

Economic **Perspectives**

Volume 2

An Electronic Journal of the U.S. Information Agency

Number 4

FOREIGN POLICY-RELATED U.S. TRADE LAW

Sanctions

A U.S. State Department Perspective

Export Controls

A U.S. Commerce Department Perspective

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No shortage of controversy surrounds U.S. use of export controls and trade sanctions, especially as the number of unilateral sanctions has surged in the 1990s. This issue of "Economic Perspectives" examines some of those issues.

Clinton administration officials argue that, despite the cost to U.S. business and the occasional differences with U.S. allies, these tools must be used to contend with international problems like terrorism, narcotics trafficking, weapons proliferation and regional instability.

U.S. use of sanctions and export controls has a long history, dating back to President Jefferson's embargoes aimed at Great Britain and France and even to the time of the American Revolution.

Many U.S. trade laws do not concern foreign policy, of course. They were the subject of the June 1997 issue of "Economic Perspectives."

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ECONOMIC PERSPECTIVES

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□ U.S. FOREIGN POLICY-RELATED TRADE SANCTIONS

An Interview with Stuart Eizenstat, Under Secretary of State for Economics, Business, and Agricultural Affairs

Economic sanctions should not be the first response to acts of irresponsible behavior by rogue states, but they do have value, says Stuart Eizenstat, U.S. under secretary of state for economics, business, and agricultural affairs.

Rising use of sanctions is a consequence of the end of the Cold War; U.S. use of unilateral sanctions results from unique leadership responsibilities, he says. According to Eizenstat, the United States tries to make sanctions multilateral when possible, and to impose unilateral sanctions in ways that maximize the pain for targeted countries and minimize the pain for U.S. business and U.S. allies.

Eizenstat criticizes challenges by the European Union (EU) in the World Trade Organization (WTO) of the Helms-Burton Act, which aims at foreign companies doing business in Cuba, and of a Massachusetts state law that aims at foreign companies doing business in Burma.

He describes Clinton administration objections to bills pending in Congress for eliminating the president's discretion in imposing sanctions and expresses interest in proposals for reforming the way Congress acts on sanctions.

This interview was conducted by USIA Economics Writer Bruce Odessey.

Question: What is the Clinton administration's general policy about using foreign policy-related economic sanctions?

Eizenstat: Economic sanctions are an important foreign policy tool intermediate between diplomacy and the use of force. They are used when other measures are insufficient and when their imposition is likely to change the behavior of the offending state. They should be used when traditional diplomatic and other efforts at persuasion have failed, not as a first order of action. They generally should be targeted only at rogue regimes that act contrary to international norms.

Sanctions are not a one-size-fits-all foreign policy tool. If the administration has the requisite flexibility in applying sanctions, it designs the sanctions regime to target effectively the vulnerability and offensive behavior of the sanctioned country while minimizing damage to U.S. interests.

Sanctions are intended to highlight misconduct by rogue regimes, to alter the behavior that threatens our national interests and the stability of the international community. Sanctions address misconduct in human rights, terrorism, narcotics, weapons of mass destruction, and other areas where such conduct is considered unacceptable by world standards.

In order to maximize the effectiveness of sanctions when we do use them, we prefer sanctions that have multilateral support and participation. Multilateral sanctions are more likely to be effective against a targeted country by showing unity of international purpose and by including a maximum number of business and commercial interests around the world. Also, multilateral sanctions minimize damage to U.S. competitiveness by distributing the burden across responsible countries.

At the same time we are prepared to use unilateral sanctions when we cannot get a multilateral sanctions regime together and when important national interests are at stake. These sanctions should be shaped in ways that are consistent with our international obligations and that reflect cost-benefit analysis. Presidents should be given flexibility in utilizing such unilateral sanctions, as Title III of the Helms-Burton Act does.

It's important for our friends and allies to recognize our feeling that trade doesn't occur in a vacuum. Prosperity also depends on a stable and secure world where nations respect common rules of behavior. Business as usual with rogue regimes can often strengthen their capacity to harm not only U.S. interests, but also the interests of our friends and allies as well.

The measures that we've adopted are designed to maximize pressure on rogue regimes and encourage behavior that respects common, basic principles and values that underlie the entire multilateral system.

Q: What are the reasons for more frequent U.S. use of sanctions in the 1990s?

Eizenstat: I believe that it has to do with the change in the international environment. With the end of the Cold War a whole host of other challenging issues has arisen. And with the United States as the preeminent, predominant world power, we have an obligation to lead on these new issues, which often get one directly into sanctions — issues like drug trafficking, lack of respect for basic human rights, terrorism, nuclear proliferation. These have always been important, but they tended to take a back seat to Cold War concerns. Now they're in the front seat.

And it is often rogue regimes that are most involved in these areas of international misconduct. Sanctions are a logical way of trying to deal with these particular situations although, again, they ought not to be our first order of business, and we should exhaust other diplomatic and political avenues before resorting to them.

Q: How do you respond to opposition by U.S. business and foreign allies to unilateral sanctions, as well as to critics who argue that sanctions usually fail to work?

Eizenstat: We recognize that certain types of sanctions are opposed both by our allies and our business interests. We always strive to use sanctions in ways that maximize pressure on the targeted regime while minimizing tensions with our allies and friends and doing the least damage possible to our business interests.

We recognize particularly that unilateral sanctions have a cost to U.S. economic interests. For example, abandoned exports mean lost exports and lost jobs, not just for the initial sales but often for years of after-sales service, particularly in a competitive or emerging market. Sanctions can also severely damage U.S. relations with the targeted country and disadvantage businesses in non-sanctioned sectors. U.S. components can get designed out of products, and U.S. companies can get frozen out of consortia.

Multilateral sanctions are the ones most likely to be effective in furthering our interests. At the same time,

short of a full multilateral embargo, the loss of a U.S. market or access to U.S. capital can inflict costs on a targeted country. A logical policy option, therefore, is to deny this access to a rogue state.

Now let's look at instances where multilateral sanctions have been generally effective. While they took time, multilateral sanctions against South Africa clearly were a factor in ending apartheid. They were clearly a factor in bringing Serbia to the negotiating table in Dayton. Sanctions have limited the damage Iraq and Libya could do to the peace-loving countries of the world.

For sure, unilateral sanctions face greater challenges to their effectiveness. But there are times when it's important for the United States to stress certain values for which we stand strongly, even though their immediate effectiveness may be attenuated. And we always try to balance the responsibilities we have to lead, to project U.S. values, to protect U.S. and world interests in areas like terrorism and drug trafficking and proliferation against what we know to be the costs both to relationships with our allies and to our business interests. This is a delicate balance. It's not an easy one.

Q: How does the administration respond to allies' complaints about extraterritorial provisions in the Helms-Burton and Iran-Libya acts?

Eizenstat: First let me say that the Helms-Burton Act deals only with foreign companies that are profiting from the use of confiscated U.S. property. By any elemental amount of due diligence they could determine the property was in fact confiscated because the State Department maintains a claims registry. So it's hard to see how the act is doing anything other than legitimately protecting the property rights of U.S. citizens.

World Trade Organization agreements do not address the issue of sanctions directly. We realize the concerns about these sanctions, and that's why we try to maximize the pressure on targeted regimes and minimize friction with our allies. We believe the actions we have taken are consistent with our international obligations, we are prepared to defend those actions, and we strongly believe that the European Union is incorrect in bringing what are essentially political disputes into a trade forum.

There has been no challenge to the Iran-Libya Sanctions Act. And the challenge to Helms-Burton was suspended after the April 11 agreement allowing the United States

and the EU to try to develop an international discipline that, if implemented and adhered to, could lead to an amendment to Helms-Burton Title IV.

Q: What is the state of play in your negotiations with the EU?

Eizenstat: We have worked very hard with the EU over several negotiating sessions to begin to develop international disciplines for deterring investment in confiscated property worldwide. I think that, while many obstacles remain, we have begun to make some progress. Both sides are negotiating in good faith.

