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To a Canadian company, or a company in any country contemplating the purchase of U.S. products for resale, or the purchase of U.S. components to incorporate into locally made goods, or the licensing of manufacturing technology, or an acquisition by a U.S. firm, the potential application of U.S. export controls is (or should be) a matter of concern. Each one of these associations creates the potential for the exercise of U.S. export control authority over what might be thought of as essentially foreign activity outside the legitimate reach of U.S. jurisdiction. Traditionally, the U.S. Government has taken a very broad view of the world trade activities that are within its regulatory grasp. This view is not shared by any other country, large or small. It is not shared by Canada, our closest neighbor. It is not shared by Western Europe or Latin America or the communist world. It is not compatible with international law. It is largely the heritage of the years after World War II when the United States was the unchallenged world economic power: when to receive U.S. goods or U.S. technology was a privilege. If there were conditions placed on receipt of goods, these were considered well worth the price. In short, this was not the competitive world of today.

It was in this atmosphere of the early Cold War that the term "person subject to the jurisdiction of the United States" came to be defined by a little-known official in the Treasury Department bureaucracy, Stanley Sommerfield. That term was the key to U.S. transaction embargoes applied first to the People's Republic of China and North Korea, and later to Cuba, Vietnam and Cambodia under the broad authority of section 5(b) of the Trading With the Enemy Act of 1917.[1] No "person subject to the authority of the United States" could have any dealings with these embargoed countries (with limited exceptions for Cuba), and "persons subject" included foreign companies owned or controlled, directly or indirectly, by U.S. persons.[2]

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1 50 U.S.C. app. § 5(b). In 1977 the Trading With the Enemy Act [hereinafter TWEA] was amended to limit its future application to wartime situations, but the controls then in force were grandfathered, subject to annual Presidential renewal. Act of Dec. 28, 1977, Pub. L. No. 95-223. New authority was conferred on the President to impose trade constraints under nonwartime emergency conditions by the International Emergency Economic Powers Act of 1976 [hereinafter IEEPA], 50 U.S.C. §§ 1701-06.

2 31 C.F.R. § 500.329 (applicable to North Korea, Vietnam, Cambodia and, formerly, the People's Republic of China); *cf.* 31 C.F.R. § 515.329 (applicable to Cuba). The Cuban embargo permits

Quite a different scheme emerged under the authority of the 1949 Export Control Act,[3] a successor to wartime measures, and the 1954 Battle Act.[4] Under these statutes the President, through the Secretaries of Commerce and State, could control all exports of products and technology from the United States. This authority has been construed in regulations to extend to reexports between foreign countries of U.S. origin goods and technology, to exports from foreign countries of products incorporating U.S. made parts or components, and to exports from foreign countries of products made abroad with U.S. origin technology.[5]

Putting these two situations together — the entity controls and the product and technology controls — very little was left to be regulated, and certainly the regulating did not stop at the U.S. borders. The scheme was extraterritorial in a very significant measure.

As we all know, the world economy of the 1950s bears little resemblance to that of the late 1980s. The United States is still a major player in international trade, but no longer the dominant force. In many sectors, U.S. technology is not at the very forefront. In almost every line of business there is effective foreign competition. In this new environment, overreaching export controls can put U.S. suppliers of goods and technologies, and foreign parties that use these goods and technologies, at a significant competitive disadvantage.

Given this new environment, given the severe U.S. trade imbalance, and mounting foreign debt, and given the recent reduction in east-west tensions, one might have expected the United States to repeal or repudiate at least some of the more extreme extraterritorial features of U.S. export controls. That has not happened in any dramatic or readily demonstratable development. But in a quiet, but significant sense, something approaching that result has taken place.

I. FREE-WORLD TRADE

Let me start with what we loosely call free-world trade — shipments of goods or services, wherever originating, that are destined for non-

some trade with that country by third-country subsidiaries of U.S. firms. *See infra* text accompanying notes 26-27.

