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Hypotheticals and Discussion Following the Remarks of Mr. Jonathan Fried and Mr. Arthur Downey

Discussion

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Hypotheticals and Discussion Following the Remarks of Mr. Jonathan Fried and Mr. Arthur Downey

COMMENT, Mr. Downey: There are two areas where we have a potential for conflict: in the reexport regime and in the notion of tech data. We will come back to this in more detail. But, while it is fresh in your mind, note that Jon Fried discussed technical data or technology in material form from the Canadian side. From the U.S. perspective, that is an incomplete definition. That is, technical data or technology has an extremely broad set of definitions. It involves anything that relates to process, know-how, or ideas. It does not have to be in material form. Therefore, technical data or technology is one area where the two systems don't meet. The Canadian side controls technology in material form, whereas the U.S. side goes well beyond that. There is a gap between these two.

As far as reexport authorities are concerned, the United States begins with a very broad assertion of authority, jurisdiction, and control. Accordingly, the U.S. foresees that it has the authority to control all U.S. origin products and technology no matter where they are and no matter when they left the United States. No person, regardless of his nationality, may reexport any U.S. origin goods or technology without U.S. reexport authorization. It is a very broad area, again, where the two systems don't mesh properly.

COMMENT, Mr. Fried: Let us begin with an example of an export of goods from the United States to Canada and the Canadian consignee, as he is called in the American language, then decides to reexport that product to a third country where the good involved is national security controlled. It is a COCOM agreed item.

ANSWER, Mr. Downey: From the Canadian side, I think that the Canadian exporter would be required to have a permit. From the U.S. side, incredibly, that Canadian is also required to have a U.S. reexport authorization because it is a U.S. product in Canada and it's being reexported. It went to Canada without a license (presumably) because of the Canadian exception. That exception applies only if the product is to be used in Canada. If it is exported from Canada, it needs reexport authorization, despite the fact that the Canadian permit will be issued based on the Canadian Government's understanding with the United States.

ANSWER, Mr. Fried: What we are really talking about is extraterritoriality—sometimes defined as the application of one country's laws outside of its own territory. We, in Canada, are coming to define it as the application of the United States' law outside the United States.

QUESTION, Mr. Norris: Is it the original exporter to Canada, or the Canadian reexporter that needs that permit?

ANSWER, Mr. Downey: The U.S. law refers to "no person . . ." It doesn't say "no U.S. person," but no person may reexport.

ANSWER, Mr. Fried: Furthermore, that applies whether the person is in the United States or in a foreign country.

ANSWER, Mr. Downey: It is the Canadian who has the obligation to seek reexport authorization. If the original exporter to Canada is a U.S. exporter who has knowledge at the time of his export that his Canadian consignee is going to, in turn, reexport, then he can not avail himself of the Canadian exception. Depending on the product, he will have to get a license to ship to Canada and that license will have to show that the ultimate destination of the product is not Canada, but someplace else.

ANSWER, Mr. Fried: The example we have used is one of a national security controlled item. That means it appears on the Canadian Export Control List. We are going to control it not by virtue of it being a U.S. origin good, but because it is a COCOM-agreed controlled item. It is captured by us. Why the United States should need the additional protection is beyond certain people's understanding.

Let's just vary the example ever so slightly. Let's say it is not a national security controlled item. It does not appear on the COCOM list, but is controlled by the United States for foreign policy reasons.

ANSWER, Mr. Downey: Under that circumstance, the same regime holds from the U.S. perspective. Depending on the product, you need a license to reexport. Our system is not so easily understood that you can either look (as Jon Fried said before) to a product list or to an area list and know the result. In the U.S. system, one must get very specific and look at the confluent of the product and the destination. Generally speaking, however, if that product that is now in Canada could have been exported from the U.S. to the ultimate destination (to the third country) under a general license, then the Canadian does not need reexport authorization. Aside from that exception, he does.

