on foreign policy grounds) on August 1, 1978. These controls required validated licenses for the export from the United States (or the re-export from any foreign country) to the Soviet Union, of (i) U.S.-origin oil and gas exploration and production equipment; (ii) U.S.-origin exploration and production technology; and (iii) the direct foreign products of U.S.-origin oil and gas exploration and production technology, if the technology was exported on or after August 1, 1978. The 1978 controls applied to exports of U.S.-origin equipment exported from the U.S. prior to August 1, 1978, but did not apply to the products manufactured abroad if based on technology exported from the U.S. prior to that date. License applications were subject to interagency review, with significant cases referred to the NSC. Licenses were generally granted.

The invasion of Afghanistan resulted in suspension of all Soviet licenses in January 1980. Following a high level review, a decision was made to approve oil and gas equipment exports and re-exports on a case by case basis, but to deny technical data for manufacture in the U.S.S.R. of oil and gas equipment.

In response to events in Poland, new regulations were issued on December 30, 1981. These regulations took two new steps: (i) expanded the 1978 regulations beyond exploration and production to include exports and re-exports of U.S.-origin equipment and technology used in connection with transmission and refining; and (ii) extended controls to the foreign direct

products of U.S.-origin transmission and refining technology, but only if the U.S. technology had been exported from the U.S. on or after December 30, 1981.*

The Regulations which were made effective on June 22, 1982, amended the scope of controls in two principal ways: (i) prohibited the foreign subsidiaries of U.S. firms from exporting to the U.S.S.R. oil and gas equipment and technology which were not of U.S. origin; and (ii) prohibited the export by foreign firms of direct products of U.S. technology, regardless of when the technology was exported, if (a) the technology is subject to an ongoing licensing or compensation agreement, or (b) the recipient of the technology has agreed to abide by U.S. export regulations.

Prior to the June 1982 controls, foreign subsidiaries of U.S. firms were permitted to export oil and gas equipment and technology which was not of U.S. origin. Furthermore, prior to the June action, exports of foreign-produced oil and gas equipment which was a product of U.S. technology were prohibited only if (i) the export from the U.S. of the technology from which the equipment was produced occurred after December 31, 1981, (in the case of transmission and refining equipment) or after August 1, 1978, (in the case of exploration and production equipment), or (ii) the recipient of the technology had given, at the time of export from the United States, a "written assurance" (required by the Export Administration Regulations) that the technology and the direct products of that technology would not be exported to the Soviet Union and certain other countries.

Appendix A is a chart summarizing, in chronological sequence, the imposition of the controls described above.

Two points should be noted. First, the December 30, 1981 controls do not merely cover items to be used in the Urengoy to

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*In a parallel action on December 30, 1981, processing of all license applications for exports to the U.S.S.R. was suspended, and no licenses have been issued for oil and gas, or any other equipment or technology, since the end of 1981. However, some licenses issued prior to December 30, 1981, for oil and gas exploration and production equipment may still be valid.

Uzhgorod export pipeline (hereafter the "Soviet gas pipeline"). Rather, these controls as well as the controls imposed on June 22, 1981, actually apply to all oil and gas transmission equipment or technology destined for the U.S.S.R. -- whether or not related to the Soviet gas pipeline.

Second, although the legal validity of many of the controls outlined above has never been tested in court, portions of the June 1982 regulations are particularly subject to challenge for reasons outlined below. Although the Soviet gas pipeline export controls squarely raise some of these legal vulnerabilities, the number of potential litigants and enforcement actions could be reduced by limiting the scope of the June 1982 controls solely to equipment and technology affecting the Soviet gas pipeline and not to all oil and gas equipment and technology which might be exported to the Soviet Union.

II. Legal Basis of Sanctions

The following is a general assessment of the legal strengths and weaknesses, under domestic and international law, of the spectrum of U.S. export controls outlined above and summarized in Appendix A.

A. Exports from the U.S. (August 1978 and December 1981 sanctions)

There is ample authority under the Export Administration Act (EAA) for controlling exports from the United States to the U.S.S.R. of oil and gas production, exploration, transmission, and refining goods and technology (even if they are the subject of preexisting contracts). These controls are also defensible under international law.