3 Act of Feb. 28, 1949, ch. 11, 63 Stat. 7 (codified as amended in 50 U.S.C. app. §§ 2021-32 (1964) (expired 1969)). This statute was succeeded by the Export Administration Act of 1969, Pub. L. No. 91-184 (codified as amended in 50 U.S.C. app. §§ 2401-13 (1976) (expired 1979)) and the Export Administration Act of 1979 [hereinafter EAA], Pub. L. No. 69-72 (codified as amended in 50 U.S.C. app. §§ 2401-20 (1987)). The EAA expired twice in the 1983-85 period. During these periods the President invoked IEEPA to maintain the regulatory export control regime. *See* Exec. Order No. 12,441, 48 Fed. Reg. 48,215 (1983); Exec. Order No. 12,470, 49 Fed. Reg. 13,099 (1984).

4 Mutual Security Act of 1954, 22 U.S.C. § 1934 (1975). This statute has been succeeded by provisions of the Arms Export Control Act of 1976, [hereinafter AECA] *as amended*, 22 U.S.C. §§ 2778-79 (1987).

5 Export Administration Regulations [hereinafter EAR], 15 C.F.R. pt. 374, and §§ 376.12 and 379.8(a)(3); International Traffic in Arms Regulations [hereinafter ITAR], 22 U.S.C. §§ 123.9, 124.10.

communist countries. This, of course, is the dominant portion of international trade. The United States does not exercise control over commercial shipments within the free world by reason of the fact that one of the parties is an entity owned or controlled by U.S. interests[6] or by reason of the fact that the product involved was made with U.S. technology.[7] Similarly, the United States does not exercise control over free world shipments of foreign goods that contain U.S. origin parts or components, unless the U.S. content is significant, both in character and in value, and the foreign end-product is also in a sensitive category.[8]

More extensive control is exercised over exports of goods and technology originating in the United States. Still, these "export" and "re-export" controls require transactional licensing for only a small sector of U.S. products and technologies moving in free world commerce, mostly those perceived to present a diversion risk with military, nuclear or national security implications. A variety of general licenses and authorities buried in the regulations avoids the need for specific authorizations for all but a small fraction of free world trade potentially subject to regulation.[9] Canada is given special status. So far as imports for Canadian consumption are concerned, there are practically no licensing requirement.[10]

I do not want to give the impression that U.S. controls have altogether ceased to be a problem in free world trade. We still maintain

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6 Controls under § 5(b) of TWEA apply to dealings by U.S.-controlled foreign firms with North Korea, Cambodia, Vietnam and Cuba. Although authority to prohibit or regulate dealings by any "person subject to the jurisdiction of the United States" was carried over from the TWEA to IEEPA, that authority was not used to control exports by foreign subsidiaries of U.S. firms when controls were placed on dealings with Iran (1980), Nicaragua (1985), or Libya (1986). *See* 31 C.F.R. pts. 535, 540 and 545. In 1977 the Export Administration Act of 1969 was amended to permit regulation of international shipments by "any person subject to the jurisdiction of the United States." This provision was retained in the EAA and was invoked when controls were imposed in 1982 to bar foreign subsidiaries of U.S. firms from providing equipment to construct a gas pipeline from Siberia to Western Europe. These controls were abandoned after a few months in the face of widespread opposition. *See* Ellicott, *Extraterritorial Trade Controls—Law, Policy and Business*, SW LEGAL FOUND. 1 (1983). Section 385.4(a)(13) of the EAR, implementing § 321 of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, a provision barring exports of petroleum and petroleum products to South Africa by "any person subject to the jurisdiction of the United States," construes that term not to include foreign subsidiaries of U.S. firms. The 1980 Moscow Olympic boycott regulation was similarly construed. 15 C.F.R. § 385.2(d)(1982). Apart from these few instances, the EAR have not invoked the statutory authority to bar exports by persons subject to the jurisdiction of the United States.