At the same time, we've begun a genuine dialogue with Congress with the view of obtaining an amendment providing the president with waiver authority for Title IV if those disciplines are negotiated and if they're adhered to. We've had a very transparent process with Capitol Hill, with leading senators and congressmen, to inform them as to where we are.

And we think this is the way to resolve these issues — not by bringing to a trade panel what essentially are political disputes. That will only weaken the WTO; it will hold it up to unnecessary criticism and opprobrium in the Congress. The WTO is not the appropriate forum for resolving political differences, but rather for traditional trade disputes. No one really can contend that, for example, the Iran-Libya Sanctions Act or Helms-Burton were imposed as a trade protection device. Rather, they were imposed to advance foreign policy agendas with no intention of benefiting U.S. business at the expense of businesses elsewhere in the world.

Q: What's your view of proposed legislation for eliminating the president's six-month waiver authority in Title III of Helms-Burton?

Eizenstat: This would be a very serious mistake because we've been able to utilize the discretion in Title III to achieve the broadest multilateral coalition of interests in promoting democracy and human rights in Cuba that we've had in the 37 years that Castro's been in power.

The European Union's action in December on a common position conditioning any improvement in political and economic relations on specific changes in the human rights and democratic conduct of Cuba, the actions by our Latin friends in the Ibero-American summit, actions by European nongovernmental organizations and by

European business interests — all of these have been possible because of the discretion provided by Title III.

If you take that flexibility away, it will lead, I think, to a substantial impairment of the progress we've made and act directly contrary to the efforts that this Congress shares with the administration in obtaining cooperation from the broadest number of countries in isolating Castro and in pressing for changes in Cuba on human rights and democracy. It would be a very, very serious blow and a very serious mistake.

Q: Does the administration have a policy in general on sanctions measures imposed by U.S. state or local governments, or in particular on the Massachusetts law imposing sanctions on companies doing business with Burma?

Eizenstat: In general, it is best to allow the president and the secretary of state to conduct foreign policy. At the same time we recognize the reasons, the moral and human rights concerns, that led Massachusetts to act and led other states in other instances to act.

Here again we're disappointed that the European Union requested WTO dispute-settlement consultation when we were working in good faith to resolve the matter. It's another instance of using the WTO on a measure clearly not motivated by trade protectionism.

This is especially the case given the strong interest that the United States and the European Union share in improving the human rights situation in Burma. And, by the way, the European Union has taken steps — more so than I think many recognize. For example, they cut off economic aid to Burma. They don't participate in fora with Burma.

In light of this and in light of the unanimous resolution by the European Parliament calling on the European Commission to refrain from addressing the Massachusetts law in the context of a WTO panel process, it makes it all the more surprising that the EU would have acted in this way.

Since we're facing potential litigation, I'm not prepared to go into our view of the allegations on the law's effects, and it would be premature to discuss our legal strategy. But we'll continue to consult with officials from Massachusetts and the European Union to try to reach a mutually satisfactory resolution.

Q: What is your view of the bill sponsored by Representative Bill McCollum and passed by the House of Representatives for eliminating the president's discretion in imposing sanctions against State Department terrorist-list countries Syria and Sudan?

Eizenstat: I've talked with Congressman McCollum, who is sincerely interested in trying to deprive states on the terrorist list from perpetrating acts of terror, and we greatly respect his motives. We do have some concerns with the breadth of the legislation and with its impact on certain countries like Syria. We're trying to engage Syria in a peace process that would mitigate the very terrorist activities that the congressman is legitimately concerned about. We are trying to work out those differences with the sponsors on Capitol Hill. We're not there yet, but Congressman McCollum has assured me that he is willing to meet with us to discuss our concerns.

Q: What is your view of the Specter-Wolf bill for imposing unilateral sanctions against countries practicing religious discrimination?

Eizenstat: We're looking at this legislation. We feel very strongly, of course, about religious discrimination. The

president and others in the administration, including the secretary of state, have spoken up very strongly against it. But we want to make sure that we are using the most effective devices to protect religious freedom.

Q: What is your view of suggestions from a few members of Congress about reforming the process by which Congress imposes sanctions, including tests for likely effectiveness as well as cost-benefit analysis?

Eizenstat: We've begun to follow this and to talk to people in the business community and others about it. It reflects the concerns business has about the growing use of sanctions. We will look at this legislation, now still in formation, and at the concerns of the business community in the weeks and months ahead, making sure that our sanctions policy is effective and that we have the maximum discretion and flexibility to use sanctions when we need to do so for national security reasons, but in ways that minimize damage to our own business interests and to relations with our allies. Creating that correct balance is something we have an interest in achieving. □

□ U.S. DUAL-USE EXPORT CONTROLS

By William Reinsch, Under Secretary of Commerce for Export Administration

While export controls will evolve along with technology and circumstances, they must remain a part of international trade as the United States and friendly countries grapple with persistent problems like proliferation of weapons of mass destruction, regional instability, and terrorism, says William Reinsch, U.S. under secretary of commerce for export administration.

Reinsch also explains U.S. use of unilateral controls and re-export controls.

OVERVIEW

With the advent of the Cold War, the United States established a comprehensive licensing system to control the export of goods and technologies that could contribute to foreign military capabilities. That system, revised many times, remains in force today with four agencies having primary responsibilities for licensing exports: The Department of State licenses arms and munitions exports. The Department of the Treasury licenses certain exports to countries under U.S. unilateral embargo. The Department of Energy licenses certain nuclear-related exports. And the Department of Commerce licenses exports of dual-use goods and technologies (i.e., those with both military and civil uses).

Since the end of the Cold War, there have been extraordinary economic and political changes, particularly among the nations of Eastern Europe and the former Soviet Union, which were the primary targets of Western export controls and now participate with Western countries in controlling exports. Another change is the accelerating pace of global technology diffusion. Technology has always been difficult to contain; now the Internet, the high-performance computer, and the modem make its diffusion even easier. We in the United States fool ourselves if we think traditional export controls can stop this spread, and we underestimate the resistance we will encounter from other nations who will accuse us of trying to hold back their economic development and entry into the global information age.

Instead, the United States must do in reality what it has often said it wants to do in theory — focus its controls on those choke-point technologies without which a weapon or missile cannot be built and which can be controlled because of their special qualities, small number of producers, or limited alternative uses.

We also face the growing complexities of rogue states, like Iran, Iraq, Libya, and North Korea, still determined to acquire weapons of mass destruction and still destabilizing their regions through their support of terrorism. They have branched out from conventional military buildups and efforts to acquire a nuclear capability to chemical and biological weapons and the missile technology to deliver them. The ubiquity of some of those ingredients and technologies — which have common civilian uses — make the threat more dangerous and our export control task more difficult.

We have also learned through our Coordinating Committee for Multilateral Export Controls (COCOM) experience that multilateralism is critical to our success even as it remains uneven in practice. Dealing with new threats has demanded changes in the U.S. export-control system and changes in the way the Commerce Department's Bureau of Export Administration (BXA) operates. The Clinton administration has worked hard to grapple with those changes.

One of the administration's most significant accomplishments in export controls in the past four years has been ratification of the Chemical Weapons Convention (CWC). The CWC, which prohibits the development, production, acquisition, retention, transfer, and use of chemical weapons, is the most comprehensive arms control treaty of the post-World War II era, and we look forward to working with industry to ensure an effective compliance program. The BXA will have major responsibilities for obtaining company data declarations and for managing inspections of civilian facilities.

The Wassenaar Arrangement on export controls for dual-use technologies and conventional weapons has also entered into force. Unlike its predecessor regime

COCOM, Wassenaar lacks strong central authority and specific target countries and has many more participants, all making consensus difficult to achieve. Nevertheless, its inclusion of conventional weaponry is a major step forward, and I am confident that as its procedures and reporting requirements become routinized, discipline will grow.