B. Foreign Re-exports of U.S. Origin Goods and Technology (August 1978 and December 1981 sanctions)

There is a defensible basis in the EAA for controlling the re-export, from foreign countries to the U.S.S.R., of U.S.-origin goods and technology. For at least twenty years, U.S. exporters and foreign purchasers have been on notice that the United States asserts authority to control the subsequent re-export of U.S.-origin goods and technology from one foreign country to another. Although controversial under international law, controls on foreign re-exports of U.S.-origin goods and technology are defensible on the theory that if the United States can prohibit exports of goods and technology it can also impose conditions on those exports it permits, and that these conditions may follow the goods and technology into foreign jurisdictions.

C. Foreign Products of U.S. Technology (covered prospectively by the August 1978 and December 1980 regulations; covered "retroactively" by June 1982 regulations)

There is a significant risk that a U.S. court would rule that the EAA does not support our decision in June "retroactively" to assert jurisdiction over foreign products of U.S. technology where such jurisdiction was not clearly asserted or reserved (i.e., "part of the deal") at the time the technology was exported from the United States.

Regulations prohibiting the export of foreign-produced equipment which is the product of U.S. technology are based upon broad authority in the EAA to prohibit the export of goods or technology which are "subject to the jurisdiction of the United States." While a case can be made for placing new and more restrictive controls on either the re-export from a foreign country of technology which was subject to U.S. export controls when it was initially exported, or the foreign export of products of such technology, the novel element of the June expansion is the effort to cover the products of technology over which the U.S. did not explicitly retain authority at the time the technology was initially exported from the U.S. The technology exported by GE to Alsthom-Atlantique under their licensing agreement for production of turbine rotors falls into this category.

The "retroactive" control of exports from foreign countries of foreign products based upon U.S. manufacturing technology poses difficult legal questions. Unlike controls on the re-export of U.S.-origin items, including parts and components, the Export Administration Regulations have not expressly reserved the right to subject foreign products of U.S. oil and gas technology to subsequently-imposed U.S. controls. In the case of the expanded June restrictions, regulatory control was not imposed prior to the original transfer of the technology. The United States could try to claim an "implied reservation of authority" paralleling the explicit authority asserted over re-exports and over foreign products containing U.S. components, but the legal support for such a claim under the EAA is tenuous.

A claim to U.S. jurisdiction over the products of this previously-transferred U.S. technology would, as far as can be determined, have to be predicated upon a claim to continuing U.S. jurisdiction over the previously-exported technology solely on the basis of its U.S. origin. There appears to be no support in international law for such a claim. Indeed, the American Law Institute's Restatement (Second) of the Foreign Relations Law of the United States does not recognize the U.S. origin of goods or technology alone as a source of jurisdiction under international law. In this connection, it should be noted that the Circuit Court of Appeals for the District of Columbia recently reiterated

in F.T.C. v. Compagnie de Saint-Gobain-Pont-A Mousson, 636 F.2d 1300 (D.C. Cir. 1980) that, absent a clear, contrary Congressional intent, U.S. statutes posing potential conflicts with foreign jurisdictional interests must be construed so as to ensure consistency with international law.

D. Exports by foreign subsidiaries of U.S. companies. (June 1982 sanctions)

In contrast to the attempt to control retroactively the foreign products of U.S. technology, there is clear authority under the EAA to control exports by foreign subsidiaries of U.S. companies. Under international law, a good case can be made that, in protecting important national interests, the U.S. has authority to regulate foreign firms controlled abroad by U.S. nationals (at least where there is no clear conflict with foreign law).

However, even this approach is highly controversial. The British and others claim that corporations organized under their laws are juridical persons in the jurisdiction of incorporation and cannot be subject to control by the United States merely because they are owned or controlled by U.S. nationals.

