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Report to the Congress

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EXPORT CONTROLS

Assessment of Commerce Department's Foreign Policy Report to Congress

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United States
General Accounting Office
Washington, D.C. 20548

Comptroller General
of the United States

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August 19, 1986

To the President of the Senate and the
Speaker of the House of Representatives

As required by the Export Administration Amendments Act of 1985, we are providing our assessment of the Secretary of Commerce's January 1986 report to the Congress on extending foreign policy controls in effect prior to the Act's passage. We are required to assess the Secretary's report to ensure that it has fully complied with the statutory reporting requirements

We are recommending that the Secretary of Commerce take some action which we believe will enhance the utility of future reports. The Department of Commerce, in commenting on a draft of this report, generally concurred with our assessment and plans to expand its future foreign policy control reports along the lines we are recommending

Appendix I presents the details of our assessment. Appendix II contains the objectives, scope, and methodology of our review, appendix III provides alternatives to the use of foreign policy controls; and appendix IV is the Department of Commerce's comments on a draft of this report

We are providing copies of this report to appropriate House and Senate Committees; the Secretaries of Commerce and State; the Director, Office of Management and Budget, and other interested parties.

Charles A. Bowsher

Charles A. Bowsher
Comptroller General
of the United States

Contents

Assessment of the Secretary of Commerce's January 1986 Report Extending Foreign Policy Export Controls

The Export Administration Act of 1979, as amended, (the 1979 Act) authorizes the President to establish export controls for economic, national security, and foreign policy reasons. With respect to foreign policy controls, the 1979 Act provides that the President, through the Secretary of Commerce, may prohibit or curtail exports to the extent necessary to support the foreign policy objectives of the United States. The 1979 Act was most recently amended in 1985 by Public Law 99-64, the Export Administration Amendments Act of 1985 (the 1985 Act) to, among other things, limit the President's use of foreign policy controls. For example, the Secretary may impose, expand, or extend export controls only if he first (1) consults with Congress, (2) makes certain determinations regarding the impact, significance, and effectiveness of proposed controls, and (3) reports to Congress. For extensions of foreign policy controls in effect prior to the 1985 Act, the Secretary need only consider their impact, significance, and effectiveness rather than make determinations. In addition, under the 1985 Act, if the Secretary of Commerce determines that goods and technology subject to foreign policy controls are available from foreign sources so that denial of an export license would be ineffective in achieving the aim of the controls, he shall license exports of controlled items.

The Secretary's January 1986 report to the Congress, the first since the 1985 Act was passed, addresses nine subjects for each of the controls that were extended. (1) the control's purpose, (2) probability that the control will achieve its intended purpose, (3) compatibility of the control with U S foreign policy objectives, (4) reaction of other countries to the control, (5) economic impact of the control, (6) ability of the United States to enforce the control, (7) consequences of modifying the control, (8) alternative means for achieving the control's purpose, and (9) whether there is foreign availability of the controlled item. Our review of the Secretary's report shows that it meets the 1985 Act's requirements. However, we noted certain shortcomings in the report. The sections addressing alternative means and enforcement had little explanation. The sections on economic impact generally examined the economic effects of particular controls but did not explain the limitations in estimating economic impact. We therefore believe that future reports need to provide a better explanation of the consideration given to alternatives to the controls, the difficulties in enforcing them, and the limitations in assessing their economic impact. Consequently, we are recommending that in future reports the Secretary of Commerce increase the substantive discussion of these matters. To the extent such reporting contains sensitive information, the Secretary may, as the 1985 Act provides, submit those portions in a classified report.

Alternative Means

The 1985 Act requires that the report specify "the nature and results of any alternative means attempted...or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means." There is a range of alternative means that can be used in place of foreign policy export controls. The alternative means sections of the report, however, generally contain declarative sentences, with little or no explanation. For example, for some of the controls on Libya and the controls on North Korea, Cambodia, and Cuba, the Secretary's report states, without explanation, that no alternatives are available. In other cases, such as the controls pertaining to human rights and anti-terrorism, there is a statement referring to diplomatic efforts, but no discussion of these efforts.

Because, in our view, the controls extended by the Secretary are mostly symbolic and generally impose few, if any, costs on the countries which are the targets of the controls while imposing costs on American businesses, we believe it is especially important to examine alternatives Consequently, we believe that more complete reporting on the Secretary's consideration of alternatives to symbolic export controls will assist the Congress in its oversight of the Department of Commerce's implementation of the 1985 Act.