COMMENT, Mr. Fried: There again, Canada feels that it has perfectly adequate protection. Even if it doesn't appear elsewhere in the Export Control List, it's covered by Item 9001 by virtue of being a U.S. origin good. The Canadian exporter would still be obliged to get a permit because it is a U.S. origin good that has not been substantially changed in substance, form, or use; furthermore, it has not been further processed or manufactured so as to become a new product.

As a matter of Canadian law, our officials regularly check and maintain a clear, open channel of communication with U.S. authorities. Thus, in our administration of ministerial discretion, we are not going to grant a permit for a U.S. origin good that is unchanged in circumstances and where the United States would not have granted a license in the first place.

A third example is if the good was destined for a destination controlled by one of the U.S. asset control regulations.

COMMENT, Mr. Downey: An example of such a destination would be Cuba or North Korea. In that circumstance, there is an absolutely clear requirement from the U.S. side that the product may not be reexported to Cuba, Cambodia, North Korea, or Vietnam. If one seeks reexport authorization, it will be denied. An exception exists with Cuba where the U.S. product is incorporated into a Canadian product; however, this circumstance is not in our problem. In that circumstance, if the U.S. part constituted less than 20% by value of the Canadian product, a license could be granted. Otherwise, it could not.

COMMENT, Mr. Fried: Let's just present other examples involving U.S. origin goods before we get into further manufacturing or processing. For our example, let's use a service industry that overhauls aircraft engines or repairs computers and does business both in Canada and in the United States, as well as in third countries. This industry does some stockpiling, warehousing, and inventorying of goods, and spare parts, as well. Furthermore, the Canadian company in this kind of business imports some of these U.S. origin goods to put on the shelf. At the time of its import into Canada, this company doesn't know whether it is going to be for end use in Canada or whether in six months time it is going to be put into a product for destination to a third country. This presents a stockpiling or warehousing situation where the Canadian importer has no knowledge and it is impossible for this importer, at the time of export from the United States into Canada, to know where the goods are destined.

COMMENT, Mr. Downey: In that kind of a circumstance, a very murky area arises from the United States perspective. The United States regulations put no affirmative obligation on the American exporter to make an inquiry of this Canadian consignee as to what he would be doing with the goods. However, if the American has knowledge or a reason to know that the product is not going to stay in Canada, then he cannot avail himself of the exception and would be required to obtain a license for the shipment to Canada, with all of the accompanying restrictions. There is a lesser standard, a "reason to believe," which could apply to the exporter if he subsequently learns or has information that would lead a reasonably prudent person to believe that the product is going to move out of Canada. In that circumstance he has to notify the U.S. government of a change in material fact.

To summarize, when the American exporter exports to Canada, it is with the reasonable belief that the product is going to stay in Canada. If he later learns that it's not, but instead is being reexported, then he has to report this fact. Therefore, there is no duty to inquire affirmatively; but if the U.S. exporter knows the product is going to be reexported, he then has an obligation to notify the U.S. government.

COMMENT, Mr. Fried: Of course, from a Canadian perspective,

the same principle should apply, which is that U.S. law should not apply. If it is a strategic good, it is going to be controlled from Canada as a matter of Canadian law under the Export Control List or the Area Control List. If it is unchanged and remains a U.S. origin good, it is going to be controlled under Item 9001, in any event, in a manner consistent with U.S. principles. Again, there is no necessity, as far as we are concerned, for any U.S. reexport licensing at all.

COMMENT, Mr. Wright: I don't understand why you keep talking about the extraterritorial application of U.S. law. It seems to me this is the application of U.S. law to goods that are in the United States at the time that the deal is made. And if we Canadians want to take the goods knowing that that is the rule, then we should govern ourselves accordingly. If we don't want to be bound by the rule and we are going to jump up and down and talk about extraterritorial application of law, we don't have to buy the goods. We can either make them ourselves or buy them somewhere else.

COMMENT, Mr. Downey: And the loser is the United States exporter.

COMMENT, Mr. Wright: I don't understand this.

