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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. e-mail note	from L. Pugliaresi to A. Platt re: agenda ahead (1p)	8/29/86	P-1
2. memo	from L. Pugliaresi thru S. Danzansky to J. Poindexter re: proposed changes in the Tech Transfer Steering Group (TTCG) (3pp)	10/2/86	P-1
3. memo	to Shultz, Weinberger, Baldridge re: ammendments to the Presidential Directive of Jan. 4, 1981 (2pp)	n.d.	P-1
4. review	coordinated DOD/DOC review of license applications for exports to free world destinations (3pp)	n.d.	P-1
5. talking points	re: changes to the Technology Transfer Steering Group (1p)	n.d.	P-1
6. letter	from J. Whitehead to J. Poindexter re: TTSG (2pp)	5/12/86	P-1
7. NSC profile	(1p)	11/6/86	P-1
8. letter	from Stephen Bryer to Al Keel re: Technology Transfer to USSR (2pp)	11/6/86	P-1

COLLECTION:
DANZANSKY, STEPHEN I.: Files
db

FILE FOLDER:
International Trade XV. (E) ~~[9 of 9]~~ (16 of 16) ~~Box 90976~~ RAC Box 8
12/5/94

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.

EXPORT ADMINISTRATION ACT OF 1979, AS AMENDED (EAA)

ISSUE

Should an export license be required in the case of sales to agencies, companies, or other entities under the direct control of COCOM governments or governments of non COCOM countries with whom the U.S. government has agreements acceptable to the U.S. government relating to the control of exports for national security purposes.

RECOMMENDATION

The Export Administration Act should be amended to provide that no export license need be obtained for the sale and shipment of DOC controlled products or technologies to agencies, companies, or other entities under the direct control of COCOM governments or governments of non COCOM countries with whom the U.S. government has agreement acceptable to the U.S. government relating to the control of exports for national security purposes.

DISCUSSION

Since the end user in the case of a government owned or controlled entity is, in fact, the government, the requirement of an export license for sale and shipment such an entity is a redundant exercise if the government in question already has in place a national security export control program acceptable to the U.S. government.

EXPORT ADMINISTRATION ACT OF 1979, AS AMENDED (EAA)

ISSUE

At present, the U.S. is apparently the only COCOM member requiring an export license for shipment of low level COCOM-controlled technology to free world destinations. Control of this technology -- which is commonly referred to as Administrative Exception Note or "AEN" level technology -- operates to the commercial disadvantage of U.S. companies. The issue is: is the U.S. requirement of an export license for shipment of AEN level goods and technology to free world destination necessary for national security purposes?

RECOMMENDATION

The Export Administration Act should be amended to eliminate the requirement of an Export license for AEN level goods and technologies shipped to free world destinations.

DISCUSSION

AEN level good and technologies are recognized as noncritical. In 1985, Congress eliminated the license requirement for AEN items shipped between the U.S. and other COCOM countries. Since COCOM countries may ship AEN level goods to bloc countries without prior COCOM approval and since, apparently, no other COCOM country requires a license for shipment of AEN level goods to free world destinations, there appears little gain to U.S. national security interests by maintaining the current U.S. license requirement. The benefit to U.S. trade interests and to our industrial base generally -- by eliminating this time and paper work burden on U.S. industries -- would appear to outweigh the apparently marginal benefit to national security.

EXPORT ADMINISTRATION ACT OF 1979, AS AMENDED (EAA)

ISSUE: West/West Foreign Availability

At present, there is no specific law or regulation detailing licensing requirements or presumptions in cases involving products or technologies found to be generally available in free world countries. One suggestion has been that such products or technologies be decontrolled with respect to the requirement of an export license prior to shipment. The issue is: what might be legislated to recognize the issue of "foreign availability" within the west without compromising DOC's national security responsibilities under the EAA?

RECOMMENDATION

The Export Administration Act should be amended to provide that when a product or technology comparable to a U.S. product or technology is available to a free world country or countries in commercially competitive quantities, the product or technology found to be so available would be presumed to qualify for a U.S. export license for shipment to such free world country or countries and such licenses would be deemed issued after 15 working days (with a 15 day extension possible) unless the license application is denied upon a showing of a risk of diversion to a bloc destination.

