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Discussion

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Discussion After the Speeches of John Ellicott and Jonathan T. Fried

QUESTION, Professor King: In terms of the effect of economic sanctions, particularly in the political area, do export controls achieve the objectives that they seek out? For example, you have the situation of Libya where the export controls were applied as a political-type control. The General Accounting Office investigated the situation, and found that all that resulted was a change in suppliers; in other words, Libya got the same goods but they got them from different suppliers, probably from Italy or from Germany, countries with which they had relationships.

I am going to ask John Ellicott, should there be these political controls, considering our competitive situation in terms of our exporters being perceived as uncertain suppliers? Should there be any political controls at all in this area, where we are not followed by any allies or friends and, if so, are there any ways of limiting them on a compromise basis or should we try to wipe them out entirely? This is a broad question, but I would like to get your thinking on it, John.

ANSWER, Mr. Ellicott: The only control at this time that I know has ever been claimed to be effective was the one we imposed on Uganda. It was little known, Idi Amin fell within two months and it had nothing to do with the control. Yet, it really looked good. The best thing you can say about the political trade controls is that they appease or ward off possible military intervention. I mean, there are worse things than export controls that the United States can be going around doing. If we have to go through some kind of a trade control on Nicaragua rather than sending U.S. troops to Nicaragua, I think it is better to do the former than the latter, but that hardly justifies the controls. I am afraid it is a very bad habit that we have fallen into; it is not effective and, yet, we keep doing it. As far as I can tell, we are going to keep on doing it. We may do it with Panama, we are almost certain to do it to a greater degree with South Africa. I do not know how to get rid of political trade controls in the kind of political system we have.

QUESTION, Professor King: I want John Fried to comment on this, too. It seems to me that you are punishing the U.S. exporter for something that somebody else has done. The victim is the exporter here rather than the country which is the target. John Fried, how does Canada avoid it?

ANSWER, Mr. Fried: We do not avoid it, mostly because we admit we do not have any effect except with a smaller export or smaller share of foreign markets. It is important to remember that from time to time,

democratic values of one sort or another survive simply by virtue of export controls.

For example, when a regime cannot be brought around to cooperative ventures like police training or education, which reflect the values of a democratic society, and who is a gross and persistent violator of human rights, the U.S. population may not want the Government to do business with them. Similarly, Canada will not sell even low technology military equipment to those kinds of areas. Brazil and France and other states will gladly fill the void.

Canada does not want to be seen as an accessory in those kinds of things. That is a foreign policy reason, a political reason, but it reflects the general will of the Government and the society that it represents.

QUESTION, Professor King: One of the questions that does come up in connection with COCOM is the question of a divergence of opinion. For example, in terms of the Soviet Union and its allies, it is highly conceivable to me there might be divergency among the members of COCOM on the impact of certain technology, in terms of the receipt of that technology.

How do you settle a dispute? Do you settle a dispute in terms of these divergencies which certainly have existed in practice, or in terms of policies that were applied in the past?

ANSWER, Mr. Ellicott: Sometimes I think there are more divergencies in the United States than there are within COCOM. Certainly we have very strong different views between the Defense Department and some other departments about what is critical and what should be controlled.

Within COCOM, they are worked out. The system has worked reasonably well. Everybody has a say. There is a complaint in the United States that you hear nothing in COCOM on the military side of the picture because the U.S. industry has no representation in COCOM. Some of the other countries in COMCO permit a degree of industry participation of COCOM. In the United States we do not. Some people in industry feel, as a result, that some decisions were made that if they had been thought about by people who knew more about the product and technology, it might have been different. COCOM works it out pretty well.

COMMENT, Mr. Fried: The main debate is mainly over civilian technology, with both sides in the United States. There is an emerging consensus that there should be deregulation of some civilian technology that does not have military application. There was a period in the first Reagan administration where everything was thought have military application. For example, if you strung enough digital watches together you could get an adequate computer out of them. But there is also a consensus today that east-west trade and west-west trade need not have the same formality.

COMMENT, Mr. Ellicott: There was a period three years ago when

the Pentagon felt that they would lose the battle of controlling personal computers. So they went to a friendly congressional committee and they brought in a bunch of computers and played war games. At least personal computers have been decontrolled and taken out of COCOM control.

COMMENT, Mr. Donohue: I think both of the speakers also raised a couple of questions. One of them was a remark that Jonathan Fried made with regards to the end result. There may be some inconsistencies between the U.S. principle that is contained in some of our export laws and the FTA. I am thinking of some of the laws that we have in the financial control area, where certain types of payments cannot be made to certain nationals. I believe Cuba is on the Treasury list where no monetary payment can be paid to Cubans; however, in the FTA we are expanding in the area of financial services whereby U.S. banks will be able to have a considerable market in Canada and vice versa.

COMMENT, Mr. Fried: A country, simply by reason of a company's nationality, ownership or control, will allege jurisdiction over a good or product. Also, every country in the world exercises control of currency. I am really talking about a corporation, a subsidiary, let us say, which is incorporated as a Canadian entity, in Canada, exercising the right of establishment in the FTA, producing a Canadian good. Canadian directors, and the Canadian corporations are subject to the laws of Canada by virtue of that corporation's Canadian production, Canadian goods, Canadian technology. There is no connection with the United States except it has U.S. ownership or control.

Now, it may well be that the U.S. parent company may be subject to U.S. controls, but is there any rationale or justification for the fact that the Canadian company, in regards to its export of a Canadian product, should be subject to a U.S. control which may conflict with Canadian foreign policy objectives? The answer is no.

COMMENT, Mr. Ellicott: That is my answer too. You do face problems with the double administrative procedures and having to obtain a license which is really superfluous because of re-export or simply by virtue of the fact that the product, in the Canadian law as well as in the U.S. law is subject to control. It is in the foreign policy area where we begin to differ, such as regarding Cuba or Nicaragua.

Since you are talking about nonmilitary COCOM, and non-U.S. origin components, corporate nationality is itself an issue. The Americans have asked the Government to allow all U.S. investment, but once you have allowed all U.S. investment, it will be treated exactly as Canadian investment.

QUESTION, Mr. Kirby: As I understand it, in the FTA section related to financial aspects, both sides opted for national treatment for the banking industry issue. Therefore, it is explicit that whatever the

Canadians do with respect to banking, they are entitled to do the same as we are.

Am I not correct that is the way the agreement came down on banking, we did opt for national treatment?

ANSWER, Mr. Fried: I guess the final buzz words agreed upon was "equivalence of competitive opportunities," which is closer to national treatment than reciprocity. Any foreign firm coming into Canada shall operate a local subsidiary by virtue of branch operation in order to ensure that the subsidiary is indeed Canadian incorporated and subject to Canadian incorporate regulation. That, however, is still distinguished from central bank control over currency. There are intergovernmental arrangements, well outside of the FTA, among central banks that allocate jurisdiction over banking supervision and home country regulators so as to ensure solvency of the bank as a headquartered institution in the whole country. The FTA does not go near that side of the banking regulation.

QUESTION, Professor King: Before the United States imposes political export controls, say on Panama, is there any free advice to Canada?

ANSWER, Mr. Fried: We do talk all the time. We share an open border and are both exporters, and our licensors are in touch on almost a daily basis. I think, as John Ellicott indicated, the United States really learned its lesson in the Siberian pipeline incident. There was at least advanced notification, if not consultations, prior to the imposition of controls on Libya and Nicaragua, and one would expect the same should the United States move in that direction on Panama.

COMMENT, Professor King: I want to thank you for a wonderful session. Both of you deserve a round of applause.