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WITHDRAWAL SHEET

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. briefing	re: foreign acquisition of US high-technology firms (1p)	12/5/86	P-1
2. memo	from L. Pugliaresi thru S. Danzansky to J. Poindexter re: proposed changes in the Tech Transfer Steering Group (TTSG) (3pp)	10/2/86	P-1
3. memo	to Shultz, Wienberger and Baldrige re: amendments to the Presidential Directive of Jan. 4, 1984 (2pp)	n.d.	P-1
4. review	coordinated DOD/DOC review of license application fo exports to free world destinations (3pp)	n.d.	P-1
5. talking points	re: cnanges to the Technology Transfer Steering Group (1p)	n.d.	P-1
6. letter	from John Whitehead to J. Poindexter re: TTSG (2pp)	5/12/86	P-1
7. memo	from L. Puglaresi and S. Danzansky to F. Carlucci re: proposed review of export control and technology transfer programs (3pp)	12/29/86	P-1
8. memo	from C. Weinberger to Assist. for N.S. Affiars re: Presidential N.S. Override for continuing export controls (2pp)	1/8/87	P-1
9. memo	page 2 of item # 8 (1p)	1/8/87	P-1
10. memo	from C. Weinberger to the President re: Pres. N.S. Override for continuing export control (2p)	1/8/87	P-1
11. memo	from C. Weinberger to the President re: Pres. N.S. Override for continuing export control (2pp)	1/8/87	P-1
12. memo	from C. Weinberger to the President re: Pres. N.S. Override for continuing export control (2pp)	1/8/87	P-1
COLLECTION: DANZANSKY, STEPHEN I.: Files			db
FILE FOLDER: International Trade XV. (E) ^(15 of 16) {8 of 9} Box 90976 RAC Box 8			11/8/94

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

WITHDRAWAL SHEET

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
13. memo	from C. Weinberger to the President re: Pres. N.S. Override for continuing export control (3pp)	1/8/87	P-1
14 e-mail note	from L. Pugliaresi to A. Platt re: tech transfer and the agenda ahead (1p)	9/2/86	P-1
COLLECTION: DANZANSKY, STEPHEN I.: Files			db
FILE FOLDER: International Trade XV. (E) ^(15 of 16) [8 of 9] Box 90976 RAC Box 8			11/8/94

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International Trade
(BOE)
Ranzansky

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Int. Trade (8049)

Danzansky

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PROBLEMS WITH EXPORT CONTROLS FROM
VIEWPOINT OF U.S. COMPETITIVENESS

1. Delays in decisions on licensing
 - Need for prompt dispute resolution
2. Large number of items controlled
 - COCOM list too long - includes technology already in Soviet hands
 - Foreign availability
 - Unilateral U.S. Controls
3. Foreign Policy Controls
 - Contract Sanctity
 - Engineering U.S. components out of the system
4. Enforcement
 - Extra-territoriality
 - Difficulty in establishing satisfactory controls over reexport from COCOM countries
5. Industry's perception that the administration is divided on this issue.

EXPORT CONTROLS

Through ~~improvements in~~ multiple licensing procedures and significant improvements in individual licensing processes, we have streamlined the export licensing system and cut down the amount of time and paperwork it takes to secure an export license by more than 50 percent over last year. We will redouble our efforts at future institutional improvements. In addition, we will undertake an interagency review of the entire export control process and continue the ongoing review of the control list with a view towards shortening it -- particularly when third country availability is at issue -- while still protecting our security interest.

Dictated over telephone by Alex Platt's
secretary, December 8, 1986
TA/OAS

- We will seek to significantly reduce adult illiteracy by the year 2000.
 - We will promote the establishment of education-employment compacts.
 - We will encourage adults to upgrade job skills and acquire new ones.
 - We will urge that private industry councils (PICs) and local human service agencies work more closely together.
2. Secretary Brock will begin a study of the private pension system to see if it might be improved to promote greater labor mobility.
 3. Adjustment Assistance Reform -- [to be considered by the Council next week].

Additional Initiatives

We are proposing a number of additional initiatives as well:

1. Export controls. Through the introduction of the "gold card" system and other processing improvements, we have streamlined the export licensing system and cut down the amount of time and paperwork it takes to secure an export license. We will redouble our efforts at further institutional improvements. In addition, we will undertake an interagency review of the entire export control process, including the control list itself, with a view to enhancing America's ability to compete -- particularly when third country availability is at issue -- while still protecting our security interests.
2. Regulatory Reform. The Vice President's Task Force on Regulatory Reform will be revitalized to identify, improve or eliminate Federal regulations that impose unnecessary burdens on the business community.

*China
High fences - lower tariffs
Streamline*

THE
CONGRESSIONAL
MONITOR'S

CONGRESS DAILY

A Publication of Congressional Quarterly Inc.

Monday, April 15, 1985



What's Ahead

Congress returns today from the Easter/Passover recess. The schedule will be light this week; starting next week, members must deal with some important issues. Here are highlights of the agenda from now to Memorial Day.

Budget. The Senate on April 22 begins what promises to be at least a week of debate on a spending blueprint for fiscal 1986. A plan worked out by Senate Republicans and the White House may not garner a majority of GOP votes, let alone the votes of the Democrats. But President Reagan is committed to the plan and will lobby hard.

The compromise replaces a budget resolution (S Con Res 32) approved by the Budget Committee on a party-line vote.

Both proposals would cut the deficit by about the same amount — about \$50 billion in fiscal 1986 — but there are key differences. The White House-backed plan calls for more defense spending and less domestic spending than does the Senate Budget Committee version:

- The White House-Senate leadership plan calls for defense spending to increase by 3 percent above inflation; the Budget Committee recommended an increase equal to inflation.