Controls Are Largely Symbolic

As a practical matter, foreign policy controls can be used for several purposes. They can

- influence a country to modify behavior that the United States finds objectionable by imposing economic costs on the target of the controls,
- punish a country for such behavior by imposing costs, or
- symbolically demonstrate displeasure or distance the United States from a specific country or behavior by restricting U.S. exports.

Most of the foreign policy controls extended in the Secretary's report are, in our view, symbolic because (1) their stated purpose is to limit U.S. involvement with a specific country and (2) the targets of the controls can use available foreign items and so incur little or no cost. The Secretary's report always draws the purpose of each control in the context of restricting U.S. items or distancing the United States from specific actions rather than in the context of punishing the target country or trying to change the target country's behavior by imposing economic costs on it. These symbolic controls were unilaterally imposed and the

United States has not been successful in gaining support for them from other countries.

If the foreign policy purpose of the controls is symbolic, there are two significant consequences. First, the costs of symbolic controls are borne by American businesses in the form of export sales lost to firms in other countries. The Secretary's report details the substantial costs imposed on American businesses by many of the controls

Second, when a control's purpose is symbolic, the enhanced foreign availability provision of the 1985 Act is not applied. Under the 1979 Act, the President only had to take all feasible steps to secure the cooperation of foreign governments in controlling exports of controlled items. However, section 6(h) of the 1979 Act was amended by the 1985 Act to provide that (1) if the President is not successful in securing this cooperation and (2) if the Secretary determines that there is sufficient foreign availability of the controlled item so that denial of an export license would be <u>ineffective in achieving the purposes of the controls</u>, then the Secretary shall approve any required export license and remove the commodity from the export control list

The Secretary's report discloses that there is widespread foreign availability of virtually all controlled items. However, by defining the foreign policy purpose of these controls in a symbolic context—e.g., to distance the United States from the specific actions of foreign nations—controls on the specific items can continue despite foreign availability of the controlled items.

Further, we would note that controls imposed for symbolic purposes take on dimensions beyond their original purposes when their renewal is considered. Once in place, as are the controls just extended under the Secretary's report, possible removal is viewed as signaling a lessening of U.S. resolve or commitment. From our discussions with Commerce and State Department officials, it seems that even if the control is symbolic and believed unlikely to affect the objectionable behavior which precipitated it, there is reluctance to remove that control without some quid pro quo.

Available Alternative Means

Diplomatic and economic alternatives to the use of export controls are available and offer opportunities for expressing U.S. displeasure in either a symbolic context or in a context that can impose costs on the target country (See app. III) Diplomatic options include frank and private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the target country is allowed to have in the United States.

Economic alternatives to export controls can be divided into four categories: controls on (1) U S government programs, such as foreign economic and military assistance, (2) imports to the United States, (3) private credit, such as bank loans, and (4) international financial organizations, through the United States exerting its influence in these bodies. The President has wide latitude in controlling U.S. government programs and using U.S influence in international financial organizations. However, the President has limited statutory authority to control imports or private credit unless he chooses to declare a national emergency and uses the broad powers of the International Emergency Economic Powers Act. Most of the laws involving import controls are triggered by economic considerations, such as discriminatory pricing and subsidies, and not by national security or foreign policy reasons. The President's control over private credit without using the broad powers of the International Emergency Economic Powers Act is largely limited to section 15(b) of the Export Administration Amendments Act of 1985, which authorizes restrictions on the financing of exports subject to controls as well as other financial restrictions designed to thwart violations of the export controls. Consequently, it should be noted that, although there are a number of economic alternatives to export controls, the use of import and private credit alternatives is limited without resorting to a declaration of national emergency

The use of alternatives to export controls can also result in costs being incurred by the United States. These costs can include, for example, lost business for importers in the case of import bans, lost banking opportunities in the case of credit controls, or reduced diplomatic access Also, retaliatory actions may be taken by the target countries, which could increase such costs

We believe that the alternative means discussion in the Secretary's report, which is especially important when controls are symbolic so as to demonstrate that alternatives were carefully considered, does not provide sufficient detail to assist the Congress in its oversight of Commerce's implementation of the 1985 Act.

Recommendation

We recommend that in future reports to the Congress the Secretary provide a fuller discussion of alternative means available to achieve the purpose of the control, suitable within the context of U.S. relations with the target country, and, if any alternative means are deemed to be unsuitable or have been used unsuccessfully in the past, the reasons why, including statutory constraints.