7 *See* EAR §§ 379.4(f), 379.8(a)(3). The countries from which certain categories of foreign-sourced direct products of U.S. origin technology are restricted are those with communist governments (except Yugoslavia), plus Libya and Cuba.

8 *See* EAR § 376.12, *as amended* effective Mar. 23, 1987. No control is exercised under this provision (except for "supercomputers") if either the end-product or the U.S. origin content is eligible for General License G-DEST or G-COM export to the destination country, or if the U.S. content satisfies a *de minimis* percentage/value test.

9 *See* EAR pt. 371, 374.2.

10 *See* EAR §§ 370.3(a)(1), 385.6, 379.5(a); ITAR § 126.5.

licensing requirements for lists of products and technologies we consider too sensitive to entrust even to our COCOM allies that have joined together in the interest of mutual security to keep these out of the hands of most communist nations.[11] Ideally we should trade freely among ourselves. In fact, the House of Representatives proposed to legislate that result last summer, shortly before the Toshiba scandal. The Senate would not agree and the Conference agreement in April of 1988, which is reflected in the amendments to the EAR passed as part of the Omnibus Trade Act in August 1988, largely preserves the status quo.[12] Fortunately, as I have said, the U.S. licensing requirements for free world trade are quite limited, and the licensing process is fast and largely predictable.

But there is a limited degree of competitive impact. In large part that impact is a residue of some unfortunate experiences of the past (to which I shall return) and a mistrust rooted in part in the belief that the United States cannot be relied upon to look to its own long-term interests in international trade matters. We are perceived as vulnerable to proposals that satisfy short-term, narrowly focused political pressures that overlook or put aside the wider interests of the international marketplace and call for sweeping U.S. trade sanctions against, for example, South Africa, Libya, Nicaragua or Panama. So long as such unilateral measures are possible and may affect third-country trade, U.S. suppliers of goods and technology, and those who use or depend upon them, will be at an economic disadvantage, wholly apart from the economic price we may have to pay to protect our national security.[13]

II. EAST-WEST TRADE

From the beginning, national security concerns have been the principal driving force behind U.S. export controls. These concerns have been focused predominantly on the Soviet Union and its Warsaw Pact allies. These, together with a few other communist countries (not includ-

[11] Products on the Commodity Control List (EAR § 399.1 Supp. No. 1) above the level eligible for General License G-COM (EAR § 371.8) required validated export licenses for shipment to COCOM member countries.

[12] *See* Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418 [hereinafter *Trade Act*]; H.R. REP. No. 576, 100th Cong., 2d Sess. 807-38 (1988).

[13] Subsequent to the delivery of these remarks the President invoked IEEPA to prohibit certain transactions with respect to Panama. Exec. Order No. 12,635, 53 Fed. Reg. 12,123 (1988). Section 2(b) of this order prohibited payments or other financial transfers to the Noriega regime in Panama by Panamanian corporations owned or controlled by U.S. firms, but did not prohibit dealings with Panama by third-country corporations owned or controlled by U.S. firms. *Cf.* 31 C.F.R. §§ 530.201 and 530.404 (1979) (repealed 1979) (defining "person subject to the jurisdiction of the United States" in the context of the 1968-79 embargo of Rhodesia to include Rhodesians, but not third-country subsidiaries of U.S. firms). On May 20, 1986, the House of Representatives passed a bill to amend the Anti-Apartheid Act of 1986 to, among other things, prohibit exports to South Africa by any person subject to the jurisdiction of the United States, or of goods or technology that are subject to the jurisdiction of the United States. Both terms are broadly defined in the bill to give it maximum extraterritorial application. H.R. 1580, 100th Cong., 2d Sess., 134 CONG. REC. 6958-59 (1988).

ing Yugoslavia) we call "restricted" or "controlled" countries. In this regard the United States shares its control scheme with Canada and our other allies in NATO (except Iceland) and with Japan. These countries work together through the informal Coordinating Committee, or "COCOM," headquartered in Paris. The products and technologies to be controlled are negotiated within the COCOM framework, but administration and enforcement are left to each member country.