One of the things the CWC and Wassenaar Arrangement taught us is that arms limitation agreements rarely arrive fully grown and complete. They are incremental. Establishing comprehensive adherence and compliance is an ongoing process that takes years of patience and confidence-building. The result is worth waiting for, and the time spent getting there is not wasted. Even works in progress produce successes along the way.

In addition, we have made several significant changes in reforming the licensing process to help U.S. companies compete in the world marketplace: computer liberalization; software, semiconductor, semiconductor manufacturing equipment, and oscilloscope licensing reform; a new system for reviewing commodity jurisdiction between the State and Commerce departments.

BACKGROUND

While the State Department issues a larger number of export licenses, the Commerce Department controls a broader range of commodities. The Commerce Department's Commerce Control List (CCL) comprises two types of items: those that the United States controls as part of its obligations to one of the multilateral control regimes (the Missile Technology Control Regime, the Australia Group for chemical and biological weapons, the Nuclear Suppliers Group, or the Wassenaar Arrangement) and those items it controls unilaterally, such as items controlled for human rights or anti-terrorism reasons.

Commerce's authority to regulate exports is based on an executive order in which the president, invoking the authorities given him by the International Economic Emergency Powers Act, directed Commerce to follow the provisions of the Export Administration Act of 1979 — often referred to as the EAA. This act, which established the legal framework for dual-use export controls, expired in 1994. Since that time, no EAA reauthorizing legislation has been enacted, despite rigorous efforts to do so. The difficulties in adopting a new EAA reflect the uncertainties in U.S. foreign policy generated by the end

of the Cold War, the rise of regional threats, the increased importance of nonproliferation, and, from a different perspective, economic competitiveness. While the debate on a new export control law continues, the president's executive order allows the United States to continue its regulation of dual-use exports to ensure that they are consistent with our national security and foreign policy.

The intent in placing an item on the CCL is to ensure that its export is not contrary to the national security, foreign policy, or nonproliferation goals of the United States. The mechanism for carrying this out is to require exporters to obtain a license from Commerce before they are allowed to ship. These license applications are reviewed by a number of agencies, which provide their recommendations as to whether the application should be approved or denied. The departments of Defense, State, and Energy and the Arms Control and Disarmament Agency are the principal agencies reviewing Commerce decisions. Licenses for exports of encryption products are also reviewed by the Department of Justice. Each agency brings its particular concerns and expertise to the process.

In many instances, for many items exported to certain countries, the United States has decided not to require a license. For example, many exports to U.S. allies like Japan, Australia, or the member countries of the North Atlantic Treaty Organization do not require prior approval. In other cases, less-advanced technologies may not require prior approval for export to responsible countries that are not close allies. Commerce reserves the right to remove these license exceptions when needed, and a special provision of the regulations (known as the Enhanced Proliferation Control Initiative) acts as a catch-all provision so that Commerce can require a license for the export of any item going to a proliferation project of concern. In addition, the United States has very stringent licensing requirements for seven countries that the secretary of state has identified as state sponsors of international terrorism — Iran, Iraq, Libya, North Korea, Cuba, Syria, and Sudan. U.S. licensing restrictions on exports to these countries go far beyond what is required by the multilateral regimes and are perhaps the broadest in the world.

For certain technologies, such as high-performance computers, the United States has developed a series of thresholds. Computers whose performance falls below these thresholds can be exported without a license. These thresholds are very high for Western Europe and Japan and extremely low for the seven terrorist countries. This

approach seeks to balance real security concerns with performance and to reduce the regulatory burden for exporters when they are shipping to safe end-users. While there has been considerable recent scrutiny of the United States' high-performance computer export policy, we believe that it continues to work very well.

In general, the Commerce licensing process follows the instructions found in another presidential executive order that laid out timelines and dispute resolution procedures for export licensing. This executive order created a new framework for export licensing in the United States. It established a hierarchy of committees, reaching from the working level, through assistant secretaries, and then to the Cabinet secretaries. Should a dispute continue beyond the last level, the president will ultimately determine whether a license is approved. In reality, almost no licenses are ever sent to Cabinet secretaries for decision, but agencies do disagree in their initial recommendations in perhaps 5 percent of all license applications sent to Commerce.

POLICY DECISIONS

In deciding whether or not to allow an export to proceed, Commerce considers a number of factors. For items controlled as part of the Wassenaar Arrangement, Commerce considers whether the export would make a significant contribution to the development of military capabilities detrimental to the national security of the United States. For items controlled for missile, nuclear, or chemical and biological weapons purposes, Commerce considers whether the export would make a "material contribution" to the proliferation of these weapons of mass destruction.

U.S. unilateral controls look at different issues and apply to additional items not controlled by the multilateral regimes. The United States looks at three sets of issues for these unilateral controls: regional stability, crime control, and anti-terrorism. In deciding whether to approve or deny exports of items controlled for regional stability purposes, the United States considers whether the export could contribute to a country's military capabilities in a way that would alter or destabilize the regional military balance contrary to U.S. national interests. Decisions on the export of items controlled for crime-control purposes are based on the U.S. interest in promoting human rights.

Anti-terrorism controls on exports or re-exports of U.S.-

controlled goods are more complicated. In many instances, an exporter is required to obtain the approval of the Department of the Treasury's Office of Foreign Asset Control before being allowed to engage in a financial transaction (such as being paid for the export). Iraq and Libya are the subject of UN embargoes, and Iran is the subject of a comprehensive U.S. unilateral embargo. U.S. exports to these countries are very small, except for certain humanitarian donations of food, medicine, and other articles to Cuba and North Korea. While the economic effects of these sanctions vary, they serve a useful purpose in expressing a strong objection to the behavior of these states in supporting international terrorism.

In some cases, and in particular for items controlled for anti-terrorism reasons, the United States reaches out and imposes "re-export" requirements. This means that when an item produced in the United States or produced with U.S. technology or components is being resold to one of the seven terrorist states, the exporter in a third country must obtain prior U.S. approval for the sale. This re-export requirement is also applied to a number of other sensitive or advanced technologies being re-exported to any destination. While a number of U.S. close trade and security partners have objected to these re-export controls as extraterritorial, the United States continues to consider them a vital part of our export-control system and necessary to advance U.S. national security and foreign policy objectives.

One particular area of interest is U.S. controls on encryption exports. Until 1997, the United States treated encryption as a munition. The growing commercial use of encryption and the spread of the Internet led to a recognition that this is an increasingly commercial technology rather than a military good. Commerce issued regulations on December 30, 1996, to implement the new U.S. encryption policy. Key elements of the regulation include the transfer of commercial encryption items from the State Department's U.S. Munitions List to the Commerce Control List, liberalized treatment for recoverable products, and a two-year transition period during which non-key recovery 56-bit DES or equivalent-strength encryption products may be approved for export based on industry commitments to build and market key recovery products and to support a key management infrastructure for electronic commerce. Encryption export controls continue to be one of the major areas of debate in export-control policy and the focus of several legislative efforts.

THE NEXT STEPS

One special part of U.S. export controls has been working with the nations of the former Soviet Union and with newly industrializing nations to develop the legal and regulatory framework needed for effective controls. This effort has been helpful in integrating these states into the larger international order.

The United States continues to refine its export controls in light of the changing international security situation and to work closely with its partners in the multilateral regimes to ensure common practices that contribute to

stability and peace without denying legitimate trade. Export controls continue to evolve as we reassess their value in contributing to nonproliferation and national security. Much will depend on the work in the multilateral regimes and on the development of new legislation. The element that is constant, however, is a common view in the United States and with our partners that export controls contribute to broad national and international interests and will continue to be a part of the practices of responsible states. □

FACTS AND FIGURES

□ OVERVIEW OF U.S. SANCTIONS LAWS RELATED TO FOREIGN POLICY

Following is a list of some of the laws in effect today that were passed by Congress authorizing U.S. economic sanctions for foreign policy reasons. They are presented in reverse chronological order; the number in parentheses is the date on which the law went into effect. The list excludes laws authorizing sanctions for retaliating against unfair trade barriers and for punishing violations of conservation measures.