Enforcement

The 1985 Act requires that the report address whether "the United States has the ability to enforce the proposed controls effectively " The enforcement sections of the report generally state that the control presents no unusual enforcement problems, that re-exports create enforcement problems, or the sections contain both statements. According to Commerce's Deputy Assistant Secretary for Export Enforcement, a typical enforcement problem, such as the difficulty in interdicting a shipment outside the United States, could be a significant problem while an unusual enforcement problem might not be. This raises the question as to what the report actually says regarding the significance or extent of the enforcement problems.

We believe that the enforcement section incompletely assesses the problems inherent in enforcing foreign policy controls. From our discussions with the Acting Director, Office of Export Enforcement, it appears that there is little difficulty in enforcing the controls as they relate to exports from the United States but there are difficulties in enforcement as they relate to re-exports from third countries. According to the Acting Director, re-exports are particularly difficult to control when other countries have not imposed similar controls and re-exports of controlled items do not violate their laws. The full extent of re-exports, however, is not known due to the difficulty in detecting them. The Department of Commerce does get information on illegal re-exports periodically and does take enforcement action.

Recommendation

We recommend that in future reports to the Congress, the Secretary of Commerce more fully and clearly discuss the difficulties in enforcing export controls for foreign policy reasons and specifically address the problems with re-exports.

Economic Impact

The 1985 Act requires that the report address "the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, [and] the international reputation of the United States as a supplier of goods and technology." Generally, the economic impact statements in the report do examine the economic effects of particular export controls. Most of the statements provide data and analyses that help to detail the costs to U.S. businesses of the various export restrictions. The report contains individual discussions of economic impact for each control but does not address the limitations in assessing economic impact. We believe, therefore, that the Secretary's report can be improved in two ways to provide a fuller understanding of economic impact and the limitations in assessing that impact.

First, the individual economic impact sections could be improved by including, at a minimum, certain key information about the specific control. For example, if a control is of recent origin, the section should include the value or volume of U.S. exports—by product affected to country affected for 3 or 4 years before the control was imposed. If a control has been in place longer, it may be more appropriate to examine the level of exports by other Western countries that have not imposed controls. If available, the number and value of applications denied should be included, with appropriate qualifications. Such information is provided inconsistently in the 1986 report.

Second, an introductory economic impact section applicable to all the controls could be added to the report to describe the limitations in assessing economic impact, such as:

1. The number and value of export license applications denied as a measure of the effect of the controls are likely to substantially understate the cost of the existing controls because U.S. firms may not seek export sales if they know their applications will be rejected.

2 Export controls may reduce the demand for U.S. exports by countries currently unaffected by controls because these countries may fear future U.S supply cutoffs.

3. The level of past U.S. exports to a country now facing controls is not, by itself, a reliable indicator of the base against which the impact of the controls should be measured because other factors, such as changes in currency values, foreign economic activity, or foreign political regimes,

or the emergence of new suppliers, might have materially affected U.S. exports in the absence of the controls.

Our conversations with Commerce personnel indicate that Commerce is trying to develop a methodology for assessing the economic impact of export controls and that it plans to expand this section of the report next year

Recommendation

We recommend that in future reports to the Congress, the Secretary of Commerce include both an introductory discussion of the broader economic factors affecting trade and the limitations of any analysis of the economic impact of a control and a more consistent presentation of information in the individual economic impact sections.

Agency Comments

In commenting on a draft of this report, the Department of Commerce stated it generally concurred with our assessment and plans to expand its future foreign policy control reports along the lines we recommended. Commerce noted that the limited discussion of alternative means in its report should not imply that no alternatives were pursued. We agree with Commerce's observation Our report states that alternatives were considered in certain instances and that it is important for Commerce to provide a fuller discussion of alternatives, including those that were deemed to be unsuitable or had been used unsuccessfully in the past and the reasons why.

Objectives, Scope, and Methodology

The Export Administration Amendments Act of 1985 requires us to assess each report of the Secretary of Commerce that concerns imposing, expanding, or extending foreign policy export controls for compliance with the Act. The Secretary's January 1986 report was the first report since the Act's passage.