COMMENT, Mr. Fried: Let me draw a distinction between a through shipment or stream of commerce transaction and other transactions. In the through shipment, the Canadian is the middleman who knows even before procuring the export from the United States that it is going on to a third country. However, in the other transactions, particularly the warehousing situation, the only transfer of goods at the time is a sale from the United States to Canada which the Canadian intends to put on the shelf.

In the first situation, where you know before the goods ever leave the United States that they are destined to a third country, Canada does recognize the right of the United States to control the ultimate destination of the goods by requiring the Canadian to get a U.S. export permit. This was at issue in a U.S. investigation involving a fellow named Leslie Kline. He was prosecuted in the United States for alleged transshipments through Canada. He claimed this was an improper assertion of American authority. The Canadian government denied that it was an improper prosecution based on the facts alleged because at the time of his original transaction, when he tried to get computers out of New Hampshire to Montreal, he knew where they were going.

COMMENT, Mr. Downey: This is a true transshipment situation: the product goes from New Hampshire right to the Montreal airport for movement to Prague.

COMMENT, Mr. Fried: As opposed to that, if the transaction was only from the United States to Canada, we go back to more general principles of jurisdiction based on international law. A state exercises its authority clearly over its own territory.

In certain limited circumstances, a state may exercise some authority over its nationals. The United States taxes its citizens wherever they are in the world. We control passports wherever they are in the world. That is jurisdiction based on nationality. No country, however, recognizes jurisdiction based on nationality of goods.

COMMENT, Mr. Downey: Nobody, except the United States. There may be others, and someone could find certain other countries that would be prepared to assert that. I suspect the United Kingdom would have been prepared to assert that in the Falkland crisis where supreme national interests were at stake.

COMMENT, Mr. Wright: We would have asserted the same thing, too, if the situation were reversed and we had 200 million people turning out all of this stuff and the Americans wanted it.

QUESTION, Mr. Fried: We point out to the Americans that contracts between private parties cannot either oust or grant jurisdiction to governments inconsistent with the primacy of territorial authority. In a reverse example, would the United States ever accept France (through Renault owning most of American Motors) purporting to tell American Motors that they couldn't sell Jeeps to El Salvador?

COMMENT, Mr. Downey: See how clever he is? He shifted the basis. Your example related to an original U.S. ownership of the goods and the U.S. attached strings on the goods; if the goods moved to Canada, those strings would still be there. That is a legitimate basis. If you don't want those goods with those strings, don't buy them. If you buy them, you know those strings are there. Mr. Fried shifted immediately into a transactional basis situation where the controls are based on ownership of the foreign corporation, which is not what we are talking about.

COMMENT, Mr. Fried: Before we go any further, I would like to put one or two other examples on the table just to give you a better feel for the reach of U.S. authority.

We have talked about U.S. origin goods. The other reason for our objection to U.S. assertions of extraterritorial jurisdiction is that it violates our bilateral understandings going back to 1941. The recognition was there that U.S. controls would not be applied and was later formalized in a series of agreements which provided that Canada would apply the controls for the U.S.

We have also talked about the warehouse situation. Now let's talk about a Canadian product, a totally Canadian product produced through an industrial process of U.S. design. In other words, a Canadian product of U.S. technology.

ANSWER, Mr. Downey: From the U.S. viewpoint, the transfer to Canada of the know-how, or the tech data, originally required no license (with certain exceptions, such as that of extremely sensitive nuclear material). No license is required to move that technology to Canada for use in Canada.

To reexport the know-how would require an authorization because it went license-free to Canada only. The U.S. has certain controls on the direct product of that know-how if the direct product is going to certain countries, principally the East Bloc countries. Those products are of the type that would have required an individual license from the United States if they were shipped from the United States. The logic of it is: if the U.S. would have required a license for the products to be sold to Czechoslovakia, and the U.S. is supplying Canada with the know-how to make these products, the U.S. in turn, wants the authority to double-check the control which Canada has over those same products being sold to Czechoslovakia. Maybe the Canadian system doesn't work in all circumstances and the U.S. wants the authority to get that person who is violating its controls.