FOREIGN OPERATIONS, EXPORT FINANCING AND RELATED PROGRAMS APPROPRIATIONS ACT, FISCAL YEAR 1997 (September 30, 1996)

Section 570 of this act prohibits new investment in Burma, pending progress on human rights, and requires U.S. representatives to international financial institutions to vote against spending for Burma.

Section 533 prohibits U.S. foreign aid to any country not complying with UN sanctions against Iraq and Serbia-Montenegro. It also authorizes the president to ban U.S. imports of goods from countries that have not enacted trade restrictions against Iraq and Serbia-Montenegro.

Section 553 puts conditions on release of foreign aid to the Palestine Liberation Organization.

Section 507 prohibits direct foreign aid to the seven countries on the State Department's list of countries that support terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

Section 523 prohibits, with specific exceptions, indirect foreign aid to Cuba, Iran, Iraq, Libya, North Korea, Syria, and China.

Section 567 restricts, with specific exceptions, military aid to Guatemala.

Section 569 restricts, with specific exceptions, foreign aid to Haiti.

Section 579 requires U.S. representatives to international financial institutions to oppose spending for any country where the people practice female genital mutilation and where the government has made no effort to educate the people against performing this practice.

IRAN AND LIBYA SANCTIONS ACT OF 1996 (August 5, 1996)

This law requires the president to impose sanctions against foreign companies that invest \$40 million in any one-year period for development of Iran's or Libya's petroleum resources (in August 1997, the threshold dropped to \$20 million for Iran). Sanctions are mandated also for any foreign company exporting to Libya goods such as aircraft and oil-refining equipment that are prohibited by UN resolutions. The sanctions include denial of Export-Import Bank credits, denial of licenses for controlled U.S. exports, prohibition of loans from U.S. financial institutions, and prohibition on bids for U.S. government procurement.

Senator Alfonse D'Amato, sponsor of the law, and other members of Congress criticized a Clinton administration decision in August not to oppose construction of a gas pipeline across Iran linking supplies in Turkmenistan with market demands in Turkey.

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (April 24, 1996)

This law prohibits U.S. nationals from supporting terrorist organizations and from engaging in financial transactions with governments named on the State Department's terrorism list: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

As five of those countries were already subject to comprehensive U.S. embargoes, the 1996 law has affected only Syria and Sudan, and only Syria has had significant trade with the United States. The Treasury Department's August 1996 regulations implementing the law prohibit

only those financial transactions with Syria and Sudan that would promote terrorist activities in the United States. Viewing the Clinton administration's actions as too limited and contrary to the 1996 law's congressional intent, members of the House of Representatives passed a bill in July 1997 by 377-33 that would essentially eliminate the administration's discretion in prohibiting transactions with the two countries. A provision in a Senate-passed foreign affairs spending bill would allow the president to waive sanctions under the law for national security reasons. Resolution of the different approaches could emerge from a House-Senate conference on the spending bill.

The law also prohibits certain U.S. foreign aid to any country that provides assistance or lethal military equipment to a terrorism-list country, requires U.S. representatives to international financial institutions to oppose spending for those countries, and prohibits exports of munitions to any country certified by the president as not cooperating on fighting terrorism.

CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT OF 1996 (HELMS-BURTON ACT) (March 12, 1996)

Title I codifies the comprehensive U.S. trade embargo against Cuba maintained since 1960 through regulations under the Foreign Assistance Act, the Trading With the Enemy Act, and other laws. It also requires U.S. representatives to international financial institutions to oppose Cuban membership in those institutions, and restricts U.S. payments to any such institution that approves assistance to Cuba over U.S. objections. It denies assistance to any former Soviet republic that assists or engages in non-market-based trade with the Cuban government. It subtracts from U.S. aid to Russia an amount of money equal to Russia's support for its intelligence facility at Lourdes, Cuba; it subtracts foreign aid to any country by the amount the country provides for Cuba's Juragua nuclear facility.

Title III gives U.S. nationals the right to bring suit in U.S. federal courts against foreign companies investing in or profiting from property confiscated from them by the Cuban government; it allows award of damages up to three times the value of the confiscated property. President Clinton has suspended this provision for six-month periods three times: in July 1996, January 1997, and July 1997. Newly introduced legislation repealing the

president's waiver authority is expected to draw wide support in the House of Representatives.

The European Union (EU) has challenged Title III in the World Trade Organization. In April the EU suspended its challenge as it attempts to negotiate with the United States by October 15 a binding international agreement on disciplines for expropriation of property. The Clinton administration pledged to seek from Congress changes in the law sought by the EU if the expropriation agreement is reached. Those negotiations continue.

Title IV requires the State Department to deny visas to any foreigner, as well as his or her spouse and children, who traffics in confiscated property in Cuba subject to a claim by a U.S. national. The department has so far barred from the United States executives of the Canadian mining company Sherritt International and of the Mexican telecommunications company Grupos Domos.

In July, the Italian telecommunications firm Stet reached a settlement with ITT for compensating the U.S. conglomerate for work on Cuba's telephone system, which ITT controlled before Castro's expropriation. The fact that Stet reached a settlement with the U.S. claimant removed it from consideration under Title IV.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1996 (February 10, 1996)

This law prohibits the Defense Department from giving aid to countries on the State Department's terrorism list.

FOREIGN RELATIONS AUTHORIZATION ACT FOR 1994 AND 1995, AS AMENDED (April 30, 1994)

This law prohibits the federal government from selling defense goods or services to any country that is "known" to request compliance with the Arab League secondary boycott of Israel. The president has applied this sanction to Iran, Iraq, Libya, Sudan, Syria, and Yemen. He has waived application of it to Algeria, Bahrain, Bangladesh, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

HICKENLOOPER AMENDMENT EXPANSION (April 30, 1994)

This provision prohibits U.S. foreign aid to countries that have expropriated property of a U.S. citizen without

compensation, and requires U.S. representatives to international financial institutions to oppose spending for those countries.

NUCLEAR PROLIFERATION PREVENTION ACT OF 1994 (April 30, 1994)

Sections 821 and 824 mandate sanctions against any person determined to have helped a non-nuclear-weapon state acquire nuclear material or devices. The sanctions prohibit any such person from bidding on U.S. federal government procurement or from dealing in federal bonds.

Section 825 prohibits the Export-Import Bank of the United States (Ex-Im Bank) from providing credits to any country that helps a non-nuclear-weapon state acquire nuclear devices or materials.

Section 530 prohibits U.S. foreign aid to non-nuclear-weapon states that violate International Atomic Energy Agency agreements or bilateral nuclear cooperation agreements.

The law also amends the Arms Export Control Act in a number of ways. It prohibits U.S. government sales of munitions and defense services to countries violating nuclear non-proliferation agreements. It prohibits foreign aid to any country that receives or delivers to another country nuclear enrichment materials or technology without proper safeguards or that attempts to export illegally from the United States anything used to make nuclear weapons. It also requires a number of sanctions against both sides in a transfer of nuclear devices, components, or designs from any country to a non-nuclear-weapon country.

IRAN-IRAQ ARMS NON-PROLIFERATION ACT OF 1992, AS AMENDED (October 23, 1992)

This law applies to Iran the same export license prohibitions applied to Iraq in the Iraq Sanctions Act of 1990. It also mandates sanctions against any foreign government that transfers technology or goods that help Iran or Iraq acquire advanced conventional weapons, or chemical, biological, or nuclear weapons. Those sanctions include suspension of foreign aid, ban on access to U.S. government procurement contracts, denial of export licenses, opposition to spending by international financial institutions, and suspension of military transfers and sales.

CUBAN DEMOCRACY ACT OF 1992 (October 23, 1992)

This law restates or modifies earlier legislation used in imposing a total trade embargo on Cuba, including the Foreign Assistance Act of 1961, the Trading With the Enemy Act, the International Emergency Economic Powers Act, and the Export Administration Act of 1979.