- The White House plan allows a 2 percent cost-of-living adjustment (COLA) for Social Security recipients; the Budget Committee called for no COLA.

- The White House plan would eliminate a number of domestic programs that survived the Budget Committee's axe. (*Background, CQ Weekly Report p. 627*) House Budget panel Democrats will

caucus three times this week to discuss strategy. No markups are scheduled.

Nicaragua. The Senate will vote April 23 on a resolution (S J Res 106) that would approve President Reagan's request for \$14 million in aid for Nicaraguan guerrillas. The House vote will follow, by April 30.

Congress set aside the aid money last year, but required that both houses pass a joint resolution before the funds can be released.

Reagan asked Congress to unfence the funds in a secret report April 3. The next day he publicly announced his "Central American Peace Proposal" — a tactical shift that put his Capitol Hill critics on the defensive.

The proposal coupled the administration's request for funds with a cease-fire and an offer of church-mediated negotiations.

Under Reagan's plan, the guerrillas, or contras, would extend a previous offer for a cease-fire until June 1. In the meantime, Congress would release the \$14 million, with Reagan's pledge that the money would be spent for food, clothing, medicine and "other support for survival" for the contras — but not for arms or munitions. If the Sandinistas do not accept the cease-fire by June 1, Reagan would use what is left of the \$14 million to resume contra arms aid.

The White House is planning a mas-

sive public relations campaign in an effort to influence the vote. The issue is likely to be decided in the House, which has voted four times since 1983 against aiding the contras.

The House Foreign Affairs Western Hemisphere Subcommittee Tuesday begins three days of hearings on the request. (*Background, CQ Weekly Report p. 631*)

Trade. Continued tough talk and legislation aimed at reducing the trade gap with Japan are expected from lawmakers who are hearing more and more complaints from their business constituents about the high dollar and what they see as unfair Japanese business practices.

A key test in U.S.-Japan trade relations has been in the area of telecommunications. Negotiations are at a critical stage.

Action is expected in the next two months on legislation to be offered this week by Sens. John C. Danforth (R-Mo), Lloyd Bentsen (D-Texas), and Frank R. Lautenberg (D-NJ). The bill would tax or restrict U.S. imports of Japanese telecommunications if Japan were found to block U.S. sales to that country. Sen. John H. Chafee (R-RI), who has been one of the Senate's staunchest free trade advocates, has introduced a bill (S 728) to bar Japanese telecommunications products from the United States until Japan opens its markets. Rep. James J. Florio (D-NJ), chairman of the House Energy Commerce Subcommittee, also is preparing telecommunications legislation. (*Background, CQ Weekly Report, p. 671*)

Export Administration. The House Tuesday will take up a bill to reauthorize the Export Administration Act.

The law, which expired last year, permits government restrictions on exports to protect national security, promote foreign policy and prevent shortages of strategic resources. Both houses passed a reauthorization bill in the last Congress but conferees were unable to agree on key provisions, including sanctions against the South African government.

On April 3, the House Foreign Affairs Committee approved a four-year Export Administration Act reauthorization (HR 1786) that was stripped of the controversial provisions. On the same day, the Senate, bypassing the Banking Committee, passed a bill (S 883) extending the act through June 15. Backers of the four-year authorization measure hope to short cut regular congressional proce-

Continued on p. 2



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Cont'd from p. 1

sure so that the Senate can vote on the House bill, without action by the Senate Banking Committee. (*Background, CQ Weekly Report p. 647*)

Conrail Sale. On Thursday, the Senate Commerce Committee marks up legislation (S 638) that would enable the government to sell its 85 percent ownership of Conrail. The Department of Transportation wants to sell its interest in the freight railroad to Norfolk Southern Corporation for \$1.2 billion.

Senate opposition to the sale comes from several sources. Pennsylvania Sens. Arlen Specter (R) and John Heinz (R) favor a public stock offering of Conrail. South Dakota Sen. Larry Pressler (R) and other Midwesterners are concerned that the sale would reduce competition and hurt service to their areas. Sen. Howard M. Metzenbaum (D-Ohio) questions whether the government will be getting the best possible price for Conrail. He has threatened a filibuster.

Shippers on east-west routes could pay more after the sale. North-south shipments probably would be cheaper. (*Background, CQ Weekly Report pp. 608, 640*)

Civil Rights. On April 23, both the House Education and Labor Committee and the Judiciary Committee will mark up legislation (HR 700) designed to overturn a 1984 Supreme Court decision that narrowed coverage of a law banning sex discrimination in federally assisted education programs.

In *Grove City v. Bell*, the court said current civil rights laws bar discrimination only in a "program or activity" receiving federal aid, not the entire institution. HR 700, which is supported by civil rights groups, would make it clear that the entire institution is covered by civil rights laws when federal aid goes to any of the institution's departments. The administration opposes HR 700 but backs legislation (S 272) offered by Sen. Robert Dole (R-Kan), whose bill would overturn the *Grove City* decision but only in the case of educational institutions.

In the Senate, the Labor and Human Resources Committee will not take up the issue until after the House acts. (*Background, CQ Weekly Report p. 682*)

Farm Bill. Markups of the 1985 farm bill should begin in the House and Senate Agriculture panels in early May.

Sen. Jesse Helms (R-NC) and Rep. E. "Kika" de la Garza (D-Texas), the chairmen of the Agriculture panels, have introduced farm bills (S 616, HR 2000) that would be easier on farmers than the administration's proposal (S 501), which no one expects to be passed intact.

The administration bill would put U.S. agriculture on a "market-oriented" track by providing minimal aid to farmers and thereby, indirectly, forcing lower market prices for farm goods.

Members may decide to avoid hard choices and approve a simple one-year reauthorization, leaving a complicated rewrite of the agriculture laws until next year.