ANSWER, Mr. Fried: From a Canadian perspective, you have a Canadian company engaged in Canadian manufacturing or production in Canada producing Canadian goods. How American law can reach a Canadian firm producing a Canadian product, again, would appear to violate virtually every internationally agreed principle of jurisdiction.

We would add that our system of controls for strategic goods that are sensitive and important is in multilateral agreement, based on COCOM, and is in full conformity with the wishes of the United States and other countries with regard to strategic goods. In practice, depending on what Mr. Downey might have to say about current enforcement and investigative attitudes in the United States, the difficult area concerns a foreign policy controlled destination. If it is a strategic good or a COCOM prescribed destination, whether Canadian law or U.S. law is the tool by which that export is controlled, the end result is the same. Neither country is going to allow the export. We, of course, prefer and strongly insist that the export be done as a matter of Canadian law.

When the destination is Cuba or other foreign policy controlled destinations, our philosophies may, and sometimes do, diverge.

QUESTION, Mr. Allen: There seems to be a lot of chat here about goods from the U.S. to Canada and from Canada onward. It may come as a bit of a surprise to some people, but goods do go from Canada to the U.S., and then beyond. I would have the impression that the Canadian government does not require its permission in those reexports.

ANSWER, Mr. Fried: We expect the United States, in controlling the reexport from the United States, to do so in a manner that was in conformity with Canadian policy.

Take for example, a military good that a Canadian firm sells to the United States and then the American importer wants to ship the good on to Taiwan. The United States might permit the export. We would not have permitted the direct export. We would expect the United States to deny that reexport on the basis of Canadian policy.

QUESTION, Mr. Allen: But then let me take this example one

point further. Would anyone care to speculate on what the U.S. attitude might be if Canada insisted in those circumstances that a permit also be obtained from Canada?

QUESTION, Mr. Downey: Are you raising circumstance where there is a product of Canadian origin that is unchanged and unincorporated in the United States?

ANSWER, Mr. Allen: Yes, let's say, the product has a Canadian content of more than 20%.

ANSWER, Mr. Downey: You have a Canadian product that comes to the United States and it is to be exported to Zambia. I think the United States government probably wouldn't care if the Canadian government wanted to assert an authority over that, though I suspect Jon Fried will say that I am wrong.

The United States government is going to assert an authority over that product because it is a product leaving the U.S. and, therefore, should be controlled by the United States. It is not of U.S. origin, but it is leaving the United States; and if the Canadian government also wants to control the product, that should be fine with the U.S.

In fact, there was a classic case some years ago when Control Data Corporation (CDC) in the U.S. wanted to show the American government how antiquated its policies were on controls of products exported to Eastern Europe. CDC bought an advanced East German computer, a copy of an IBM model, and brought it into the United States for review and inspection. When CDC was shipping it back to its facility in Vienna, the U.S. government said that the export needed a license. It was of East German origin, but it was being exported from the U.S. This illustrates that the U.S. will control all its exports. If the government of Canada wishes to control the same, I don't think the U.S. would say no. On the other hand, I think the U.S. would, as a practical matter, get very upset if there was no U.S. control and a foreign government was trying to tell us what to do within the United States.

COMMENT, Mr. Fried: That again, comes to the foreign policy example.

ANSWER, Mr. Downey: Yes, I agree that this is the foreign policy, transaction-based ownership-based problem. Yes, the U.S. would become unhappy if the government of France told American Motors that it should not supply jeeps to X country and the United Auto Workers lost all of those jobs; the U.S. would get very upset.

COMMENT, Mr. Fried: Let me add one additional aspect. I did mention that the minister has complete discretion in issuing permits. That includes attaching such conditions that he sees fit. The minister in Canada may, if you are shipping through the United States to another country, specify reexport conditions. Those conditions would only attach to you, the Canadian exporter. We would never assert direct jurisdiction over the U.S. consignee by virtue of either the contractual undertaking or

the request for you to pass it on to your American consignee. There, the Americans differ from us again: the Canadian importer would accept or recognize that the U.S. purports to control the reexport. The U.S. claims the authority to directly prosecute the Canadian importer, who may never have had any presence in the United States.