There has long been a belief in the United States that administration and enforcement have not been even-handed within COCOM. More specifically, there have been assertions that interpretations of what requires a license varies from country to country, that licenses are more readily obtainable in some countries than others, and that effective enforcement of controls is lacking in some countries (not Canada). The general impression is that the United States is the leader in all aspects of strict observance, with Japan and some European countries at the opposite end of the spectrum.

The Toshiba scandal that broke last summer seemed to confirm these long-held beliefs. Computerized machinery capable of the manufacture of silent submarine propellers leaked into the Soviet Union from companies in Japan and Norway, clear breaches of the COCOM rules. This quickly became, and remains, a political issue in the United States. An effort began in Congress to impose sanctions on Toshiba in Japan, and on Kongsberg in Norway, for past actions in violation of the COCOM understandings, but not in violation of any U.S. law. The sanctions include denial of U.S. Government contracts for three years to the parent companies of the offending firms, but not an import ban. This provision is in the House-Senate Conference version of the recently enacted trade bill. The bill also contains a provision that directs the President to impose both contracting and import bans for up to five years for future "knowing" violations of COCOM rules.[14]

One more positive outcome of the Toshiba experience has been increased attention within COCOM to more uniform administration and enforcement. It is too early to tell how far this effort will go, but in Japan, at least, there is mounting evidence of attention to this subject, both in Government and in the private sector.

Perhaps we might even reach the point, not too far in the future, when we in the United States might be willing to trust our COCOM allies, such as Canada, in licensing east-west trade that involves products or technology with U.S. content to be shipped from their countries. We do not delegate this authority now, even to Canada, notwithstanding the Hyde Park understanding to which Jon Fried may refer. We insist on a separate licensing decision in the United States, thereby inserting an added level of red tape and transactional uncertainty.[15]

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[14] *Trade Act, supra* note 12, § 2444.

[15] *See* EAR § 385.6. Despite this apparent absence of regulatory authority to waive reexport

The problem of unevenness within COCOM has a second aspect. The United States has unilateral controls that reach products and technologies beyond the common limits of COCOM. These "unilateral" national security controls have diminished in scope over the past ten or fifteen years under prodding from industry and Congress, but significant vestiges remain.[16]

One particularly egregious control requires U.S. licensing for any U.S. origin technology sent to any communist country (except Yugoslavia and China), no matter how innocuous — for example, technology to manufacture breakfast cereal.[17] This overreaching control came under heavy attack at a recent Commerce Department Forum on Technical Data Export Controls and hopefully it will be brought to an end in the next few months. The U.S. technical data controls have assumed added importance recently in the light of the Soviet Union's new joint venture law. So long as broad controls remain, a degree of uncertainty exists regarding participation in any joint venture by a U.S. firm or by a foreign firm that licenses or uses U.S. source technology.

There is also an effort underway to expand COCOM by adding what might be called "associate members," although the countries involved would not accept that description. To date, five countries — Sweden, Switzerland, Finland, Austria and Singapore — have agreed informally not to permit U.S. high-technology items to be diverted through their territory to communist nations in violation of U.S. reexport controls.[18] If other COCOM countries reach similar understandings with these five "Cooperating Countries" and if the Cooperating Country group is expanded to include other free world countries, such as Hong Kong and South Korea, that are significant sources or markets for high-technology products, the COCOM regime will be strengthened significantly. At the same time, the negative competitive effects of uneven administration and enforcement within COCOM should diminish.

However, it would be a mistake to assume that COCOM and the Cooperating Countries will be on an equal competitive footing in terms of east-west trade in high-technology products. As far as I can determine, the understandings reached with the Cooperating Countries do not affect their indigenous products. It is not realistic to expect countries such as Sweden and Switzerland, with long traditions of non-alignment,

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authorization requirements for shipments from Canada, the Commerce Department is known to have advised some U.S. companies, on occasion, that if a Canadian license has been issued indicating that the goods are of U.S. origin, the Canadian exporter may presume that U.S. authorities have been contacted and have cleared the shipment, obviating the need for a U.S. reexport authorization.