South Africa Sanctions. Hearings begin this month in both the House and the Senate on legislation that would slap economic sanctions on South Africa unless that government changes its racial policies. A House vote on the issue could come as early as May.

The House Foreign Affairs Africa and International Economic Policy and Trade subcommittees have scheduled joint hearings this Wednesday and Thursday. The Senate Foreign Relations Committee will hold a hearing April 24.

Approximately 20 bills calling for some kind of action against South Africa are pending in the House and Senate. The House is expected to approve anti-apartheid sanctions this year. Senate action is less certain.

On March 27, the Senate Foreign Relations Committee approved a bill calling for economic sanctions against South Africa if that nation fails to make "significant progress" toward ending apartheid in two years. Chairman Richard G. Lugar (R-Ind) said members will have a chance to offer tougher legislation later.

On April 3 the Senate passed a resolution (S J Res 96) condemning South Africa's racial policies. (*Background, CQ Weekly Report p. 440*)

Superfund. The Senate Finance Committee will hold hearings April 25 and 26 on the tax issues involved in the reauthorization of the Superfund hazardous waste cleanup program. A markup could be scheduled as early as the week of April 29.

The Senate Environment panel has reported legislation (S 51) authorizing a five-year extension of the program. The committee's version involves the expenditure of \$7.5 billion over the next five years. More than \$6.4 billion of the total would come from taxes on industry that must be authorized by the Finance panel.

The House Energy Commerce Subcommittee has held hearings on the Superfund; markups could be scheduled in May. Last year subcommittee Chairman James J. Florio (D-NJ) backed a \$10.2 billion, five-year reauthorization. The administration has proposed a \$5.3 billion program. (*Senate action, CQ Weekly Report p. 409*)

Indiana Election. Government auditors hope to finish today the chore of

recounting the more than 230,000 ballots cast in the Indiana 8th District election last November. The seat has been vacant while a House Administration Committee task force has worked to determine who won the close election. The panel hopes to make a recommendation on whom to seat — Republican Richard D. McIntyre or Democrat Frank McCloskey — by the end of this week or early next week. A House vote could follow quickly. (*Background, CQ Weekly Report p. 620*)

Devine Nomination. The Senate Governmental Affairs Committee should vote April 25 on confirming Donald J. Devine for a second four-year term as director of the Office of Personnel Management.

The vote is expected to be close.

Committee Democrats strongly oppose the reappointment, arguing that Devine has demoralized federal workers and injected partisanship into the nonpartisan civil service.

Labor, Trade Nominations. The Senate Labor Committee tentatively plans to hold a hearing April 23 on the nomination of William E. Brock III to be labor secretary. Brock's confirmation is expected, possibly before May 1. He is currently U.S. trade representative.

The proposed replacement for Brock as trade representative is Clayton K. Yeutter, president of the Chicago Mercantile Exchange. The Senate Finance Committee has not set confirmation hearings. Action might not occur until May. (*Brock background, CQ Weekly Report p. 549; Yeutter background, CQ Weekly Report p. 646*)

Energy Emergency Preparedness. Key provisions of the Energy Policy and Conservation Act (PL 94-163) expire on June 30. The act authorizes several programs designed to assure that the United States is prepared for an energy shortage.

The House Energy Fossil Fuels Subcommittee has approved HR 1699, which would extend the authority for the Strategic Petroleum Reserve (SPR) and for United States participation in the International Energy Agency until 1989.

The measure approved by the subcommittee is a simple extension of current law.

The Senate Energy Committee plans to act on legislation, but Chairman James A. McClure (R-Idaho) has not decided whether to press for a simple extension or an expanded bill.

The decisive debate over SPR probably will come during consideration of the budget resolution. The White House-backed Senate budget proposal calls for a three-year moratorium on placing more oil in the reserve. (*Background, CQ Weekly Report pp. 75, 504, 658*)

National Security Council
The White House

System # I

Package # 813.1

DOCLOG Jm AIO _____

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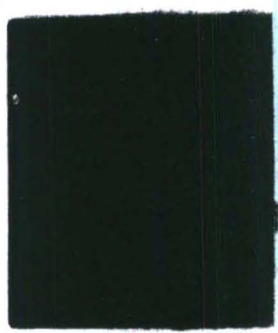
I = Information A = Action

cc: VP Regan Buchan

COMMENTS

We have to address this painful as it is.

- ① tech transfer -
- a) the Soviet targeting
- of new areas
- b) does current regime offer protection, right balance?
- c) NAS / Industry complaints re trade interference
- d) Congressional threat to act
- e) focus is not on West/East but on West/West (validate firms)
- f) prevent regime too strict and too broad



SI

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WITHDRAWAL SHEET AT THE FRONT OF THIS FOLDER.

HIGHLIGHTS OF THE EXPORT ADMINISTRATION
ACT, AS AMENDED, 1985

The EAA, as amended in 1985, tightens some national security controls. However, to the extent we make changes in our regulations, we have authority to permit other controls to be relaxed.

National Security Controls

o Import Sanction - The EAA provides the President with authority to prohibit imports from companies violating U.S. national security controls. He may also bar imports from companies violating COCOM (i.e., foreign) export controls if (1) negotiations with the pertinent government have been conducted; (2) the President gives COCOM partners 60-day notice of intent to impose sanctions; and (3) a majority of COCOM partners concur or abstain.

o Foreign Availability - The EAA requires that an exporter's assertion of foreign availability, if supported by reasonable evidence, be accepted in the absence of reliable evidence. The EAA also requires that the President actively pursue negotiations to eliminate foreign availability, and decontrol items within 6 months if foreign availability has not been eliminated, except that he may extend the period one year by certifying that negotiations are progressing and that decontrol would be detrimental to U.S. national security.

o Intra-COCOM Decontrol - Items at the lowest level of COCOM control, where only notification to other countries is required, must be decontrolled for export to other COCOM countries.

o Controlled Countries - Controlled countries are those set forth in Section 620(f) of the 1961 Foreign Assistance Act, but the President may add (or delete) countries if exports there would make a significant contribution to the military potential of an adversary and prove detrimental to U.S. national security. All Warsaw Pact countries are listed in 620(f), plus Vietnam, North Korea and Cuba (with which we have a complete embargo), as well as China and Yugoslavia.

o Foreign Embassies - The President has the authority to control transfers to embassies and affiliates of controlled countries.