COMMENT, Mr. Morrison: Part of what you are talking about seems to be a question more of symmetry than of extraterritoriality. There seems to be a broad agreement that these issues will be dealt with cooperatively and that the controls will be effectively maintained by the two governments. Once you reach that extent of the agreement, I think you are pretty well agreed, in substance, that cooperatively this will be worked out. Your focus seems to be on the practical means by which that agreement will be implemented.

ANSWER, Mr. Fried: Yes and no. We might focus this discussion more on the foreign policy area. We certainly agree on strategic goods and technology and that does boil down to modalities of implementing a common system.

Regarding foreign policy-based controls, let's take Cuba, for example. Canada has never broken diplomatic relations with Cuba and doesn't have any legislation directing corporations to trade with Cuba, but it encourages, through our trade commissioners and otherwise, a healthy trade in civilian goods with Cuba.

However, we don't sell strategic goods to Cuba, even though it's not on the COCOM list or on our Area Control List. We know that they are an adversary and we are not going to sell them guns. We will sell them butter, though. The Americans, on the other hand, under their Cuban Asset Control Regulations, will not.

COMMENT, Mr. Downey: The U.S. will say nothing goes to Cuba from the United States, as you well know. Not even butter or light bulbs. It is an absolute embargo.

COMMENT, Mr. Fried: This brings us to the example of U.S. components further manufactured or processed in Canada. Let's take U.S. glass or U.S. tungsten going into a Canadian light bulb. As far as we're concerned, based on value, further processing, severability, and percentage content, that light bulb is a Canadian good. Item 9001 doesn't even enter into it. If that light bulb doesn't appear on the Export Control List, and most likely it doesn't, it is because there is nothing strategic about a light bulb and it is going to a destination that is not on our Area Control List. Canadian export control law and policy governs. For the Canadian light bulb exporter, therefore, if there is no prohibition in the Export Control List and no mention of Cuba in the Area Control List, you don't need a permit. The Canadian company can sell that light bulb to Cuba.

COMMENT, Mr. Downey: From the U.S. side, the situation is different. I will also bring out the Libyan situation to show that the U.S.

made some strides forward in recognition of the sensitivities of very sensitive people.

In our Cuba circumstance, the United States had taken the view that it maintains an absolute embargo and does not want any part of the industrial basis of the United States to be used to benefit Cuba. If we are going to sell light bulb glass to Canada, that's fine. We love Canadians; let them have all of the light bulb glass they want. But if they are going to use that American light bulb glass and send it to Cuba, that defeats our goal and, therefore, we will say, "No, it cannot go."

However, we will say, as an exception, that if the foreign government, Canada in this case, has a policy encouraging trade with Cuba, and if that decision is one independent from the U.S. (i.e., if it's not really run by the United States company involved), then it's a Canadian decision which is okay. And if there is no U.S. financing or U.S. guarantees, then that's fine; the U.S. owned or controlled entity in Canada can engage in trade with Cuba in those narrow circumstances.

COMMENT, Mr. Fried: It can engage in trade with Cuba only if it applies for and gets a U.S. license to do so.

COMMENT, Mr. Downey: If its U.S. parent applies for the license and gets one, it can even use U.S. parts. It's okay to use that glass in your trade with Cuba, as long as it's insignificant which is defined to mean less than 20%.

COMMENT, Mr. Fried: But for an aircraft to Libya, it can also be defined as 1%.

COMMENT, Mr. Downey: A lot of people would say that is an overreach on transaction controls — that is, owner control based and not product based. In this recent activity with Nicaragua and with Libya, the U.S. has advanced (or declined, depending on your viewpoint) and takes the position: if you, United States company, supply a company in Canada or elsewhere with a product, part, or component; and it has become substantially transformed in Canada, Italy, or elsewhere; then it's beyond our control and you can reexport the product to Libya or wherever. That's the current law.