16 For example, commodities coded "B" through "E" on the Commodity Control List (EAR § 399.1 Supp. No. 1) are regulated for export to communist countries by the United States but are not subject to COCOM control.

17 *See* EAR § 379.4(b)(z).

18 These agreements are reflected in the eligibility of these five countries to receive commodities under General License G-COM, EAR § 371.8(b).

to adopt such controls. Thus, as technology continues to spread throughout the free world there is a real question as to whether the COCOM regime can continue to be effective in denying important western technology to the communist nations.

III. United States Trade Control Escapade

I have saved the most controversial U.S. control aspects for last — those all too frequent instances in which the United States has imposed trade controls on a particular target country, almost always acting by itself, generally to achieve "political" or "foreign policy" objectives or to "distance" itself from an undesirable foreign power.

The most notorious of these escapades were the short-lived controls imposed in the summer of 1982 in a belated effort to stop construction of a natural gas pipeline from the Soviet Union into Western Europe.[19] The stated justification for the gas pipeline controls was the role played by the Soviets in the suppression of the Solidarity movement in Poland. The real provocation was the fear that Western Europe would become subservient to, or at least less independent of, the Soviet Union because of its energy dependence. That view had not prevailed within COCOM. It did prevail in the White House in June 1982 when the then Secretary of State was out of favor.

The pipeline controls were extraordinary in many ways. They were wholly unilateral, grossly extraterritorial and significantly retroactive. They barred European firms from delivering nonstrategic compressors, turbines and other equipment for the pipeline, equipment that had been contracted for months before and largely assembled in Europe using U.S. technology or parts licensed or supplied before the controls were imposed. The affected western countries would have none of this. The British invoked their 1980 blocking statute.[20] The French found a old requisition law.[21] A Dutch court ruled that the U.S. controls were invalid under international law.[22] A legal challenge was mounted in the United States.[23] In the midst of this, George Schultz was appointed Secretary of State and he persuaded the President to rescind the controls. They had been in effect less than six months.

The pipeline controls were an aberration, or perhaps a regression to

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19 *Supra* note 6.

20 *See* Memorandum in Support of Motion to Vacate Temporary Denial Order. *In re* John Brown Engineering, Limited (U.S. Dept. of Comm., Int'l Trade Admin., Case No. 635, Oct. 1, 1982).

21 *See* Memorandum in Support of Motion to Vacate Temporary Denial of Export Privileges, *In re* Dresser (France) S.A. (U.S. Dept. of Comm., Int'l Trade Admin., Case No. 632, Aug. 27, 1982).

22 Compagnie Europeenne des Petroles S.A. v. Sensor Nederland B.V. (Dist. Ct., The Hague 1982), *reprinted in* 22 I.L.M. 66.

23 *See* Complaint for Declaritory and Injunctive Relief, Dresser Industries, Inc. v. Baldrige, No. 82-2385 (D.D.C. Aug. 23, 1982).

earlier times. They were reminiscent of the 1950 U.S. embargoes applied to China and North Korea, later extended to Cuba, Vietnam and Cambodia. But none of these countries were major economic players, and the opportunities for conflicts with other western countries were limited notwithstanding the extraterritorial applications of these embargoes. Occasional conflicts did occur. One was the noted *Fruehauf* case in 1968.[24] A French subsidiary of Fruehauf contracted to supply truck bodies, made in France, to a second French company for sale to China. When the Treasury Department invoked the embargo regulations, the French-held minority investors in the Fruehauf subsidiary persuaded a French court to place the subsidiary in receivership, cutting the U.S. tie. Not long afterwards, President Nixon went to Peking and the U.S. embargo of China came to an end.