Foreign Policy Controls

In general, the bill significantly restricts the impositions of foreign policy controls by requiring that stricter criteria be met, that a prior report be submitted to Congress, that specified agencies be consulted, that controls be enforceable, and that existing contracts not be interrupted except under certain circumstances;

o Contract Sanctity - Existing contracts or export licenses may not be interrupted unless and until the President certifies to Congress that a "breach of the peace" has occurred which poses a direct threat to U.S. strategic interests, and that curtailment of contracts would be instrumental in remedying this threat. The controls continue only so long as the direct threat persists. (Alternatively, the President may interrupt existing contracts if Congress passes a joint resolution of authorization).

o Criteria - The President may impose or extend controls only if he determines that the following criteria have been met:

- The controls are likely to achieve their intended purpose (which cannot be achieved in another way);
- The controls are compatible with U.S. policy toward the recipient nation;
- Reactions of other nations are not likely to render the controls ineffective;
- Economic costs to the U.S. do not exceed foreign policy benefits;
- The U.S. can enforce the controls effectively.

o Consultation and Reporting -- The President may not impose or extend controls until he has submitted a report to Congress which:

- Specifies the purpose of the controls;
- Presents his determinations and rationale with regard to the criteria listed above;
- Presents the results of or plans for consultations with industry and other countries;
- Lists alternative actions attempted or reasons for imposing export controls without attempting alternative means;
- Describe foreign source of the goods in question and U.S. efforts to secure foreign cooperation.

o Foreign Availability - After controls are imposed, the President must take "all feasible steps" to eliminate foreign availability. If, after six months, he has been unsuccessful and the Secretary of Commerce determines that goods in "sufficient quantity and comparable quality" are available that would render the control ineffective, the Secretary shall remove the control if he determines that such action is "appropriate." Exempted from this requirement are anti-terrorism controls,

crime control instruments, and controls imposed under international obligations.

o Agency Consultation - Before imposing foreign policy controls, the Secretary of Commerce must consult with the Secretaries of State, Defense, Agriculture, Treasury, and the USTR, as well as other agencies Commerce considers appropriate.

o Reimposition of Controls on South Africa - Prohibiting export of relatively innocuous items to the South African military and police as well as computers not used in apartheid enforcement to South African Government agencies. (Other anti-South African economic measures were deleted from the EAA, but has been superceded by new legislation.)

Other Provisions

o Agricultural Products - Control effectively made much more difficult.

o Expiration - Act would expire on September 30, 1989.

o Enforcement - Bill continues exclusive Commerce authority to impose civil penalties. Both Customs and Commerce are given authority to investigate export violations.

Frank E. Samuel Jr.

Ease Up on Export Controls

In some ways the cause of the crippling trade deficit is an inside job. To be sure, high tariffs, subsidies, dumping and other trade practices by foreign nations have all had their hand in it. But they couldn't have pulled it off without an American accomplice: our own export controls.

Although export controls on some products are necessary for national security, the President's Commission on Industrial Competitiveness estimated in 1985 that such controls cost the U.S. economy \$7.6 billion in lost sales every year. These missed export opportunities mean about 200,000 lost jobs. That's bad news with a trade deficit that may reach \$170 billion and an unemployment rate about 7 percent.

Export controls make sense if we are talking only about tanks or missiles. But many medical products—ultrasound fetal monitors, blood flow detectors, heart monitors, blood analyzers and CT (computerized tomography) scanners—are subject to the same controls. The rationale is that these devices—or their imbedded computer technology—could be diverted to military use.

Two facts contradict that, however. First, most of the same products are available from other countries anyway. So they can be easily obtained from our overseas competitors, regardless of U.S. controls. Second, most of these products are strictly for medical use. Many of the devices currently subject to these controls contain computers that can't be separated from the medical product or diverted to military use.

Nevertheless, U.S. manufacturers encounter a range of hurdles in the high-tech race for the world market. If you're a manufacturer of a product on the government's Commodity Control list—a list that is 120 single-spaced pages long—you have to apply for a license before you can export your product. Most of these applications

“Export controls only make the trade battle tougher and hasten the declining trade balance in high-tech products.”

win approval—eventually. But it takes the government an average of four to six months to process a license for export to a country that isn't one of our allies. For export to an allied country, the average waiting time is four weeks. By contrast, most Western nations have virtually no waiting period for export to another nation. And Japanese manufacturers often wait only one month for a license to export to a nonallied country.

This puts U.S. manufacturers at a clear disadvantage. For example, a manufacturer of CT scanners, an important tool in medical diagnostics, recently lost a prospective sale to China. The reason: a West German competitor promised immediate delivery, while U.S. export controls would have hung up the American firm as long as a year.

Another case in point involves medical lasers. These are lasers used in surgery and other medical procedures—not in Star Wars missile systems. But export controls have also delayed—and in some cases blocked—the overseas sales of these lasers by U.S. companies. Since the same products are manufactured in West Germany, England, China, the Soviet Union and Israel, this doesn't make much sense. But one thing is certain: U.S. companies are losing out to foreign competitors in this field.

in fact, foreign competitors often talk about these delays in pushing their products. Why order from an American company, they ask, when U.S. export controls mean delayed delivery?