Section 1704(b) authorizes the president to apply sanctions against foreign countries providing Cuba grants or concessional sales, subsidizing exports to Cuba, or giving preferential treatment to imports from Cuba. The sanctions include ineligibility for foreign aid, for U.S. government sales of controlled munitions, and for debt reduction from the U.S. government.

Section 1706 extends the U.S. embargo against trade with Cuba to foreign subsidiaries of U.S. companies. It also restricts U.S. port privileges for ships that carry Cuban goods or engage in trade at Cuban ports.

Section 1705 allows, with some exceptions, donations of food to Cuban non-government organizations; exports of medicines and medical supplies and equipment; provision of telecommunications services and appropriate facilities; direct mail service between the United States and Cuba, and assistance for promoting non-violent democratic change in Cuba.

CHEMICAL AND BIOLOGICAL WEAPONS CONTROL AND WARFARE ELIMINATION ACT OF 1991 (December 4, 1991)

Sections 306 and 307 mandate sanctions against a country determined to have used chemical or biological weapons in violation of international law or against its own nationals. The sanctions, which may be waived by the president, are termination of foreign aid and foreign military financing, prohibition of certain U.S. controlled exports, and denial of Ex-Im Bank credit.

This law also amends the Arms Export Control Act and the Export Administration Act. Those sections mandate sanctions against foreigners who export technology or goods that help a terrorist country acquire chemical or biological weapons. The sanctions prohibit the foreigner from bidding on a U.S. government procurement contract and from exporting goods to the United States.

IRAQ SANCTIONS ACT OF 1990 (November 5, 1990)

On top of the comprehensive U.S. trade embargo imposed on Iraq in August 1990 after it invaded Kuwait, Congress passed this law denying to Iraq U.S. foreign aid and Ex-Im Bank credit and requiring U.S. opposition to spending for Iraq by international financial institutions.

The law also restricts U.S. exports of supercomputers to countries assisting Iraq's weapons capabilities.

The sanctions may be waived by the president if there is a change of leadership in Iraq.

NATIONAL DEFENSE AUTHORIZATION ACT FOR 1990-1991, AS AMENDED (November 5, 1990)

This law mandates sanctions against foreigners who export goods or technology controlled under the multilateral Missile Technology Control Regime (MTCR) to a non-MTCR country if that sale helps the country produce missiles. The sanction applies even if the export was not of U.S. origin or made from U.S.-origin technology.

Under a provision called the Helms amendment and aimed at China, any sanction imposed on a foreigner in a non-market economy must also be applied to the government there. The sanctions deny U.S. exports of munitions and prohibit participation in U.S. government procurement contracts. President Clinton imposed such sanctions against China and Pakistan in August 1993; he waived the sanctions against China in November 1994; the Pakistan sanctions expired after two years.

FOREIGN RELATIONS AUTHORIZATION ACT FOR 1990-91, AS AMENDED (February 16, 1990)

This law prohibits a number of U.S. benefits to China, including credit from the Overseas Private Investment Corporation (OPIC); foreign aid; exports of certain satellites; and licenses for export of certain munitions, crime control equipment, and nuclear material, technology, and equipment.

NARCOTICS CONTROL TRADE ACT (October 27, 1986) and **FOREIGN ASSISTANCE ACT, AS AMENDED** (September 4, 1961)

Under Sections 481 and 490 of the amended Foreign Assistance Act, no foreign aid or credit from Ex-Im Bank or OPIC can go to any drug-producing or drug transit country not certified by the president as cooperating with U.S. counter-narcotics efforts.

Section 802 of the Narcotics Control Trade Act requires the president to apply other sanctions to those uncertified countries, including denial of preferential tariffs under the Generalized System of Preferences (GSP), and to restrict air transportation between the United States and those countries.

Section 803 of the law prohibits the president from allocating any U.S. sugar import quota to any country where the government engages in illegal drug trade or fails to cooperate with U.S. counter-narcotics efforts.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT OF 1987 (October 18, 1986)

This law prohibits the U.S. Department of Defense from entering into contracts of \$100,000 or more with companies owned or controlled by the government of a State Department terrorism-list country.

INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1985 (August 8, 1985)

Section 505 authorizes the president to restrict or ban imports of goods and services from countries on the State Department terrorism list, and to prohibit exports of goods and technology to Libya.

EXPORT ADMINISTRATION ACT (EAA) OF 1979, AS AMENDED (September 29, 1979)

Section 11A mandates sanctions against foreigners who violate certain multilateral export controls. The sanctions ban imports and bids for U.S. government procurement contracts. Such sanctions were applied in 1988 to Toshiba Machine Company of Japan and Kongsberg Trading Company of Norway.

INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT (IEEPA) (October 28, 1977)

Under this law, the president has broad authority "to deal with an unusual and extraordinary threat, which has its source in whole or in part outside the United States, to

the national security, foreign policy, or economy of the United States.”

After the president declares a national emergency, he can restrict or prohibit virtually any foreign economic transaction: imports, exports, and transfers of money or credit.

Under IEEPA, the Treasury Department’s Office of Foreign Assets Control (OFAC) administers sanctions against Iran, Libya, Iraq, Serbia-Montenegro, and Angola.

Sanctions from 1979 and 1995 prohibit most U.S. transactions with Iran, including any brokering and financing related to trade in Iranian goods and services. They prohibit U.S. exports to Iran as well as re-exports to Iran from other countries of certain U.S.-origin goods and technology. They prohibit investments by U.S. persons in Iran as well as those by a foreign subsidiary of a U.S. company. Sanctions also block transactions of certain assets of the Iranian government and central bank within U.S. jurisdiction.

For Libya, 1986 sanctions block the assets in the United States of the Libyan government and of persons acting on its behalf. They prohibit essentially all U.S. exports to Libya and U.S. imports from Libya; they allow re-exports to Libya of U.S.-origin goods that are substantially transformed in a third country, except those used in Libya’s petroleum sector.

For Iraq, the 1990 sanctions implementing a United Nations resolution block financial assets in the United States of the Iraqi government. They prohibit most U.S. exports and re-exports of U.S. goods and technology to Iraq, U.S. imports of goods from Iraq, and financial transactions with the Iraqi government. Unilateral U.S. sanctions also prohibit exports of U.S. services to Iraq and block all property assets in the United States of the Iraqi government.

OFAC regulations of December 1996, implementing a later UN resolution, authorize U.S. companies to seek licenses to buy oil from Iraq; the revenue is intended for the purchase of humanitarian supplies for Iraqis.

Regulations of 1992 and 1994 block the assets of the governments of Serbia-Montenegro in the United States, as well as those of the Bosnian Serb-controlled areas of Bosnia and Herzegovina.

Regulations of September 1993 prohibit the sale or supply of arms and related material or petroleum and petroleum products to Angola, except through a few designated points of entry, and prohibit such sales to the National Union for the Total Independence of Angola (UNITA).

Also under IEEPA, regulations of January 1995 prohibit all transactions with persons listed by the State Department as having committed or posing a significant risk of committing acts of violence to disrupt the Middle East peace process.

ARMS EXPORT CONTROL ACT, AS AMENDED (October 22, 1968)

Section 40 prohibits exports of munitions to countries on the State Department terrorism list.

Section 38 restricts munitions exports under certain foreign policy objectives, including the possibility of escalating conflict and human rights violations. At present the State Department denies licenses for munitions exports to Afghanistan, Angola, Armenia, Azerbaijan, Belarus, Burma, China, the Democratic Republic of Congo, Haiti, Liberia, Rwanda, Serbia-Montenegro, Somalia, Tajikistan, and Vietnam.

UNITED NATIONS PARTICIPATION ACT OF 1945 (December 20, 1945)

Section 287(c) gives the president broad powers to impose economic sanctions, but only those mandated by the UN Security Council.