In the Western Hemisphere the major U.S. embargo problem has been Cuba. This embargo has never been quite total. In the early phase there was an exception that permitted subsidiaries of U.S. firms in Canada, Mexico and other countries that did not disfavor nonstrategic trade with Cuba, to engage in such trade if there were no U.S. technology or product content.[25] In 1975 the Cuban embargo was further modified in the face of recurring third-country trade conflicts. A licensing regime was instituted under which most nonstrategic third-country trade is approved, albeit with some red tape and delays.[26]

When U.S. hostages were seized by Iranian revolutionaries in 1979 there were immediate demands for a broad trade embargo against that country. Reflecting a greater understanding of international trade and the legitimate interests of third countries, the Iran embargo, (which lasted only a few months until the release of the hostages) did not bar third-party subsidiary trade with Iran.[27] U.S. companies were required to notify the Treasury Department in advance of any proposed foreign subsidiary transactions.[28] This notification, was facilitated a certain degree of governmental "persuasion," backed by the threat of unpleasant public disclosure of noncooperation, but left room for foreign countries to make the ultimate decision as to what would be done by companies in their own territories.

The next country to go into the U.S. doghouse was Libya. In 1982 the United States imposed extensive licensing controls, but stopped short of an embargo. The 1982 controls require U.S. licensing for almost all

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[24] Fruehauf v. Massardy, 1968 D.S. Jur. 147, 1965 J.C.P. II No. 14,274 (Cour d'Appel, Paris). *See* Graig, *Application of the Trading with the Enemy Act to Foreign Corporations Owned by Americans: Reflections on Fruehauf v. Massardy*, 83 HARV. L. REV. 579 (1970).

[25] 31 C.F.R. § 541 (1975) (repealed 1975).

[26] 31 C.F.R. § 559 (1987). Exports of foreign-made products from third countries to Cuba generally are licensed if the product is not considered strategic and the U.S. content does not exceed twenty percent by value.

[27] Sec. 1-102 of Exec. Ord. No. 12,205, 45 Fed. Reg. 24,099 (1980).

[28] 31 C.F.R. § 535.207(b) (1980).

third-country trade with Libya that involves U.S. origin products or technology, but licensing is available for almost all nonstrategic third-country trade.[29] Further provocations by Qaddafi resulted in a total embargo in 1986 on direct U.S.-Libya trade.[30] Efforts to persuade our European friends to join in were not successful. The United States resisted the temptation to extend the Libya embargo to U.S. controlled companies in third countries, except for a freeze on U.S. dollar accounts in foreign branches of U.S. banks. That freeze measure was successfully challenged in an English court proceeding.[31] Rather than face the risk of an adverse ruling on appeal, the Treasury Department ultimately licensed the result decreed by the trial court.

The Nicaragua trade control regime, dating from May 1985, is close to the Libyan embargo pattern, but it lacks the asset freeze element and the reexport licensing requirements.[32] In short, there is an embargo on direct trade but it has no extraterritorial application. The U.S. embargo of South Africa is even less complete, at least, today it is. On the export side it covers only selected products and entities.[33] It also prohibits new loans and other forms of investment in South Africa by U.S. firms.[34] But, here again, the restrictions are primarily (though not entirely) on direct U.S.-South Africa trade and financial dealings. New legislation may go further. The Dellums Bill, passed by the House and now pending in the Senate, would ban all exports by any "person subject to the jurisdiction of the United States," a term that apparently is to be construed to cover third-country subsidiaries.[35]

IV. Conclusion

What does this history tell us? It does not tell us that the United States is prepared to cease and desist from unilateral export control measures. The political pressures of our open democracy and the patterns we have set for ourselves are such that either the executive branch or the legislative branch will be tempted, from time to time, to take such actions, even in circumstances where it is privately conceded that they will do little to change the course of foreign events. At the moment, Panama and South Africa appear ripe for addition to the list.[36]

Short of a constitutional amendment, which is not realistic, there is no way for the United States to throw off this recurrent self-inflicted malady (if I may call it that). The futility of legislative restraints is revealed by events that have occurred since 1979 when the Export Administration

29 EAR § 385.7.

30 Exec. Ord. No. 12,543, 51 Fed. Reg. 875 (1986).

31 Libyan Arab Foreign Bank v. Bankers Trust Co., 1986 L. Nos. 1567, 4048 (Q.B. 1987).

32 *See* Exec. Ord. No. 12,513, 50 Fed. Reg. 18,629 (1985).