Export controls like these hurt. High technology firms need global markets to achieve economies of scale and generate enough R&D funding to develop new products. They also need to build world-market share because foreign competitors are working aggressively in the U.S. market. But export controls only make the trade battle tougher and hasten the declining trade balance in high-tech products. The balance has shifted from a \$27 billion surplus in 1980 to a \$1.3 billion deficit for the first half of 1986. And in the medical device industry alone—a \$17-billion-a-year industry that employs 200,000 people—the billion-dollar trade surplus we enjoyed only three years ago has slipped to half of that in 1986.

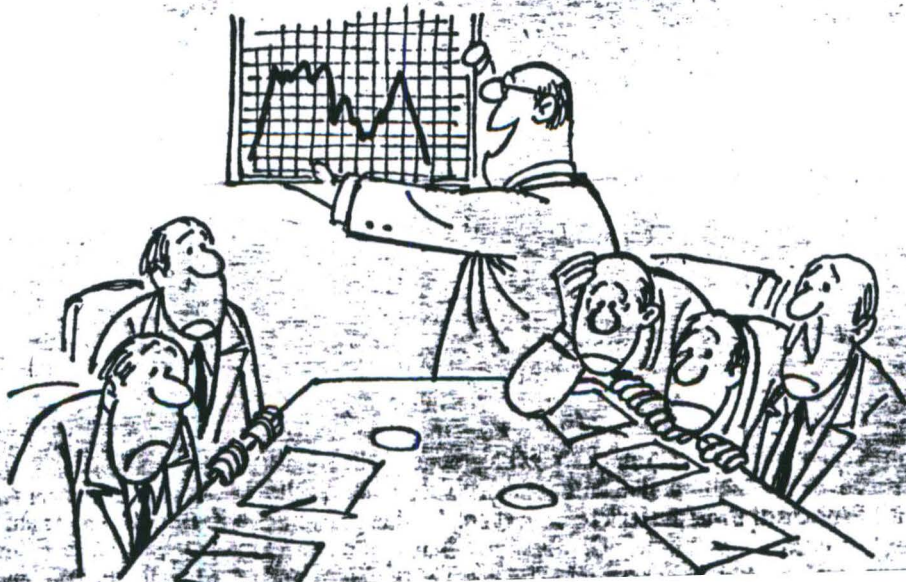
But easing export controls would not only promote technological vitality. It would allow a low government to focus more attention on those items that are truly significant for national security. According to Rep. Don Bonker (D-Wash.), who sponsored legislation to streamline export controls, “National security can best be assured through sharpening attention on critical goods and technologies while reducing unnecessary restraints on exports that are not militarily significant to adversary nations.”

The administration could ease the situation immediately by reinterpreting one provision of a major trade agreement with our 14 fellow members of the Coordinating Committee for Multilateral Export Controls, a group made up of Japan and most of our NATO allies. The COCOM agreement lists certain medical equipment in a category of products “likely to receive favorable consideration” for an export license. In practice most COCOM members—who are our major trade competitors as well as our allies—simply exempt those products from export licensing requirements. The United States should follow suit.

Furthermore, the United States should propose new language in the COCOM agreement that would expand the list of medical products that should be exempt from export controls.

A recent conference in Uruguay, which began a round of multilateral trade talks, could lead to a solution to some of these problems. But we should act now to remove a trade barrier of our own making by creating a more rational export control system.

The writer, a former assistant secretary in the Department of Health, Education and Welfare, is president of the Health Industry Manufacturers Association.



Thursday October 16 1986

Reagan curbs hit US electronics sales overseas

BY GUY DE JONQUIERES IN LONDON

US ELECTRONICS companies are losing overseas sales to Japanese and other foreign competitors because of the Reagan Administration's controls on technology exports, according to a survey by US officials in West Germany.

The survey found that US suppliers and their customers blamed the administrative complexity of the controls for increasing the cost of US technology exports, delaying deliveries and creating business uncertainty.

The controls govern official licensing of a wide variety of technologies and products exported from the US. They are intended to curb access by Communist countries to technology which could be put to military use.

Some Western European companies have expressed fears that the US might abuse the controls by giving US companies preference over their foreign competitors in awarding export licences.

However, the survey came across no cases of unfair discrimination. It suggests that the controls are hurt-

ing US companies more severely than Western European ones.

The survey, conducted this year by the commercial section of the US consulate in Frankfurt, covered 35 unnamed companies in the area, most in the electronics industry. They include both German-owned companies and local subsidiaries of US concerns.

Among the survey's main findings were:

- Several leading electronic equipment manufacturers said that they had begun to redesign their products to incorporate fewer US components since the controls had taken effect. Where suitable components were also freely available from non-US suppliers, the companies were increasingly substituting them for US parts.

- A switch away from US products is said to be widespread among distributors of electronic components, mostly for lower value items. One distributor estimated that, as a direct result of its customers' concern about the controls, 20 per cent of its

sales were now being supplied from Japanese instead of US sources.

- Complying with the controls was said by US companies to add about 25 per cent on average to their normal administrative overheads. The increase was relatively higher for smaller companies, which generally found the controls more burdensome than did big groups.

Many of the companies surveyed said they would continue to use US components in the immediate future if they were unable to obtain comparable products elsewhere or were tied to US suppliers by long-term contracts.

The survey found that the more sophisticated and valuable the US component, the more reluctant were customers to seek alternative suppliers.

However, the companies said that in the longer term, failure to reduce the administrative problems and uncertainties caused by the controls led them to seek out other sources of supply and put pressure on local suppliers to provide the components they needed.

Overkill in export control

EVER SINCE the US began cracking down some five years ago on illegal exports of militarily-useful technology to the Soviet bloc, businessmen and scientists on both sides of the Atlantic have complained that legitimate trade in high technology has been unnecessarily stifled. Should Europe's answer be to stop buying American?