COMMENT, Mr. Fried: Just one other point before any further questions. We do recognize the progress made by the United States in the Nicaraguan and the Libyan sanctions. They have, in fact, learned the lesson of the Siberian pipeline and have circumscribed their controls. In effect, these regulations still reflect the basic U.S. philosophy. What the U.S. has done in the Nicaraguan and Libian sanctions is to say that they exempt all transactions involving U.S. goods that are substantially transformed, borrowing the Canadian definition. The conflict over the Siberian pipeline has had an impact, at least, on the good people in the State Department who influence the Treasury Department and the National Security Council.

QUESTION, Mr. Jackson: When I spoke yesterday, I was faced

with an interesting cultural difference question which I was only too happy to answer. Now, I would like to bring up a question, one for each of you.

In a country which is so dedicated to free enterprise and limited government interference in business, is there any chance that this kind of behavior in the world will gradually yield to the needs of business as an international activity? Shouldn't Canada do all that it can to avoid getting into the position of having such mercantilist controls over its business when business has the ability to prevail in the world arena without a lot of controls?

ANSWER, Mr. Downey: It is true that the American business community has felt aggrieved by the sudden imposition of foreign policy based controls. These have hurt its business and there has been a great deal of harm. The response from the public sector, that is, from Congress or the Administration, is that you people in the business community just want your dollars and you forget about the broad national interests which you don't understand as well as we do.

The elected representatives of the people of the United States made those decisions. The result, and I'm being facetious, of this conflict presented itself last summer in the renewal of our Export Administration Act. Included in this Act is a provision on contract "sanctity." This is a very holy pontifical way of saying to the president, "For foreign policy reasons, you can't impose a control over our exports unless there is a 'breach of peace'." "Breach of peace" — a beautiful term because it is undefined and no one knows what it means.

ANSWER, Mr. Fried: Sort of like a national emergency. The short answer on the Canadian side, is that we, too, are trying to strike a similar balance. In effect, right now we are tighter on nonstrategic goods to the East Bloc than anybody else because, in fact, by virtue of having the Area Control List, exports of light bulbs to the Soviet Union require an export permit.

Shortly, Canada should be eliminating its Area Control List and should then be in closer conformity with the U.S. system. The result will be that, if the good is strategic, the Export Control List will cover it. If the good is nonstrategic, why should the additional administrative burden be imposed on our exporters?

COMMENT, Mr. Fried: Let's talk about the export of technical data, blueprints, designs, and electronic transmission of information. Those flow all the time between Canada and the United States—by mail, telephone, telex, or any other form. Moreover, technical data, itself, goes on to a third country. Let me give the Canadian perspective first because it is easy. First of all, item 10003 states that technical data is not controlled unless it's in material form—something tangible and in your hand. Secondly, that data must relate to something that's tangible and

controlled elsewhere on our list. It either must be strategic and appear in groups numbered three to eight, or be of U.S. origin, group nine.

If it is the direct manufactured product of technical data, the product may be controlled, but not the data, itself. If it's not of U.S. origin and not strategic, it is not otherwise controlled. We do not have, in the legislation or the regulations, any specific exemption for mailing your patent application to Europe. As a matter of administrative practice, however, unless it's a strategic good, such as a design for a munitions item, we are not going to purport to control it, even though the legislation preserves that right.

COMMENT, Mr. Downey: From the U.S. side, we wrap our arms around everything and say that an idea, process, and know-how are all tech data and we can control the export of that tech data. How do you export it? You can export it by putting it in a blueprint and mailing it out. You can export it by talking to the East German by telephone. You can export it by having the East German come to your plant and look at your process, et cetera. And you need a license for any export of tech data.

QUESTION, Mr. Fried: Do you mean that you need a license to have somebody visit your plant in the United States?

ANSWER, Mr. Downey: Yes, except if the data is generally available. Obviously if it's in a book in the library, no license is needed. Furthermore, if it is scientific, educational, or if it's a patent application in accordance with that system no license is needed. All other data not generally available requires a license, except for Canada. If a Canadian company puts on an in-house seminar conveying tech data and an East German representative is present, and, further, an American attends and gives a lecture of unclassified information which the East German hears, a U.S. license would be required. Here, again, the U.S. has a different set of systems.