EXPORT-IMPORT BANK ACT, AS AMENDED (July 31, 1945)

This law prohibits Ex-Im Bank credits to “Marxist-Leninist” countries (China has received a “national interest” waiver from successive presidents since 1980) and to countries that have violated International Atomic Energy Agency safeguards or U.S. bilateral agreements regarding nuclear energy.

SMOOT-HAWLEY TARIFF ACT OF 1930 (June 17, 1930)

This law prohibits U.S. imports of goods mined, produced, or manufactured by convict labor, forced labor, or indentured labor, except for goods otherwise

unattainable to meet U.S. demand. At present the Treasury Department applies this law to certain products from China and Mexico.

TRADING WITH THE ENEMY ACT (TWEA)

(October 16, 1917)

Section 5 prohibits trade with any enemy or ally of an enemy during a war. From 1933 until 1977, the law was expanded to control both domestic and international financial transactions during peacetime as well as during war. When Congress passed IEEPA in 1977, it restricted somewhat the president's authority to control economic transactions during peacetime emergencies. At the same time, Congress revised the Trading With the Enemy Act, retaining the president's broader authority to control foreign transactions and property interests during war; it also continued trade embargoes and foreign assets controls then in effect, including one with North Korea. Although the total embargo on transactions with North Korea from 1950 was modified after an October 1994 U.S.-North Korean agreement to begin reducing barriers to trade and investment, bilateral trade remains mostly restricted. Treasury's OFAC generally prohibits U.S. imports from North Korea, but may issue specific licenses for imports of North Korean-origin Magnesite or magnesia. Commerce Department licenses are required for all U.S. exports to North Korea except for items like books, magazines, films and compact disks. The regulations prohibit buying and selling to North Korean nationals doing business anywhere in the world.

CURRENT ISSUES

Religious Persecution: A bill has been introduced in Congress that would impose unilateral U.S. economic sanctions against governments determined to be engaged in religious persecution involving imprisonment, forced resettlement and other forms of brutality. Neither the

House nor Senate has yet to act on the bill. Consideration by the House International Relations Committee was scheduled September 11 but postponed with no new date scheduled.

State and Local Sanctions: In July the EU challenged in the WTO a Massachusetts state law imposing sanctions against foreign companies doing business with Burma. According to the EU, the law violates WTO procurement rules. The Clinton administration is defending Massachusetts during a 60-day consultation period. If still dissatisfied after consultations, the EU can request a WTO panel to settle the dispute, which could ultimately lead to retaliatory EU trade sanctions. Such a case could set a precedent for handling of state or provincial rights and sovereignty under multilateral trade agreements.

Meanwhile, a Journal of Commerce report says the USA Engage coalition of more than 600 U.S. big businesses in planning to challenge sanctions imposed by state and municipal governments in federal court, arguing that they infringe on the federal government's constitutional powers for conducting foreign policy.

Sanctions Reform: Published reports say that Senator Richard Lugar and Representative Lee Hamilton are circulating a legislative proposal that would set conditions on Congress for passing additional unilateral sanctions laws. They have made no official comment yet. Hamilton has said publicly that sanctions should be subject to cost-benefit analysis concerning the likelihood they will achieve their objective and the costs they will impose on U.S. business and employment. □

SOURCES: President's Export Council; U.S. Treasury Department; U.S. House of Representatives Ways and Means Committee; National Association of Manufacturers.

□ OVERVIEW OF U.S. EXPORT CONTROL LAWS

The United States has employed export control laws continuously since 1940. The first controls aimed to avoid scarcity of critical commodities during World War II. Cold War-era controls aimed mostly at preventing diversion of advanced technology to the Soviet bloc and China. Later, more and more controls aimed at changing behavior of foreign countries.

Following is a list of U.S. export-control laws. The number in parentheses is the date on which the law went into effect.

EXPORT ADMINISTRATION ACT OF 1979 (EAA) (September 29, 1979)

The Export Administration Act (EAA) authorizes the president to control exports of U.S. goods and technology to all foreign destinations, as necessary for the purpose of national security, foreign policy, and short supply.

The Commerce Department administers the Export Administration Regulations (EAR), which implement the EAA, even though the EAA expired in August 1994. President Clinton has kept the EAA export controls in force since then by executive order under the International Emergency Economic Powers Act (IEEPA). Although this use of emergency powers has faced legal challenge from time to time, no challenge has succeeded yet.

Regulated by the Commerce Department's Bureau of Export Administration (BXA) are exports of "dual-use" advanced technology and materials having both military and civilian applications.

Congress has failed five times over seven years to reform the Cold War-era EAA because of persistent differences between defense and commercial interests. Now Congress will tackle EAA once more, starting with an October hearing in a House subcommittee.

Reflecting their Cold War origin, Commerce's export controls make distinctions between those imposed for national security and those for foreign policy reasons.

The objective of national security controls was to maintain a qualitative weapons advantage for the United States against the former Soviet bloc and China. The countries still subject to national security controls are the former republics of the Soviet Union, Albania, Bulgaria, China, Cuba, Estonia, Latvia, Lithuania, Mongolia, North Korea, Romania, and Vietnam.

The objective of the foreign policy controls was to promote change in behavior by other countries. Most of the controls aim at halting proliferation of weapons of mass destruction and reducing support for terrorism.

Two years ago President Clinton submitted a legislative proposal for EAA reform that would have departed from the distinction between national security and foreign policy controls. Instead, it would have made a basic distinction between multilateral and unilateral controls.

By executive order in 1990, President Bush vastly increased the scope of export controls aimed at halting proliferation of nuclear, chemical, and biological weapons and missiles. Bush's Enhanced Proliferation Control Initiative (EPCI) is a catch-all provision requiring an exporter to apply for a Commerce Department license on shipment of any goods that he or she knows would be used for proliferation of weapons of mass destruction, whether or not the items are controlled otherwise.

The Commerce Department regulations also control exports of commodities in short supply. The export of crude oil carried on the Trans-Alaska Pipeline is controlled, as is that of crude oil and western red cedar harvested from federal or state lands.

INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT (IEEPA) (October 28, 1977)

IEEPA gives the president broad authority in peacetime to regulate a comprehensive range of financial and commercial transactions with foreign countries, but only after declaring a national emergency.

Presidents Reagan, Bush, and Clinton have declared national emergencies to keep EAA controls in force when

the EAA lapsed in 1983, 1984, and since mid-1990, except for a few months in 1994.

Following are recent developments in a few current issues on export controls covered by IEEPA:

Encryption: A bill opposed by the Clinton administration for de-controlling exports of encryption software has been approved in two House committees, Judiciary and International Relations. Two other House committee with partial jurisdiction, National Security and Intelligence, approved amendments to the bill that essentially overturn its original intent, including some provisions that would actually increase domestic and export controls on encryption. A fifth committee, Commerce, has until September 26 to act on the bill. After that the House Rules Committee will have to sift through the different versions of the legislation to fashion a base bill and amendments for consideration by the full House. Action by the full House in the current session is considered unlikely.

A rival bill favored by the administration has been approved in the Senate Commerce Committee. It would relax export controls somewhat but would require adoption by industry of the administration's key recovery system giving law enforcement and intelligence agencies some means, under court order, to unscramble scrambled messages. No bill has yet been considered by the full House or Senate.

Meanwhile, a judge in a U.S. district court in San Francisco has ruled that export controls on encryption are unconstitutional. The judge ruled that the federal government decision barring a University of Illinois computer science professor from publishing a version of his encryption software over the Internet infringed his First Amendment right to freedom of speech. Another U.S. district court, one in Washington, D.C., had upheld the constitutionality of the same regulations in 1996. The Justice Department said the export controls will remain in place until the issue is resolved.

Computers: Although the House passed by 332-88 legislation reimposing stricter export controls on U.S. supercomputers sales to 50 countries, including China and Russia, the Senate decisively rejected similar legislation. Resolution of the opposite approaches could emerge from the House-Senate conference on the underlying Defense Department spending bill, which

needs to go to President Clinton for signature or veto by October 1.