A recent survey conducted by the commercial section of the US consulate in Frankfurt tends to confirm a widely-held belief that American export controls exaggerate the strategic threat and do more damage to US companies in Europe than to the Soviet military machine.

It reveals that some European-based electronics companies are searching for other sources of supply, notably Japan. Other companies in the past have reacted even more strongly, suggesting that the export controls are a surreptitious way of reinforcing US dominance in civilian as well as military technology. They have concluded that the stringency of American licensing is grounds for building a technically self-sufficient European electronics industry.

Cheapest sources

No convincing evidence has been produced to show that American export controls do in practice discriminate against Europeans, nor that honest companies have suffered more than irritating interference and (sometimes expensive) delays. Whatever justifications there may be for an independent third force in world technology trade, the administrative burden of buying American is certainly not one of them. Just because the Pentagon sees advanced technology as a strategic issue does not mean that European industry should head for the bunker.

Like it or not, companies are operating in a world market and are compelled to buy their components from the cheapest and most reliable sources: the cost of duplicating in Europe low-price Japanese chip manufacture or sophisticated US systems would be unbearably high and absurdly wasteful of resources. Their own commercial alliances outside Western Europe show that companies recognise the fact. Britain's

ICL has links with Fujitsu, and American manufacturers like Honeywell have taken similar refuge with the Japanese to meet the worldwide challenge of International Business Machines.

Yet so long as the Pentagon appears to be dictating commercial procedure to the Department of Commerce, the political cost of American export controls will be high. For example, the British and US governments have been arguing for over a year whether holders of American distribution licences in Britain should be forced to submit to inspection by US officials as required by American law. The extra-territorial application of that law has been a running sore in transatlantic commercial relations

Better balance

The huge embargo list of so called "dual use" items operated by the Nato allies and Japan is still seen by frustrated manufacturers as the product of American strategic obsessions rather than as a sensible restraint on high-technology trade with the Communist bloc. Efforts have been made to refine that list (Apple computers were taken off last year) so that yesterday's hardware is set free as tomorrow's technology is added.

No administrative system, however rigorous, will be proof against people who make money by leaking sensitive technology to the Soviet Union, just as no economic embargo is totally enforceable and no law will deter every potential traitor. It is a question of striking a better balance between the needs of honest traders and the opportunities for dishonest ones.

A still more discriminating approach by Nato's co-ordinating committee (CoCom) would go a long way to relieving the unnecessary burden of US controls on the free world's electronics manufacturers and traders. At the same time the Pentagon should trust allied governments to track down and punish those who smuggle technology to the East. Once American technology leaves US shores, it becomes a collective responsibility. The present system destroys business confidence and invites illogical responses that would only stifle innovation still further.

U.S. REEXPORT CONTROLS

U.S. suppliers of components incorporated into foreign manufactured systems are losing millions of dollars in sales each year because of U.S. reexport controls. As a recent survey of major West German electronics firms confirmed, some large European original equipment manufacturers (OEMs) have begun to re-design their products to incorporate fewer U.S. components since the U.S. controls took effect. When suitable components are available from non-U.S. suppliers, foreign OEMs are increasingly substituting them for U.S. parts.

Varian's Electron Device Group (EDG) is a leading producer of electronic devices and components used in commercial and military systems. Major customers for these products are the large OEMs located in COCOM countries of West Germany, France, Japan, Great Britain, and Italy. Varian estimates that EDG lost \$3 million in sales in 1985 as a direct result of U.S. controls on reexports of our components. We can only guess at the value of other potential sales where these controls indirectly resulted in the decision to buy from non-U.S. suppliers. In other situations we are not invited to bid simply because we are a U.S. supplier.

Some specific examples:

A Radar Manufacturer

No U.S. suppliers were asked to quote. Requests for quotation were issued to European and Japanese manufacturers only: Thomson-CSF, English Electric Valve, Nippon Electric Corporation, etc.

European Fighter Aircraft

Only U.K., West German, Italian, and Spanish microwave tubes were used.

During a recent European trip, a Varian senior executive encountered very strong negative opinions from several major radar and electronic warfare OEMs about the reliability of U.S. sources due to the erratic administration of U.S. export laws. Examples of their comments:

"U.S. export regulations are administrated inconsistently. We do not know from day to day what will be approved for export."

"The power fights between U.S. agencies would jeopardize our industry if we continued to buy from the U.S."

Some of the above situations involve devices on the Munitions List which are subject to the International Traffic in Arms Regulations (ITAR) as administered by the Department of State. However, these same negative sentiments apply to sales of commercial items as well. U.S. manufacturers are regarded as unreliable because of the uncertainties resulting from the uneven application of U.S. export controls. OEMs do not want to be dependent upon an unreliable supplier, so they purchase parts from non-U.S. suppliers. They also feel that the requirement for a U.S. reexport authorization for components incorporated into their systems is very distasteful.