With the exception of Treasury regulations imposed in the past under the President's statutory national emergency powers, the June 1982 regulations are the first broad extension of controls over exports of completely foreign-source items by U.S.-owned or controlled firms abroad. If other nations enact or enforce blocking statutes, these controlled U.S. subsidiaries may be placed in an awkward and costly jurisdictional tug-of-war.

III. Enforcement Issues

Whatever the legal merits and vulnerabilities of the oil and gas export controls, their successful enforcement will initially turn on issues of jurisdiction and leverage over offending entities. There are two ways in which the current controls may be enforced -- administrative procedures instituted by the Commerce Department and enforcement by a U.S. licensor or the United States Government of rights under contracts. Of these, the administrative course appears to us to have a far greater chance of success.*

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*There are likely to be many obstacles to criminal prosecution of violations of our controls by non-U.S. citizens in foreign countries. Criminal prosecutions involve a heavy burden of proof, require that the defendant be brought before the court, and would likely entail more rigorous judicial review of the legal authority for our regulations.

A. Administrative remedies

The following measures are available under the EAA and the Export Administration Regulations to deal with violations or threatened violations of the oil and gas controls.

1. Bringing an administrative enforcement action against any U.S. firm, or any foreign firm subject to the controls, which sells, purchases, or uses pipeline-related goods or technology with knowledge or reason to know that a violation (i.e., sale to the U.S.S.R.) is about to or is intended to occur. Administrative sanctions include civil fines and denial of export privileges. Denial orders typically prohibit U.S. exporters and foreign consignees of U.S. goods and technology from exporting or re-exporting U.S. origin items to the firm being sanctioned, thus effectively cutting off a foreign firm's access to all U.S.-origin goods and technology.

2. Temporarily denying export privileges, on an ex parte basis, to any U.S. or foreign firm which is under investigation for possible violation of the Regulations upon a showing that such action "is required in the public interest to permit or facilitate enforcement" of the EAA or Regulations.

3. Issuing interrogatories or requests for production of documents to affected foreign firms. Provided service can be validly obtained, failure or refusal to respond can result in the imposition of a total denial of export privileges for five years or until the interrogatories and requests are answered or adequate reason is given for failure to respond.

4. Requiring U.S. firms, through mandatory reporting requirements or compulsory process, to assist in gathering necessary information about existing and proposed contracts.

5. Seizing goods or technology which have been, are being, or are intended to be exported from the United States in violation of the EAA or Regulations. Items which are seized are subject to forfeiture.

Because these measures are administrative -- carried on within the Commerce Department -- they offer the possibility of initial enforcement of the controls without judicial involvement. The Commerce Department, in addition, may take some enforcement actions without having obtained jurisdiction through formal service of process.

However, after sanctions have been imposed, a complaining party may challenge the regulations or the method of their enforcement in court. In such a case, a complainant might attack, inter alia, the adequacy of the statutory support for the regulations, their constitutionality, their validity under international law, the jurisdiction of the Commerce Department, and the fairness of the administrative procedures which resulted in sanctions. All these grounds of attack are largely untested in U.S. courts. Where there is administrative precedent, it has generally involved persons, particularly foreign persons, who would be unlikely to appeal to U.S. courts. In deciding whether to assert particular regulatory provisions in the pipeline matter, Commerce will have to take into account the heightened likelihood of legal challenge and the consequences to enforcement efforts, generally, if a challenge succeeds.

B. Foreign Governments' Resistance to U.S. Controls

Even if these legal challenges are overcome, there is still the possibility that foreign violators will be able to escape U.S. sanctions by arguing to a U.S. court that the laws of their respective countries compel them to ignore the regulations. This "foreign sovereign compulsion" defense has never been tested in the export control area, but in any event the existence of some real legal compulsion will be necessary to give it force.