DISCUSSION

Although the recommendation is arguably only a codification of what can be implemented under present authority, it provides the correct statutory focus with respect to the issue of West/West foreign availability. Total decontrol upon a finding of foreign availability would ignore the fact that diversion to the bloc is by definition a West/East problem. Without the requirement for a license the U.S. Government would loose the ability to review the reliability of an end user in cases involving sophisticated technology which, while available in the West, we would not want diverted to the bloc. The provision for presumption of licensability in the West/West context, however, would underscore that what is at issue is only the reliability of the end user and not the more subjective and restrictive issues of general availability to the bloc in quantities sufficient to satisfy bloc military requirements which relate to total decontrol through the West/East foreign availability process. The 15 day processing deadline would reinforce and add teeth to the presumption.

EXPORT ADMINISTRATION ACT OF 1979, AS AMENDED (EAA)

ISSUE · WEST/EAST FOREIGN AVAILABILITY

At present, the process by which a product or technology is decontrolled by a finding of "Foreign Availability" is restricted by both the restrictive nature of the definition of foreign availability, taken in part from the law and in part from Trade Administration construction of the law, and by the lack of a definite structure, with appropriate time frames, within which the interested parties (DOD and Commerce) must operate. To the extent that findings of foreign availability are negated or delayed for either reason, if unjustified from a national security perspective, U.S. competitiveness is adversely affected. Further, because a portion of the present definition is taken from agency action alone, there is the continued perception that the agency is not acting in accordance with the intentions of Congress. The Issue is: can the "Foreign Availability" process be improved by legislation?

RECOMMENDATION

The Export Administration Act should be amended to include (1) a precise definition of the term "foreign availability", and (2) a precise structure with appropriate time frames for the decision making process.

DISCUSSION

The proposed legislation would, for definitional purposes, adopt the present Trade Administration definition. This would raise the level of discussion of restrictiveness vis-a-vis national security to the Congressional level for a definitive finding. At present the definition can be changed in many respects by administration action alone. The fact that the definition might be changed from year to year or administration to administration is not conducive to good long-term administration of the program.

With regard to structure, the legislation should (1) reaffirm the primacy of the Department of Commerce in the process, (2) provide for a thirty day review period for other interested agencies upon the issuance of a final determination by Commerce, and (3) assuming disagreement with the finding by another interested agency, provide for elevation of the issue to the President for final resolution of the issue within that thirty day period. Failure to elevate to the President within the time frame would forever foreclose challenge in any forum on the issue decided by the final determination.

seek legislation to permit Federal agencies to withhold information if release would be harmful.

-- The Administration will propose legislation to reduce the cost of defending patent rights by mandating an award of attorneys fees in frivolous suits or cases of willful infringement. The legislation will: (1) require challenges to patent validity to first go through an administrative proceeding before going to court and (2) limit actions that invalidate patents to those found to be commercially significant.

-- To better utilize the Patent Office as a research tool, the Office will begin to make its technology file of U.S. patents and English abstracts of Japanese and European patents available to businesses and universities through private contractors or regional research centers.

-- We will direct all Federal agencies to take the treatment of U.S. intellectual property into account when negotiating international agreements or providing bilateral economic assistance.

Legal and Regulatory Reform

America got where it is today through competition, and it is our ability to compete that will carry us into the 21st century. Smart kids, a well-trained and adaptable workforce, and a commitment to excellence in science and technology are important building blocks for an even more competitive America for generations to come.

We can't take that future for granted, however; we have to work for it. Outmoded rules and regulations, self-imposed disincentives, and failure to protect our most important assets can place us at a major disadvantage in an increasingly competitive world marketplace. A number of changes in government policy are absolutely critical to ensuring our future.

o We must stop draining off resources from our economy through product liability judgments that have gotten out of hand. We will introduce legislation to stop the costly insurance spiral which is sapping our economy, while still providing the necessary protections for consumer health and safety.

o Business in the 21st century will have to compete on a global scale; to do so, it cannot be bound by rules designed to fit the far different markets of the early 20th century. We must enact antitrust reforms that allow firms to develop new ways of organizing and operating which take account of the increasingly global nature of markets.

- Similarly, we cannot hamstring our cutting-edge industries' ability to compete through an export control policy that disadvantages our firms vis-a-vis foreign competitors. We will redouble our efforts at further institutional improvements in our export control system. 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 security interests.

- Finally, we need to take another hard look at unnecessary barriers we impose on ourselves through ineffective and costly regulation.