British Aerospace
Public Limited Company
ARMY WEAPONS DIVISION
SUPPLY DEPARTMENT PB331

P.O. Box 19 Six Hills Way, Stevenage, Hertfordshire SG1 2DA
Telephone: Stevenage (0438) 312422 Telex: 825125/6
Telegrams: Britain Stevenage

EV. 3847

Registered Office:
100 Pall Mall
London SW1Y 5HR
No: 1470151

Any queries in connection with this order should be referred to:

J.E. WHITTLE
EXT. 2750

PURCHASE ORDER

This Order Number to be marked on all consignments and quoted on advice notes, invoices and correspondence	ORDER NUMBER	Sheet
	DATE	
Please execute this order subject to the following:		INSPECTION AUTHORITY

To: []
[]
[]
[]

ITEM	TOTAL QUANTITY	UM	PART NUMBER	FURTHER REFERENCE	CONTRACT NUMBER	DELIVERY QUANTITY	UM	DATE	UNIT PRICE	PER
			DESCRIPTION AND SPECIFICATIONS							
PLEASE SUPPLY, in accordance with the stated conditions:										
			THE CONDITIONS ON THE FACE AND THE GENERAL CONDITIONS ON THE REVERSE OF THIS ORDER.							
			THIS ORDER IS SUBJECT TO THE STANDARD CONDITIONS OF GOVERNMENT CONTRACT FOR STORES PURCHASES (FORM GC/STORES/1) AS SUPPLEMENTED BY PARA 3 OVERLEAF, AS FAR AS THESE CONDITIONS ARE APPLICABLE.							
			* * * * * RE-EXPORT OF ARTICLE(S) OF U.S. ORIGIN * * * * *							
			* THE ARTICLE(S) TO BE DELIVERED TO BAE, IN ACCORDANCE WITH THE REQUIREMENTS OF THIS ORDER MAY BE SUBSEQUENTLY EXPORTED AS PART OF, OR IN SUPPORT OF BAE, DESIGNED AND MANUFACTURED EQUIPMENT.							
			* YOU ARE REQUIRED AS A SPECIFIC TERM OF THIS ORDER TO CONFIRM THAT NO RESTRICTION EXISTS IN RESPECT OF U.S. DEPARTMENT OF COMMERCE EXPORT ADMINISTRATION REGULATIONS, UNLESS SPECIFICALLY ADVISED OTHERWISE AT THE TIME OF ACCEPTANCE OF THIS ORDER, BAE SHALL ASSUME THAT NO SUCH RESTRICTION EXISTS IN RESPECT OF THE RE-EXPORT OF ANY ARTICLE(S) OF U.S. ORIGIN OTHER THAN THOSE COVERED BY U.K. STATUTORY REQUIREMENTS.							
			* * * * *							

Goods to be delivered to:
BRITISH AEROSPACE
PUBLIC LIMITED COMPANY
ARMY WEAPONS DIVISION
GOODS RECEIVING BUILDING C
STEVENAGE, HERTS SG1 2DA
unless otherwise stated

Invoices and statement to be sent to:
BRITISH AEROSPACE
PUBLIC LIMITED COMPANY
ARMY WEAPONS DIVISION
ACCOUNTS DEPARTMENT
BOUGHT LEDGER P B 14
STEVENAGE, HERTS SG1 2DA

Carriage: unless otherwise stated, delivery charges will not be accepted by BAe
V.A.T.: the price quoted on this Purchase Order does not include Value Added Tax. Value Added Tax at the rate ruling on the date of supply must be shown separately on your invoice.
Terms of payment: net period account unless otherwise stated.

For BRITISH AEROSPACE
PUBLIC LIMITED COMPANY
ARMY WEAPONS DIVISION
STEVENAGE

F26476/003 11/84

SUPPLY DEPARTMENT PB331

Int. Trade (8049)
Panzansky

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partment of Commerce. Such information may include data received from other sources, including the Department of Defense and other appropriate governmental agencies. A detailed description of foreign availability sources, including any supporting information available to the applicant, will greatly assist in a timely and complete assessment.

(iii) Supporting information may include such items as foreign manufacturers' catalogs, brochures, operation or maintenance manuals, articles from reputable trade publications, photographs, depositions based on eyewitness accounts, and other credible data. Foreign availability assessment criteria outlined in § 391.3 of this part should be considered when assembling data in support of a FAS.

3. FASs that do not accompany a license application must be addressed to:

Office of Foreign Availability
Room SB701
U.S. Department of Commerce
14th & Pennsylvania Ave., NW
Washington, D.C. 20230

§ 391.3

CRITERIA FOR DETERMINATION

(a) *Non-U.S. Origin*

Only information pertaining to availability of non-U.S. origin commodities or technical data (as defined in § 391.1 of this part) will be considered in support of foreign availability claims. Notwithstanding the foregoing, the Department welcomes the submission at any time of specific information concerning the availability of U.S. origin commodities or technical data to proscribed destinations so that appropriate measures can be taken to make U.S. controls more effective.

(b) *Availability-in-Fact*

Only non-U.S. origin commodities or technical data that are available-in-fact to the proscribed countries will be considered in establishing foreign availability.

(c) *Standards of Comparison for Commodities*

All of the following tests must be met in determining the comparability and quantitative sufficiency of U.S. and non-U.S. origin commodities:

(1) Comparable Quality. U.S. and non-U.S. origin commodities must be substantially similar in (i) function; (ii) technological approach; (iii) performance thresholds; (iv) maintainability and service

life or any other attributes relevant to the purposes for which controls were placed on that commodity.

(2) Sufficient Quantity. For all submissions, comparable non-U.S. origin commodities must be available-in-fact to the proscribed countries in quantities sufficient to satisfy their needs so that U.S. exports would not make a significant contribution to the military potential of such countries.

(d) *Standards of Comparison for Technical Data*

Non-U.S. origin technical data submitted as evidence of foreign availability must meet the following standards of comparison as to comparable quality:

(1) Non-U.S. origin technical data is or can be used or adapted for use in ways and with results similar to those of its U.S. counterparts; and

(2) End products of the use of non-U.S. origin technical data are substantially similar to end products resulting from the use of its U.S. counterparts.

(e) *Evidence*

The Department of Commerce may consider evidence from any source in determining foreign availability. A claim of foreign availability for an item supported by reasonable evidence shall be accepted unless contradicted by reliable evidence available to the Department. To the extent consistent with the national security and foreign policy interests of the United States and with the protection of proprietary information, the Department of Commerce will inform the claimant of information contradicting the representations and supporting information where such evidence is the basis for a negative determination of foreign availability. The Department of Commerce will normally rely upon its own and other governmental sources for evidence bearing on the needs of proscribed countries and will determine whether the denial of a license or continuation of controls would be ineffective in achieving the national security purposes of the controls.