33 *See* EAR § 385.4(a).

34 *See* 31 C.F.R. § 545.210 (1987).

35 *See supra* note 13.

36 *See id.*

Act was amended to require the President to take into account certain realities when imposing new trade controls for foreign policy reasons, realities such as the availability to the target country of goods and technology from non-U.S. sources and the probable effectiveness of controls.[37] These provisions were strengthened in 1985 after they proved wholly ineffective in forestalling the 1982 pipeline controls. Under the 1985 amendments the President must make specific findings and report these to Congress.[38] The President has since invoked emergency powers under the International Emergency Powers Act to avoid these Export Administration Act constraints.[39] Even if the President's powers eventually are circumscribed, Congress itself can legislate an embargo with whatever terms it wishes.[40]

That is not to say no progress has been made in limiting the anti-competitive aspects of U.S. controls. Since the 1982 pipeline experience there has been a very significant restraint in the use of extraterritorial features in U.S. "political" trade control measures. In terms of national security, it appears there has been some progress toward a more uniform and effective multilateral control system, with a degree of cooperation beyond the COCOM membership. Through the use of broad new general licenses, more expeditious transactional licensing and a higher threshold for controlling foreign goods with U.S. content, we have eased or removed much of the unilateral U.S. control of west-west trade.

There is more to be done:

First, Congress should legislate more effective limitations on the use of political controls by the executive branch, including limitations on extraterritorial measures. Even if Congress cannot stop itself from legislating future embargoes, the legislature usually does not move with great alacrity and a Presidential veto can stop an unwise initiative. Thus, effectively curbing the executive branch has some practical consequences;

Second, we should be looking for opportunities to do away with, or at least water down, obsolete or ineffective unilateral embargoes that seem to linger on forever, such as those imposed on Vietnam, North Korea and Cuba. Certainly, the extraterritorial features of these embargoes are out of tune with today's world and an unwanted and unreasonable interference with the legitimate economic interests of friendly third countries;

Third, we should continue to work for greater uniformity and cooperation with other free world nations in the administration of trade controls for national security purposes. These efforts should include more expeditious decontrol of products and technologies that are no longer essential or effective in practice in terms of legitimate national security

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37 EAA, Pub. L. No. 96-72, § 6 (b).

38 *Id.*

39 *See supra* text accompanying notes 29-31.

40 *See supra* note 13.

objectives. We should endeavor to remove barriers to trade within the groups of countries that cooperate in this common control scheme;

Fourth, we should renounce extraterritorial measures that are inconsistent with norms of international law and that have damaged the reputation of the United States, and U.S. firms, in international trade and commerce. Specifically, we should cease attempts to control the actions of foreign companies by reason of their being owned by U.S. interests; whatever controls we are to exert should be imposed on and through domestic parent companies, recognizing the legitimate right of the corporation's resident state to assert its ultimate authority over a resident firm if it so chooses. Likewise, we should move away from asserting control forever over all goods and technology that have left our shores; our controls should be more narrowly drawn to frustrate divisionary transactions and to condition the holding and application of a narrow list of highly critical goods and technologies;

Finally, we should improve and simplify our export control structure. Ideally, there should be one governing statute administered in a consistent fashion by one agency under one set of regulations. The private sector, particularly the business community, should play a larger role in policy formation and especially in the development of regulations. Interagency communication should be improved, and we should do a better job of keeping up to date with changing technologies.