Only Britain has thus far taken definitive action under its laws to prohibit compliance with the U.S. oil and gas controls. It is not entirely clear at this point to what degree France, Italy or West Germany presently have (or could quickly put into place) the domestic legal authority necessary to prohibit compliance with the controls. These three governments have, with varying degrees of firmness, expressed an official policy that their companies should proceed to perform their pipeline contracts. But, as far as we know, none has yet issued anything that purports to be a legally binding directive comparable to the measures taken by the British. Actions by these governments which fall short of legally effective compulsion of the relevant licensees or subsidiaries would substantially reduce the effectiveness of the foreign sovereign compulsion defense if asserted by any of the nationals of these three countries in the U.S. courts.

Nevertheless, the British actions on June 30 and August 2 under their Protection of Trading Interests Act appear to operate as a direct compulsion, under penalty of unlimited fines, on the four companies specified by the British Secretary of State, not to comply with U.S. oil and gas controls (although copies of the actual "directions" issued by the British Government to the individual companies have not yet been obtained by the U.S. Government). While the British action does not appear directly to compel the four British companies to respect their pipeline-related contracts, and while there is some doubt whether the

British statute would even provide authority for such direct compulsion, the steps appear at a minimum to have the effect of removing any valid excuses under UK law for non-delivery that the four companies might otherwise have derived from the expansion of the U.S. export controls.

With respect to U.S. investigations to enforce U.S. controls, French and British blocking statutes would in all probability be used to bar companies within their territories (under pain of criminal penalties) from providing documents or information to U.S. enforcement officials. Official cooperation from any of the European governments (as in the service of interrogatories or compelling the production of documents) could not be expected in enforcing U.S. controls, and U.S. investigatory activity could be seriously complicated.

C. Contractual Remedies

The second memorandum in this two-part legal analysis will address, among other matters, the specific terms of the contracts relating to the particular equipment and technology covered by export controls. While it is possible that some of these contracts may afford the U.S. contracting party a remedy if the foreign purchaser of U.S. goods or technology disregards U.S. export controls, the usefulness of such a remedy is subject to question. Where the remedy is solely that of the U.S. contracting party we will have to determine whether the U.S. person can be compelled to pursue it (or is likely to do so voluntarily) and if not, whether the U.S. Government can bring a suit as an interested third party to enforce that U.S. party's contractual remedy. In short, it is not yet clear that any remedies provided in particular contracts will provide the U.S. Government a means of enforcing current oil and gas export controls. Moreover, any available contractual remedies will be difficult to enforce as a practical matter, because such enforcement may depend on the assistance of a foreign court.

IV. Conclusion

This memorandum has attempted to identify in general terms the strengths and weaknesses of the U.S. position and the difficulties which may be faced in enforcement. The second part of this analysis will explore enforcement strategies in particular types of cases.

DATE OF REGULATIONS	U.S.-ORIGIN ITEMS	NON-U.S.-ORIGIN ITEMS	DIRECT FOREIGN PRODUCTS OF U.S. TECHNOLOGY
	Licensing Requirements Imposed on Exports From the U.S. and Re-exports From Outside the U.S. of U.S. Origin Items by All Firms to USSR	Licensing Requirements Imposed on Exports From Outside the U.S. of Non-U.S. Origin Items by U.S. Firms or Their Foreign Subsidiaries to USSR	Licensing Requirements Imposed on Exports From Outside the U.S. of Foreign Products of U.S. Technology by All Firms to USSR
August 1, 1978	Oil and gas exploration and production equipment and technology	No restrictions	Direct products of specified U.S. exploration and production technology exported from U.S. after August 1, 1978
December 30, 1981	Oil and gas transmission and refining equipment and technology	No restrictions	Direct products of specified U.S. transmission and refining technology exported from U.S. after December 30, 1981
June 22, 1982	No new restrictions	Oil and gas exploration, production, transmission and refining equipment and technology	Direct products of U.S. technology relating to oil and gas exploration, production, transmission and refining -- regardless of when the technology was exported -- if such technology is currently subject to a license agreement or if foreign exporter agreed to abide by U.S. export controls.