§ 391.4

PROCEDURES

(a) *Claims Associated with License Applications*

(1) Assessments of foreign availability for items included in a validated license application (or request for reexport authorization) will be initiated only when all the following conditions are met: (i) A license has been denied based only on national

aries, affiliates, joint venturers, and licensees that have long-term, contractually defined relations with the exporter, are located in countries other than controlled countries, and are approved by the Secretary. The Secretary shall grant the license to manufacturing, laboratory, or related operations on the basis of approval of the exporter's systems of control, including internal proprietary controls, applicable to the technology and related goods to be exported rather than approval of individual export transactions. The Secretary and the Commissioner of Customs, consistent with their authorities under section 12(a) of this Act, and with the assistance of all appropriate agencies, shall periodically, but not less frequently than annually, perform audits of licensing procedures under this subparagraph in order to assure the integrity and effectiveness of those procedures.

(C) A project license, authorizing exports of goods or technology for a specified activity.

(D) A service supply license, authorizing exports of spare or replacement parts for goods previously exported.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) **CONTROL LIST.**—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the "control list") stating license requirements (other than for general licenses) for exports of goods and technology under this Act.

(c) **FOREIGN AVAILABILITY.**—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in sufficient quantities and comparable in quality to those produced in the United States so as to render the controls ineffective in achieving their purpose, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States. In complying with the provisions of this subsection, the President shall give strong emphasis to bilateral or multilateral negotiations to eliminate foreign availability. The Secretary and the Secretary of Defense shall cooperate in gathering information relating to foreign availability, includ-

ing the establishment and maintenance of a jointly operated computer system.

(d) **RIGHT OF EXPORT.**—No authority or permission to export may be required under this Act, or under regulations issued under this Act, except to carry out the policies set forth in section 3 of this Act.

(e) **DELEGATION OF AUTHORITY.**—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

(f) **NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.**—The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Secretary shall meet regularly with representatives of a broad spectrum of enterprises, labor organizations, and citizens interested in or affected by export controls, in order to obtain their views on United States export control policy and the foreign availability of goods and technology.

NATIONAL SECURITY CONTROLS

SEC. 5. (a) **AUTHORITY.**—(1) In order to carry out the policy set forth in section 3(2) (A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection includes the authority to prohibit or curtail the transfer of goods or technology within the United States to embassies and affiliates of controlled countries. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act.

(2) Whenever the Secretary makes any revision with respect to any goods or technology, or with

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Meeting on ~~Export~~ Controls

9:00 a.m.

Friday, January 9

Situation Room

~~XV~~ (E)

To: Officer-in-charge
Appointments Center
Room 069, OEOE

Please admit the following appointments on Friday, January 9, 1987

for Stephen I. Danzansky of NSC
(NAME OF PERSON TO BE VISITED) (AGENCY)

DERWINSKI, Edward 9/15/26

DEAN, Robert 1/16/42

FREEDENBERG, Paul 2/17/43

LAMB, Denis 9/6/37

SMART, Bruce 2/7/23

Bryen, Stephen 6/30/42

Hunt, William 9/23/43

Turner, Robert 11/30/38

*Low P.
Gene McAllister (?)*

MEETING LOCATION

Building White House

Room No. Situation Room

Time of Meeting 9:00 a.m.

Requested by Patricia Battenfield

Room No. 365 Telephone 4985

Date of request January 8, 1987

Additions and/or changes made by telephone should be limited to three (3) names or less.

APPOINTMENTS CENTER: SIG/OEOE - 295-6046 or WHITE HOUSE - 452-6742

Agreement

1. President directs DOC, DOD, State as top priority.

o Reduce by additional 1/3 the average time to rule on and issue export licenses.

o Harmonize the U.S. list of controlled technologies and products and enforcement procedures with COCOM.

2. President directs Secretaries of Defense, Commerce, State to undertake interagency review of entire export control process and length of control list:

A. Terms of reference.

(1) competitiveness

(2) shorten list

(3) level playing field with allies re enforcement, length of list, and user rules

(4) ^{control} countries

(5) expedite process

(6) level of technology controlled

(7) foreign availability east and west

B. Report with recommendations, including specific proposal for administrative or legislative changes.

C. Report by March 1, 1987 (April 1)

3. Form

A. State of Union language

B. Accompanying fact sheet

C. TOR spelled out in competitiveness

practicing

Int. Trade (8049)
Danzansky

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COMPETITIVENESS: EXPORT CONTROLS

Continued technological leadership is critical to America, since it ensures our military security and provides us with the ongoing industrial strength on which that security is based. Therefore, the export of technology and products having potential military application must be regulated in a way that defends our present security fully, but at a minimum cost to the competitiveness and future strength of America's high technology companies.

This requires that we and our allies apply the same criteria to export licensing and that our COCOM enforcement programs be uniformly rigorous, so that firms can compete on the basis of performance rather than based on export control rigor or laxness. Without such "competition neutrality," our companies lose market share and the revenues needed to fund future Research and Development. We must also continue efforts to reduce processing times for export licenses. Such times have already been reduced by one-third over the past 12 months.

To accomplish this, I have directed the Departments of Commerce, Defense, and State as a top priority to:

- Reduce by an additional one-third the average time it takes to rule on and issue export licenses, and
- Harmonize our list of controlled technologies and products and our enforcement procedures with those of our COCOM allies.

calendar 85
30 days
86
20 days
87
14 days

These changes will eliminate the disparity between our practices and those of our allies which now place some American firms at a competitive disadvantage.