  -- To this end, Vice President Bush will revitalize his Task Force on Regulatory Reform to take a new look at the entire Federal regulatory structure from the competitiveness standpoint and to improve or eliminate unnecessary regulatory burdens.

  -- To improve competitiveness both within these industries and in the industries they serve, the Administration will continue to seek full deregulation of the pricing and transportation of natural gas and again ask Congress to complete deregulation of the trucking industry.

II. Shaping the International Environment

The best and brightest in American education, labor, technology and entrepreneurship do not operate in a vacuum. The litmus test of whether we will be truly competitive in the 21st century will be our ability to meet the competition head-on -- and win -- in the international marketplace.

It is here that government can play a key role by shaping an international environment in which American knowledge, talent and entrepreneurship can flourish.

- First, the fundamentals have to be right. In an increasingly interdependent world, currency flows, foreign government policies with respect to spending, saving and taxes, and trends in foreign investment all have a major impact on the competitiveness of American firms. We must shape these factors in ways that enhance, not inhibit, our competitiveness.

- This will require improved economic and monetary cooperation on a global scale. The Administration will build on our progress over the past year, including the new institutional arrangements we have developed, to guarantee a more stable and realistic value for the dollar, improved growth abroad, and an accompanying growth in markets for American firms.

COMPETITIVENESS: EXPORT CONTROLS

America's military security depends in good part on its leadership in proprietary new technologies, and its ability to prevent those from falling into the hands of prospective adversaries. For this purpose the Export Administration Act directs the Secretary of Commerce, in cooperation with the Department of Defense, to establish a licensing process to determine what sensitive products and technologies may be exported, to whom, and under what conditions, and which may not.

This licensing process has been criticized by American manufacturers as being too slow and uncertain. They point out that licensing delays and restrictions on products which are freely available elsewhere cost American companies business and markets and strengthens high-tech competitors abroad.

America's ability to maintain world leadership is damaged in the very areas so critical to our future.

In recent months considerable progress has been made in speeding up the licensing process by as much as 50%, but the list of controlled products remains long. Foreign availability is occasionally disregarded in an effort to be super safe. Over-control can be as harmful as under-control.

The Departments of Commerce and Defense should conduct an immediate interagency review of the administration of this program,

with the objective of streamlining the licensing process to provide prompt and consistent decisions for our exporters, respecting both our real security needs and the needs of our companies to compete effectively in world high technology markets. This new process should be in operation within 90 days.

SBSmart
12/8/86

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100th Congress
1st Session

DRAFT

1.30 Thursday

A BILL

To promote the mutually acceptable resolution of import trade disputes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Trade Enhancement Act of 1987".

SEC. 2. Congressional findings and declaration of purpose.

The Congress finds that--

(1) unlawful or unreasonable import practices or levels may have serious adverse effects on American industries, balances of trade with other countries, and the economy generally;

(2) there is a strong need to resolve import disputes expeditiously and in manners conducive to positive long-term relationships with U.S. trading partners;

(3) voluntary restraint agreements of limited duration entered into by the United States with foreign governments may in limited circumstances be the most

appropriate means to resolve import disputes, affording affected American industries a reasonable time in which to adjust to changing global markets;

(4) any voluntary restraint agreements entered into by the United States must be negotiated and implemented with adequate attention to the interests of affected industries and consumers alike; and

(5) neither federal nor state antitrust laws should interfere with a voluntary restraint agreement between the United States and a foreign government.

SEC. 3. Definitions.

For purposes of this Act--

(1) the term "antitrust laws" means the antitrust laws as defined in section 1 of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that said section 5 applies to unfair methods of competition;

(2) the term "voluntary restraint agreement" means a written agreement between the United States and a foreign government to restrain imports into the United States of specified products or services;

(3) the terms "producer" and "exporter" include any person controlling, controlled by, or under common control with such producer or exporter; and

(4) the term "Attorney General" means the Attorney General of the United States.

SEC. 4. Antitrust defense.

(a) No voluntary restraint agreement or the implementation of such an agreement by producers or exporters of the foreign products or services that are the subject of that agreement, certified pursuant to subsection (b), shall be deemed to violate any of the antitrust laws or any state law similar to the antitrust laws.

(b) The Attorney General may certify (i) the existence of a voluntary restraint agreement or (ii) that proposed conduct by producers or exporters of the foreign products or services that are the subject of such an agreement would implement that agreement. Such certification shall conclusively establish the defense that is provided by this Act to an action under any of the antitrust laws or any state law similar to the antitrust laws.