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SITUATION ROOM

MESSAGE NO. 00385 CLASSIFICATION E.S Sens. No. Pages 1

FROM: L P Bremer S/S 28448
(Officer name) (Office symbol) (Extension) (Room number)

MESSAGE DESCRIPTION See Phone

TO: (Agency)	DELIVER TO:	Extension	Room No.
NSC	Mr. McFarlane	456-2224	
NSC	Mr. Mike Wheeler	395-3044	

FOR: CLEARANCE ☐ INFORMATION ☒ PER REQUEST ☐ COMMENT ☐

REMARKS:

S/S Officer: L P Bremer

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THE SECRETARY OF STATE

WASHINGTON

Sanctions

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MEMORANDUM FOR: THE PRESIDENT

FROM: George P. Shultz (S)

SUBJECT: Pipeline Sanctions

Last week you approved the use of denial orders as our first response to European shipments which violate our sanctions. A denial order has the attraction of being a flexible instrument which can be focussed on particular companies and on particular lines of activity.

We now face the likelihood of a shipment from John Brown Engineering of the UK. Mac Baldridge and I jointly conclude that the right approach to this case is to issue an order which denies the company U.S. oil and gas-related exports. This would eliminate about 50% of the business of this highly GE-dependent company, without driving it into immediate bankruptcy.

The effect of this denial order would be the same as that issued last week against Dresser France. That order was stated more broadly but its effect on Dresser is focussed because that company does only oil and gas-related business with the U.S. Creusot-Loire's business is more diversified. To make the comparability of the two actions clear, and so as not to aggravate unnecessarily the French, we should now move to clarify the French denial orders so that the language in each order is similar and is directed at oil and gas equipment.

The action we propose for John Brown will serve as a model for the Italian (Nuovo Pignone) and German (AEG-Kanis) cases, should events require action in those cases in the next few days or weeks. It will also strengthen our hand for the future: since the British, Italian, and German companies all operate beyond the oil and gas field, they are particularly vulnerable to expansion in the scope of our orders at a later date. Should they ship the partial consignments now available and then later ship more equipment in further violation of our sanction, we will have reserved a significant further penalty for use when and if needed. The companies will of course be aware of this fact.

?! We believe this approach carries forward your decision of last week and will proceed with it, if and when John Brown ships.

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MEMORANDUM

NATIONAL SECURITY COUNCIL

CONFIDENTIAL

September 21, 1982

INFORMATION

MEMORANDUM FOR WILLIAM P. CLARK

FROM: RICHARD PIPES

SUBJECT: CDU Statement on Soviet Sanctions

The Deputy Chairman of the CDU (and the potential next Defense Minister), Manfred Woerner, issued on the 15th, in the name of the CDU/CSU factions, an important statement (Tab I) on economic policy toward the USSR . This statement, which may well represent the official policy of the next German government, goes a long way toward meeting our own stated objectives and may pave the way toward a reconciliation. (You will note particularly that the statement contains no criticism of U.S. sanctions on pipeline equipment.)

In view of this, it seems especially important that nothing be done for the time being that could provide the least grounds for suspicion in Europe that we are backing off. If we were to soften our sanctions at this time in any way we would, in effect, be pulling the rug from under our German friends and supporters who are sticking their necks out on our behalf.

Norman Bailey, Dennis Blair and Roger Robinson concur.

Attachment:

Tab I Rough translation of the CDU Statement issued on September 15, 1982

CONFIDENTIAL
Declassify on: OADR

CDU Statement

The Deputy Party Chairman, Dr. Manfred Woerner [on September 15], issued the following statement on behalf of the CDU/CSU parliamentary factions:

Concerning East-West relations, Dr. Woerner, Chairman of the CDU/CSU faction, stated:

The tensions and differences between Europe and the United States of America over the gas pipeline and East-West trade must be overcome by forward-looking initiatives. The Federal Republic must make a contribution to the discovery of a way out of the dilemma posed by economic relations with the Soviet Bloc. The West also must finally unite, in the economic system, upon a common and reliable strategy of flexible responses. We ask that the Federal Government develop such an initiative without delay. Its purpose should be:

-- To give strong recognition to the justified political and security interests of all Alliance partners.