Comparatively, the Canadian Government controls access at the border. If the Government allows the Russian or the East German in, either can hear whatever he wants. On the American side, however, the U.S. lets either one in, but then places earmuffs on him.

QUESTION, Mr. Roseman: I wanted to ask another question relating to services. Say, for example, Saudi Arabia is trying to upgrade its telephone systems as the key to military communications. They are able to get the technology of the French, the Swedish, or whatever. They may have stolen it or perhaps the Saudis bought it; but in order to put it together and make it work, they ask Bell Canada to put together the system, manage it, and provide the management and know-how. Is that kind of thing restricted?

ANSWER, Mr. Downey: It is not restricted by the United States, if it is Canadian knowledge. If it is U.S. know-how that went to Canada and it's going to be applied to the Soviet Union, then, under most cir-

cumstances reexport authorization from the United States would be required.

COMMENT, Mr. Bradley: This last part was one of the things that I was hoping would come up, but it still implies that these U.S. controls have something to do with strategic goods and I would argue that increasingly, it is a matter of technological protectionism: a set of nontariff barriers that are economically based.

You can fit almost anything into the military critical technologies list these days. Processes used to create this paper that I'm writing on could be controlled. We have got a situation now arising where there are controls on unclassified technical data. It's not controls to the East Germans. It's controls to Canadian access or West German access. DOD is now proposing rules on access to scientific meetings on DOD funded research. DOD is one of the largest, if not the largest, funder of research. In fact, I'm told that it is the largest funder of basic physics and basic mathematics research in Canada. You are controlling scientific needs which have historically not been intellectual property questions, not questions of security of classification, and yet they are now being controlled. I argue that those are increasingly motivated by economic protectionist attitudes, both in DOD and in Congress, and that it is part of a pending technology war between Europe, Japan and the U.S.; but you are using the strategic excuse.

COMMENT, Mr. Downey: I think that's wrong, but you have a core that is correct. Obviously there are a lot of people in the United States who want to protect U.S. technology from everybody, including the Canadians, and use all devices accordingly; however, scientific information and educational information are not controlled for export.

There are circumstances where in company financed or government financed projects, even if unclassified, an attempt is made to add restrictions. I think that's unwise as a U.S. national policy, but I don't think you can say fairly that this export control system and law have been designed for an economic security base, since it has been there for a long time and has been fundamentally unchanged. The other thing that you are talking about is contract research being more limited. I think you are right, but I don't think that you can say that fairly across the board.

COMMENT, Mr. Fried: On the contract research, Canada is in a very unique position and has a leg up on its European allies because we go back again to the special bilateral relationship. We say, "Don't worry about us." If you are going to have sensitive procurement for sensitive production of sensitive items, you should be treating us as Americans. You should have the same exemption as is reflected in the general Export Administration Regulations.

COMMENT, Mr. Downey: And they do.

COMMENT, Mr. Fried: From time to time, under one or another Department of Defense directive or other regulation, somebody forgets

about the Canadian exemption. In that case, we think that they have overstepped, and we do try to bring it back to conformity with the Canadian exemption.

That reached the Head of Government level in 1985. The language of the Quebec Security Declaration states that we are a North American defense base. Canadians should have full participation, consistent with the Canadian exemption, in defense development and defense production sharing pursuant to the two sets of agreements to which I referred, but am unable to discuss in detail in the interests of the more general issues. We could spend an additional session on defense related items.

COMMENT, Mr. Bradley: I was not suggesting that the original basis of the export control system was economic. I am saying that it has increasingly moved in that direction.

COMMENT, Mr. Downey: I don't think so. I think Jon Fried's point is right. We have aberrant behavior now and then in the procurement area and the good folks in Ottawa straighten out Washington every now and then. The beneficiary is Canada. I'd be all in favor of a stronger control regime for technology transfers to Japan and elsewhere.