SEC. 5. No Judicial Review.

No action of the Attorney General under this Act, including without limitation any decision to certify or not to certify the existence of a voluntary restraint agreement or that proposed conduct would implement such an agreement pursuant to section 4(b), shall be subject to judicial review.

SEC. 6. Other defenses preserved.

Nothing in this Act shall preclude any other defense to any action under any of the antitrust laws or any state law similar to the antitrust laws.

SEC. 7. No authorization implied.

Nothing in this Act shall authorize any voluntary restraint agreement.

"FAIR TRADE ENHANCEMENT ACT OF 1987"

ANALYSIS

The first (unnumbered) section of the Act provides that it may be cited as the "Fair Trade Enhancement Act of 1987."

Section 2 of the Act contains Congressional findings and a declaration of purpose. The findings and purpose note the adverse effects of unlawful or unreasonable import practices or levels, the need to resolve import disputes expeditiously and in a manner conducive to positive long-term relationships with our trading partners, the appropriateness, in some circumstances, of limited voluntary restraint agreements ("VRAs") with foreign governments as resolutions of import disputes, the importance of negotiating and implementing any VRA with adequate attention to the interests of both affected industries and consumers, and that neither federal nor state antitrust laws should interfere with VRAs between the United States and foreign governments.

Section 3 defines key terms. The "antitrust laws" are defined as set forth in section 1 of the Clayton Act to include the Sherman Act, the Clayton Act, and the Wilson Tariff Act, as well as section 5 of the Federal Trade Commission Act to the extent that section 5 applies to unfair methods of

competition. A "voluntary restraint agreement" is defined as a written agreement between the United States and a foreign government to restrain imports into the United States of specified products or services. "Producers" and "exporters" as used in the Act are defined to include persons controlling, controlled by, or under common control with such producers or exporters. The term "Attorney General" is defined to mean the Attorney General of the United States.

Section 4 establishes the antitrust defense provided by the Act. Under section 4(a) no voluntary restraint agreement (as defined in section 3) or the "implementation" of such an agreement by producers or exporters of the foreign products or services that are the subject of such an agreement, certified pursuant to subsection (b), shall be deemed to violate any of the federal antitrust laws or any similar state law.

The antitrust defense provided by section 4(a) is subject to certain limitations. In order for the Act's defense to attach to a VRA itself, the Attorney General must certify the existence of the claimed agreement, i.e., that the government of the United States has entered into a written agreement with a foreign government to restrain imports into the United States of specified products or services. In order for the Act's defense to attach to proposed conduct that allegedly would

implement a VRA, the Attorney General must certify that the proposed conduct would in fact implement that VRA (thus in effect also certifying the VRA's existence). Moreover, the defense for implementing conduct may be claimed only by producers or exporters (or related persons) of the foreign products or services that are the subject of a VRA. Thus, the Act does not protect anticompetitive collaboration among domestic producers or collaboration between domestic and foreign producers that might be claimed to implement a VRA.

Section 4(b) authorizes the Attorney General to certify the existence of a VRA, or that proposed conduct would implement a VRA. If the Attorney General so certifies, the antitrust defense provided by the Act is conclusively established. Prior certification for conduct implementing a VRA provides certainty to those who intend to participate that they will not be subjected to antitrust liability. It also ensures that consumers will be protected against anticompetitive conduct that might be claimed to implement a VRA, but in fact goes much further than the import limits established by a VRA.

Section 4 explicitly provides an antitrust defense for VRAs and conduct that implements VRAs, not only to any action under the federal antitrust laws, but also to any action under any similar state law. Preemption of state law is warranted by

the significance of VRAs to trade between the United States and foreign nations.

Section 5 of the Act provides that no action of the Attorney General under the Act, including without limitation any decision to certify or not to certify the existence of a VRA or that proposed conduct would implement a VRA, shall be subject to judicial review. In deciding whether to certify an agreement or proposed conduct, the Attorney General will consider closely the claimed written VRA, and may consult with the government officials who negotiated the agreement to resolve any doubt as to its intended implementation. His decision should be final and unreviewable, in light of the fact that the terms and intended effect of a VRA are the product of negotiations between the governments of the United States and foreign nations, for which the Executive Branch is fully responsible. Judicial intervention in Executive Branch determinations is thus inappropriate in this context. Moreover, judicial review could significantly delay the implementation of VRAs, thus undercutting VRAs as an effective tool for resolving import disputes in those circumstances in which they are appropriate.