-- To make possible concerted and decisive coordination of common East-West economic policies; and

-- To clarify the special role which our economic relations to the Soviet Union and its East European allies play in the development of an East-West relationship compatible with the necessities of an active maintenance of peace.

A five-point comprehensive proposal should be addressed to the United States concerning future common behavior in East-West trade:

1. On the condition that the Soviet Union

-- is prepared to behave in a responsible, conflict-limiting fashion in world affairs;

-- is prepared to observe international human rights agreements;

-- is prepared for strengthened cooperation in efforts toward effective and verifiable arms control and disarmament;

-- is prepared to accept step-by-step dismantling of the economic barriers in Europe, and to display fundamental willingness to build economic relations with the Soviet Union and the East European state-trading countries.

2. There should be responsible political and economic treatment of guarantees and credits, especially the issuance of credits according to market terms only.

3. There should be further limitations on the transfer of highly developed technology in the context of COCOM negotiations, especially reliable controls on second-party transfers of technologies having military uses.

4. There should be established permanent consultative and information organs concerning questions of East-West trade in the Atlantic Alliance context.

5. There should be a common reaffirmation of the NATO Council decision of January 11, 1982, concerning economic measures of alliance partners against the use of force in Afghanistan and Poland.

Such a five-point initiative should be discussed by the Foreign Ministers of the European Community as well as at the informal meeting of NATO Foreign Ministers in Canada on October 2 - 3. Through such guidelines and unequivocal decisions, the resolutions of the Council of Europe, the Versailles Economic Summit and the Bonn and NATO Summits can be given concrete content and can be supported by all Atlantic partners.

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8. USSR: SOVIETS ATTACK EC IMPORT SANCTIONS

The Soviet Ministry of Foreign Trade has begun calling in EC economic counselors to protest the extension of EC import sanctions against the USSR, Embassy Moscow reports. The Soviet West European desk officer, treating the issue as a bilateral matter, told the FRG economic counselor that Soviet reaction to the measures had been "moderate" in 1982 because the USSR presumed the measures would expire at the end of the year. Now the USSR is "deliberating" possible countermeasures against FRG goods. The FRG, he said, was contravening not only bilateral trade agreements, but the Conference on Security and Economic Cooperation.

Embassy Comment: The Soviets, who will likely call in each EC economic counselor, have probably delayed their protest until they thought it would have an effect on some EC member governments. (~~CONFIDENTIAL~~)

9. BERMUDA: CONSERVATIVES GAIN BROAD VICTORY

Preliminary reports indicate that the conservative United Bermuda Party (UBP) picked up four seats in the House of Assembly at the expense of the third world-leaning Progressive Labor Party (PLP) in yesterday's election. The new breakdown in the House of Assembly will be 26 seats for the UBP and 14 for the PLP. This represents the first time since the mid-1960's that the UBP has gained seats at the expense of the PLP.

INR Comment: Premier John Swan's personal victory will add greatly to his stature, but is clouded by the fact that the victory was gained in large measure because voter registration was arranged to exclude a crucial segment of the black electorate. Early negotiations for independence from the UK and for a renegotiation of the 1940 Base Agreement with the US can be expected. (~~CONFIDENTIAL~~)

10. TURKEY: US FIGHTER PROJECT RECEIVES HIGHEST PRIORITY

Turkish Minister of Defense Bayulken emphasized to Ambassador Strauz-Hupe that the most important part of Turkey's military modernization program is the acquisition and eventual co-production of 160 new fighter aircraft over the next decade. Bayulken wants to decide between US producers by March 15 and has scheduled a survey team to begin consultations on February 15.

Ambassador's Comment: Giving this project priority over every other military and civilian program is politically attractive to the Turkish government, which hopes it will assuage growing military frustration and spearhead a government drive for industrial and technological development. (~~CONFIDENTIAL~~/EXDIS)

11. FRANCE: INF AND THE SOCIALIST INTERNATIONAL

In a speech to a Socialist International (SI) meeting in Paris on January 23, French Foreign Minister Cheysson said that peace between the East and West can be achieved only if the West maintains its security and strength and that nuclear deterrence will work only if