Weapons Proliferation: The Commerce Department has published the names of weapons research institutes in India, Pakistan, Israel, Russia, and China, listing them as proliferation risks subject to strict U.S. export controls. India has protested the department's publication of the list. The department has said it will add more names to its "entity list."

ARMS EXPORT CONTROL ACT (AECA)

(October 22, 1968)

Direct commercial sales of U.S.-origin defense products, components, technologies, and services are controlled by the International Traffic in Arms Regulations (ITAR), which are administered by the State Department to implement the Arms Export Control Act. Those items requiring export licenses from the State Department's Office of Defense Trade Controls (DTC) appear in the U.S. Munitions List in the ITAR. The Defense Department's Defense Technology Security Administration (DTSA) also reviews many of the applications.

Any item on the Munitions List requires a license for export to all countries (with a few exceptions for exports to Canada). Under current regulations, licenses are denied for defense goods and services exports to Afghanistan, Armenia, Azerbaijan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Serbia-Montenegro, Syria, Tajikistan, and Vietnam. They are denied also to countries currently subject to U.S. arms embargoes: Burma, China, the Democratic Republic of Congo, Haiti, Liberia, Rwanda, Somalia, and Sudan.

ATOMIC ENERGY ACT (August 1, 1946)

The Nuclear Regulatory Commission (NRC) is responsible for licensing both exports and imports of nuclear facilities and materials under the Atomic Energy Act, as amended by the Nuclear Non-Proliferation Act of 1978 and the Energy Policy Act of 1992. It also has authority to license exports of nuclear components and other substances or items that are deemed significant for nuclear explosions.

NRC issues about 100 specific export licenses or license amendments a year. No specific license is required for

reactor equipment exports destined for use in Canada, Western Europe, Japan, South Korea, or Taiwan.

Other agencies also have some jurisdiction under the law. The Commerce Department controls nuclear-related dual-use items; the Energy Department controls nuclear

technology transfers; the State and Energy departments negotiate agreements for peaceful nuclear cooperation. □

SOURCES: U.S. Department of Commerce; U.S. Department of State; Nuclear Regulatory Commission; U.S. House of Representatives Ways and Means Committee; Practising Law Institute.

□ OVERVIEW OF NON-PROLIFERATION REGIMES

The United States participates in a number of informal groups of countries that cooperate to control the proliferation of conventional arms, missiles, and weapons of mass destruction — nuclear, chemical, and biological — through common export-control policies. None of the groups is based on a treaty. Among them are the following.

WASSENAAR ARRANGEMENT

In July 1996, after two years of negotiations, 33 countries approved guidelines and procedures for the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Wassenaar Arrangement members seek to coordinate export controls on conventional arms as well as “dual-use” advanced materials and technology — those that have both military and civilian applications.

The aim of the group is to prevent advanced arms and technology from going to pariah states like Iraq, Libya, and North Korea and to regions of instability like South Asia.

Clinton administration officials have characterized the Wassenaar Arrangement as a work in progress that should, over time, become as effective and reliable as any of the other non-proliferation regimes.

Named after the city in the Netherlands where the initial elements were negotiated, the Wassenaar Arrangement was negotiated after termination of the Coordinating Committee for Multilateral Export Controls (COCOM), the Cold War-era group that controlled exports of advanced technology to prevent their diversion to the Soviet bloc and China.

Unlike the present multilateral regimes, which give each country discretion in enforcing the agreed export controls, COCOM effectively restricted national discretion because one member could veto a sale proposed by another.

The current members of the Wassenaar Arrangement are

Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, South Korea, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States.

MISSILE TECHNOLOGY CONTROL REGIME

Formed in 1987, the Missile Technology Control Regime (MTCR) is a group of countries seeking, through coordinated export controls, to arrest the proliferation of ballistic missiles and other means for delivering weapons of mass destruction by air.

The MTCR aims to restrict the proliferation of missiles, unmanned air vehicles, and related technology for those systems capable of carrying a 500-kilogram payload at least 300 kilometers, as well as systems intended for delivery of weapons of mass destruction.

The current members are Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

AUSTRALIA GROUP

Formed in 1984 and chaired by Australia, the Australia Group is a group of countries that seek to curb the proliferation of chemical and biological weapons through coordinated export controls on: chemical weapons precursors; dual-use chemical and biological manufacturing facilities, equipment, and related technology; and biological agents including plant, animal, and human pathogens and toxins.

The current members are Argentina, Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, the European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal,

Romania, Slovakia, South Korea, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

NUCLEAR SUPPLIERS GROUP

The Nuclear Suppliers Group (NSG) is a group of Nuclear Non-Proliferation Treaty supplier countries that coordinates on applying International Atomic Energy Agency safeguards to prevent diversion of exported nuclear fuel to weapons use. In the 1990s the group also began coordinating control policies on nuclear-related enrichment, reprocessing, and heavy water production plants; dual-use goods like machine tools; technical information; and technical assistance.

The current members are Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, the Czech Republic, Denmark, the European Union, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, South Africa, South Korea, Spain, Sweden, Switzerland, Ukraine, the United Kingdom, and the United States. □

SOURCES: U.S. Department of State; U.S. Department of Commerce; Arms Control and Disarmament Agency.

❑ CHRONOLOGY OF FOREIGN POLICY-RELATED U.S. TRADE ACTIONS

1765 — When Great Britain imposed the Stamp Act on American colonies as a revenue measure, the colonies boycotted British goods; Britain repealed the Stamp Act the next year.

1767-1770 — When the British Parliament passed the Townshend Acts taxes to pay for the salaries of judges and officials, the colonies reacted by boycotting English goods. Parliament repealed the taxes except that on tea. The tea tax was the pretext for the “Boston Tea Party,” in which, on December 16, 1773, colonists dressed as Indians boarded three British ships and emptied chests of tea in Boston Harbor.

December 1774 — The First Continental Congress, a convention of delegates from the American colonies, outlawed exports of goods to Britain, establishing the first American export controls.

1807 — After three Americans were killed when a British warship attacked a U.S. frigate, U.S. President Thomas Jefferson closed down the U.S. market with the Embargo Act, which prohibited U.S. ships from leaving for foreign ports, foreign ships from carrying U.S. goods out of U.S. ports, and coastal shippers from diverting their cargoes to foreign ports.

1808 — The U.S. Congress passed subsequent embargo acts to close loopholes in the original legislation. The Enforcement Act (January 9, 1809) increased the punishments for evading the law, but failed in stopping French and British attacks on U.S. merchant vessels carrying goods to Europe.

1809 — Under pressure, Jefferson repealed the Embargo Act. Successive nonintercourse acts (1809, 1810) reopening American ports to ships of all nations except Britain and France failed to accomplish their goals.

1812 — On April 4, Congress passed another embargo act, which imposed a 90-day moratorium on all trade between the United States and Britain as relations between the two countries worsened. The act had little

effect before it was superseded June 18, 1812, by a U.S. declaration of war on Britain.

1861-1865 — During the Civil War between the northern and southern U.S. states, the North, with its far superior resources in seapower, railroads, production of iron, and munitions, imposed a blockade against the South that gradually tightened and then stopped the import of foreign goods to the southern states.

1898 — In the Spanish-American War, the United States maintained a naval blockade of Cuba while native insurgent forces harassed Spanish troops on the island. A concurrent blockade of the Philippines was intended to deny Spain revenues from that colony.

1914-1918 — During World War I, the United States imposed sanctions against Japanese shipping. U.S. steel was released to Japan only in exchange for immediate delivery of ships for the Atlantic war effort.

1938-1947 — Britain and the United States levied controls against Mexico to settle the expropriation of the oil industry by Mexican President Lázaro Cárdenas and against Japan (1940-41) to force its withdrawal from Southeast Asia. The embargo against Japan (effective October 1940) also included freezing assets (beginning July 1941).

1939-1945 — During World War II, the Alliance Powers placed economic sanctions first against Germany and then on Japan. The United States also placed sanctions against Argentina in an attempt to eliminate the Nazi influence there and destabilize the Peron government.