Section 6 preserves other defenses to challenges to VRAs or conduct alleged to implement VRAs that may be raised in

federal or state antitrust actions, including particularly the defense of foreign sovereign compulsion. The purpose of the Act is to provide additional assurance and certainty to foreign governments and foreign producers and exporters who participate in VRAs, not to limit antitrust defenses they may already have.

Section 7 makes clear that the Fair Trade Enhancement Act of 1987 itself provides no authority to enter into voluntary restraint agreements. Whether or how a VRA is authorized under other law will not, however, affect the antitrust defense provided by this Act.

FAIR TRADE ENHANCEMENT ACT OF 1987

On many occasions over the past years, the United States and its trading partners have chosen to resolve trade disputes by entering into "voluntary restraint agreements" (VRAs). Recently, for example, at the President's direction U.S. negotiators reached agreements with several of our trading partners to restrain exports of steel and of machine tools to this country. Although the United States could unilaterally have imposed quantitative limits or additional tariffs on imports of those products, VRAs permitted a balance among the interests of American producers and consumers, and those of our trading partners, that better served our national interests.

A number of our trading partners, however, have expressed reluctance to negotiate VRAs without assurance that their exporters would not be subject to liability under U.S. antitrust laws for implementing such an agreement. Some kinds of trade agreements -- for example, orderly marketing agreements entered into under the "escape clause" provisions of our trade laws, or suspension agreements in settlement of antidumping proceedings -- enjoy limited implied antitrust immunity because they are clearly contemplated by statute and necessary to make the statutory schemes work. By contrast, VRAs are not always negotiated pursuant to specific statutory authorization and, therefore, may not have the benefit of implied immunity from our antitrust laws.

Although U.S. antitrust laws basically are aimed at private anticompetitive conduct, and not at the sovereign activities of governments, the implementation of VRAs can involve a mix of private and governmental action that raises complex issues. To the extent that actions by foreign producers or exporters clearly are compelled by their governments pursuant to a VRA, they are immune from antitrust liability under the foreign sovereign compulsion doctrine. However, in some circumstances the rigid and pervasive foreign government controls that may be necessary to ensure the availability of a foreign sovereign compulsion defense may frustrate foreign firms' ability to respond to market forces to a greater extent than is required to achieve the VRA's objectives. A VRA that allowed more flexibility would not necessarily give rise to antitrust liability even under present law, since it would not necessarily require firms to enter into anticompetitive agreements with one another, or because U.S. courts might decline jurisdiction on comity grounds. Nevertheless, the paucity of judicial decisions in this area and the foreign government's interest in avoiding antitrust uncertainty may lead it to employ the most rigid compulsory measures.

The Fair Trade Enhancement Act of 1987 would eliminate this antitrust uncertainty as an obstacle to the negotiation of VRAs whose terms best serve our overall economic interests. It would do so by providing a clear antitrust exemption for VRAs and for foreign producers and exporters' actions to implement them. By conditioning the availability of the exemption on the Attorney

General's certification, the bill would assure that the exemption is available only to conduct implementing such governmentally negotiated agreements, and is not available as a shield for what is in reality private cartel activity.

XV (E)

Emergency Committee for American Trade 1211 Connecticut Ave Washington DC 20036 (202) 659-5147

ECAT'S EXPORT CONTROLS AGENDA

POLICY OBJECTIVES

ECAT members are of the view that their export control proposals presented below will further the international competitiveness of U.S. industry in Western markets through encouraging foreign purchases of U.S. products where foreign availability exists. Today, unilateral U.S. controls discourage such purchases because they do not reflect realistically the diffusion of advanced products throughout the West and the observable worldwide availability of advanced products from other Western sources. We further believe that the changes in the control system proposed by ECAT will not undermine our nation's security but will strengthen the industrial competitiveness from which it arises and from which it must continue to draw strength.

ECAT firms and other U.S. companies have been doing their part to prevent controlled goods from reaching proscribed destinations. Their efforts must be reinforced by changes in the export control system which place increased responsiblity on allied and other cooperating countries for helping to prevent controlled goods from reaching proscribed destinations.

PROPOSALS FOR ADMINISTRATIVE ACTION

1. Limit the extraterritorial application of U.S. export and re-export controls on shipments to non-proscribed countries:

   a) Adopt a meaningful, worldwide de minimus level for control of U.S. origin parts and components contained in foreign produced products below which re-export controls would not be required. Considering the positive industry responses, the Commerce Department should further develop and implement the proposed revision of controls on U.S. origin parts and components published in the July 7, 1986, Federal Register.

   b) Eliminate U.S. controls on internal (in-country) transfer in CoCom and other cooperating countries. The U.S. government should be encouraged to continue to work out on a government-to-government basis bilateral agreements under which foreign governments take responsibility for policing the internal movement of high-performance goods. The maintenance by the United States of unilateral controls on internal transfer invites further friction with our Common Market allies who have set for their goal the achievement of the free flow of goods within the Common Market by 1992.

2. Discourage unilateral foreign policy export controls in situations in which foreign availability exists since the imposition of such controls adversely affects the reliability of U.S. firms as a source of supply:

a) Encourage use of diplomatic alternatives to foreign policy export controls, such as those recommended by the General Accounting Office in its August 1986 "Assessment of Commerce Department's Foreign Policy Report to Congress."

b) Encourage that any imposition of foreign policy export controls be pursuant to the authorities of the Export Administration Act and adhere to the Export Administration Act requirements for foreign policy export controls.

c) Terminate foreign policy export controls on the export to the U.S.S.R. of oil and gas equipment and related technical data since the original rationale for the imposition of these controls no longer exists and their continuation is visible evidence of the unreliability of U.S. suppliers.

3. Establish all governmental organizations and government-controlled entities in CoCom and other cooperating countries as eligible to receive goods under the certified end-user license with no performance limits.

4. Encourage the Commerce Department to establish procedures for submission of proposals to update the technical parameters for items eligible for the distribution license and to review the appropriate portions of Supplement 1 of Part 373 of the Export Administration Regulations, deleting or modifying those commodity categories no longer appropriate for inclusion.

5. Expand the Green Zone for the People's Republic of China.

PROPOSALS FOR CONGRESSIONAL ACTION

1. Define foreign availability in terms of West-West trade. The foreign availability of all products in a product line should be presumed to exist below a demonstrated technology level, i.e., the highest provable level of foreign availability in the product line. Export of an item which is below the level of proven foreign availability to Western destinations and is not bilaterally or multilaterally controlled to the West would be permitted unless the government demonstrates that West-West foreign availability of that item does not exist.

2. Curb the extraterritorial application of U.S. export and re-export controls:

a) Eliminate such controls on lowest-level items, i.e., items eligible for Administration Exception Notification.

b) Eliminate intra-country controls within CoCom and cooperating countries.

3. Encourage Congressional oversight of the Administration's imposition of controls under the International Emergency Economic Powers Act in lieu of the Export Administration Act.

4. Discourage imposition of ineffective unilateral foreign policy controls by conforming the International Emergency Economic Powers Act to the EAA as regards the criteria for imposing foreign policy export controls.

12/16/86

F/S: XV. E

THE WHITE HOUSE

WASHINGTON

November 20, 1986

Dear Senator Nickles:

Thank you for your letter of September 22 to the President concerning foreign policy controls on the export of oil and gas equipment and technology to the Soviet Union.

The controls originally were imposed in response to a 1978 Soviet human rights crackdown which included, among other measures, the arrest of an American journalist and the jailing of Soviet dissidents Anatoly Shcharanskiy and Alexander Ginsburg. The controls were reaffirmed in the wake of the 1979 Soviet invasion of Afghanistan, the imposition of martial law in Poland in 1981, and the shooting down of KAL 007 in 1983.

The Administration shares your concern for the well-being of the American oil and gas equipment industry. However, we believe the controls contribute to our efforts to bring about positive changes in Soviet behavior, especially with respect to human rights practices.

Pursuant to Section 6 of the Export Administration Act, the Department of State and the Department of Commerce will soon undertake the annual review of all export control programs maintained for foreign policy purposes. As you know, during the review last January the licensing policy for the export of oil- and gas-related technology was modified. This was done in consideration of Soviet efforts in resolving divided family problem cases. The Departments of State and Commerce are aware of the points you have made in your letter to the President. They will certainly keep them in mind as they consider the question of further modifications in the controls during the upcoming policy review.

Sincerely,

Rodney B. McDaniel
Executive Secretary

The Honorable Don Nickles
United States Senate
Washington, D.C. 20510

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