1948-1949 — The United States levied economic controls against the Netherlands to persuade that country to recognize the independence of its colony Indonesia.

1949-1970 — The United States imposed sanctions on China in retaliation for its takeover and subsequent assistance to North Korea, and its human rights violations.

1950-present — The United States leveled economic sanctions, which continue today, against North Korea, for its attack on South Korea. An arms agreement with North Korea in October 1994 allowed a partial lifting of the sanctions in exchange for a Korean commitment to freeze its nuclear capability.

1951-1953— With the United Kingdom, the United States imposed sanctions on Iran to press for reversal of Iran's nationalization of oil facilities and to destabilize the Mohammad Mussadiq government, which was overthrown in 1953.

1954-1994 — The United States, in a joint effort with South Vietnam, imposed sanctions on North Vietnam to impede its military effectiveness. President Clinton lifted the embargo against the unified Vietnam in 1994.

1956-1962 — The United States imposed sanctions on Laos to destabilize the leftist governments of both Prince Souvanna Phouma and General Phoumi and to prevent Communist takeover.

1960-present — The United States banned economic and military aid to the Cuban dictatorship of Fidel Castro, the first of numerous sanctions. In 1992, Congress passed the Cuban Democracy Act, which tightened the 1960 embargo by prohibiting foreign-based subsidiaries of U.S. companies from trading with Cuba. In 1996, Congress passed the Libertad Act (the "Helms-Burton Act"), which imposes U.S. sanctions on third-country companies investing in Cuba.

1965-1979 — In its first use of economic sanctions, the UN Security Council banned exports of oil and of other

commodities to southern Rhodesia (now Zimbabwe) to prevent white settlers from seizing control of the country.

1973-present — The United States imposed sanctions against Libya to protest dictator Muammar el-Qaddafi's support of terrorist groups in the Middle East. The sanctions were later strengthened to an embargo on all trade and a freeze on Libyan assets.

1979-present — The administration of U.S. President Jimmy Carter froze Iranian assets in the United States after revolutionary forces took Americans hostage in Teheran. Sanctions were expanded in 1980 into a broad trade embargo to curtail Iran's support of international terrorism. The trade embargo was lifted in 1981 when the hostages were released. The United States reinposed sanctions against Iran in 1995 and 1996.

1986-1991 — The Comprehensive Anti-Apartheid Act, passed over President Ronald Reagan's veto, banned new investments and bank loans to South Africa and prohibited bilateral trade in a number of goods. The United States worked with France, the United Kingdom, and Germany, all participants in sanctions against South Africa, in an action that was widely credited with bringing down apartheid. In July 1991, President George Bush lifted sanctions against the country after political reforms were introduced. □

Sources: Congressional Quarterly; Institute for International Economics.

INFORMATION RESOURCES

KEY FEDERAL GOVERNMENT CONTACTS AND INTERNET SITES

**U.S. Department of the Treasury
Office of Foreign Assets Control (OFAC)**

Treasury Building Annex
Pennsylvania Avenue and Madison Place, N.W.
Washington, D.C. 20220 U.S.A.
Telephone: (202) 622-2970
Internet: <http://www.ustreas.gov/treasury/services/fac/>

**The Federal Bulletin Board Online via the Government
Printing Office**

(brochures describing OFAC sanctions and embargo programs)
Internet: http://fedbbs.access.gpo.gov/lib/fac_bro.htm

**U.S. Department of Commerce
Bureau of Export Administration**

Herbert Clark Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230 U.S.A.
Telephone: (202) 482-0097
Internet: <http://www.bxa.doc.gov>

**U.S. Department of State
Office of Defense Trade Controls**

2201 C Street, N.W.
Washington, D.C. 20520 U.S.A.
Telephone: (202) 647-6968
Internet: <http://www.pmdtc.org>

**U.S. Department of State
Office of Economic Sanctions Policy**

2201 C Street, N.W.
Washington, D.C. 20520 U.S.A.
Telephone: (202) 647-5673
Internet: http://www.state.gov/www/issues/economic/us_trade.htm

**U.S. Department of Defense
Defense Technology Security Administration**

2600 Defense Pentagon
Washington, D.C. 20301-2600 U.S.A.
Telephone: (202) 697-5737
Internet: <http://www.dtsa.osd.mil/index.html>

U.S. Arms Control and Disarmament Agency

320 21st Street, N.W.
Washington, D.C. 20451 U.S.A.
Telephone: (202) 647-8677
Internet: <http://www.acda.gov/initial.html>

**Nuclear Regulatory Commission
Office of International Programs**

Washington, D.C. 20555 U.S.A.
Telephone: (301) 415-8200
Internet: <http://www.nrc.gov>

**U.S. Department of Energy
Office of Nonproliferation and National Security**

Washington, D.C. 20585-1401 U.S.A.
Telephone: (202) 586-4670
Internet: <http://www2.nn.doe.gov/nn/>

OTHER KEY INTERNET SITES

USA*Engage (coalition of 600 U.S. businesses)
<http://www.usaengage.org/>

Institute for International Economics
<http://www.iie.com/>

Overview and Compilation of U.S. Trade Statutes (1997)
<http://www.access.gpo.gov/congress/house/house19.html>

International Trade Law Monitor
http://ananse.irv.uit.no/trade_law

ADDITIONAL READINGS ON FOREIGN POLICY-RELATED TRADE LAWS

Amuzegar, Jahangir. "Adjusting to Sanctions." *Foreign Affairs*, Vol. 76, No. 3, May-June 1997.

Bergeijk, Peter A.G. van. *Economic Diplomacy, Trade and Commercial Policy: Positive and Negative Sanctions in a New World Order*. Brookfield, Vermont: Edward Elgar, 1994.

Cooper, Mary. "Economic Sanctions." *CQ Researcher*, Vol. 4, No. 40, October, 1994.

Doxey, Margaret P. *International Sanctions in Contemporary Perspective* (2nd edition). New York: St. Martin's Press, 1996.

Flamm, Kenneth. "Controlling the Uncontrollable: Reforming U.S. Export Controls on Computers." *Brookings Review*, Vol. 14, Winter 1996.

Lavin, Franklin L. "Asphyxiation or Oxygen? The Sanctions Dilemma." *Foreign Policy*, No. 104, Fall 1996.

Harrison, Glennon J. *The Economics of Export Controls*. The Library of Congress: Congressional Research Service, January 15, 1997.

Hufbauer, Gary C., Kimberly Ann Elliott, Tess Cyrus, and Elizabeth Winston. *U.S. Economic Sanctions: Their Impact on Trade, Jobs, and Wages* (working paper). Washington, D.C.: Institute for International Economics, 1997.

Hufbauer, Gary C., Jeffrey J. Schott, Kimberly Ann Elliott. *Economic Sanctions Reconsidered: History and Current Policy*. Washington, D.C.: Institute for International Economics, 1991.

Kaempfer, William H. and Anton D. Lowenberg. *International Economic Sanctions: A Public Choice Perspective (The Political Economy of Global Interdependence)*. Boulder, Colorado: Westview, 1992.

Kirschten, Dick. "Chicken Soup Diplomacy." *National Journal*, Vol. 29, No. 1, January 4, 1997.

Lande, Laurie. "Second Thoughts" (Iran-Libya sanctions act). *The International Economy*, Vol. 11, No. 3, May-June 1997.

Martin, Lisa L. *Coercive Cooperation: Explaining Multilateral Economic Sanctions*. Princeton, N.J.: Princeton University Press, 1992.

President's Export Council, Subcommittee on Export Administration. *Unilateral Economic Sanctions: A Review of Existing Sanctions and Their Impacts on U.S. Economic Interests With Recommendations for Policy and Process Improvement*. Washington D.C.: Department of Commerce, Bureau of Export Administration, June 1997.

Richardson, J. David. *Sizing Up U.S. Export Disincentives*. Washington, D.C.: Institute for International Economics, 1993. □