To assess the report, we (1) reviewed the 1985 Act and its background to identify the requirements the report must meet, (2) examined the report for compliance with the 1985 Act's requirements, (3) discussed its development with the Commerce and State Department employees who prepared it, and (4) examined the documentation, analysis, and methodology supporting it. We reviewed Commerce and State Department documents describing the tasks to be performed in preparing the report, Commerce and State Department memoranda providing comments on drafts of the report, supporting material provided for the report, and earlier reports extending controls that were required by the Export Administration Act of 1979. We compared the 1986 report with earlier ones required by the 1979 Act to determine how the reports had changed over time. We also reviewed the Secretary of Commerce's February 19, 1986, testimony before the Senate Committee on Banking, Housing and Urban Affairs and March 19, 1986, testimony before the Subcommittee on International Economic Policy and Trade, House Committee on Foreign Affairs, on the purpose, effectiveness, and economic impact of the controls. At the request of the Chairman, Senate Committee on Banking, Housing and Urban Affairs, we provided a preliminary assessment of the Secretary's report in testimony before the Committee on February 19, 1986.

To obtain a broader understanding of the use and history of controls and alternatives to them in the conduct of foreign policy, we reviewed congressional hearings and reports, books, and articles dealing with foreign policy export controls and economic sanctions in general. These included congressional hearings on export controls, State Department reports on human rights practices in individual countries, and several books and articles on the use of economic sanctions. We also talked with people presently or previously active in the area, including the authors of several of the publications we reviewed and former high ranking officials in the previous administration.

We made our review in accordance with generally accepted government auditing standards.

Alternatives to the Use of Foreign Policy Export Controls

From our review of literature, congressional hearings, and past Presidential actions; discussions with a State department official, former high-ranking federal officials, and others who have written on economic sanctions; and statements by the Secretary of Commerce in March 1986 hearings before the Subcommittee on International Economic Policy and Trade, House Committee on Foreign Affairs, we have developed a list of diplomatic and economic alternatives to the use of foreign policy export controls. The list is not meant to be exhaustive.

It should be recognized that alternatives must be chosen within the context of U.S relations with a target country, so not all options are suitable for any given situation. For example, reducing foreign or military aid may be suitable for a country which receives substantial U S. aid but is obviously not applicable for a country which does not receive such aid.

The following lists of diplomatic and economic alternatives to foreign policy export controls are arranged alphabetically to avoid the appearance of favoring one alternative over another

Diplomatic Alternatives

- Expel target country's diplomats from the United States.
- Hold frank and private discussions with foreign leaders.
- Issue public statements in situations where private diplomacy is not effective.
- Make official visits to or hold meetings with opposition leaders.
- Raise issues at summit meetings.
- Reduce the size of embassy staff that the target country is allowed to have in the United States
- Slow the visa application process.
- Suspend cultural, scientific, and educational exchanges.
- Use U.S. voting power in the United Nations to oppose the target country's interest
- Withdraw U.S. diplomats from the target country.

Economic Alternatives

- Deny fishing rights.
- Deny special favorable tariff treatment
- Impose financial controls, such as barring extension of credit or loans and blocking the target country's access to its financial assets in the United States.
- Impose import controls.

- Prohibit financing by the Export-Import Bank and Overseas Private Investment Corporation of target country transactions.
- Restrict foreign aid
- Restrict military aid.
- Suspend airline privileges.
- Use U.S. influence in international financial institutions to oppose and/or deny loans to the target country.

Comments From the Department of Commerce

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
Washington D C 20230

JUL 11 1986

Mr. Frank C. Conahan
Director, National Security and
International Affairs Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is in reply to GAO's letter of May 30, 1986, requesting comments on the draft report entitled "Export Controls: Assessment of Commerce Department's Foreign Policy Report."

We have reviewed the enclosed comments of the Under Secretary for International Trade and believe they are responsive to the matters discussed in the report.

Sincerely,

Kay Bulow

Kay Bulow
Assistant Secretary
for Administration

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington D C 20230

June 30, 1986

Dear Mr. Conahan:

Thank you for the opportunity to review and comment on the General Accounting Office (GAO) draft report, Export Controls. Assessment of Commerce Department's Foreign Policy Report to Congress.

We found the report to be constructive, and we generally concur with GAO's findings. We agree that future foreign policy reports to Congress should provide more detail in the sections on alternative means of affecting the behavior of a foreign country, the economic impact of controls on the domestic economy, and the ability to effectively enforce the controls.

The 1986 foreign policy report to Congress was the first required by the 1985 Amendments Act to the Export Administration Act of 1979. I understand that Commerce staff worked with the GAO to amend some of the sections while the report was in draft. The result, I believe, was a commendable effort to comply fully with the intent of the new Act's provisions. Now, I would like to respond to your comments on the sections of the foreign policy report your paper cited as insufficient.

First, while in many instances the section on alternative means contained little or no explanation of what alternatives had been explored, this should not imply that no such efforts were initiated. Generally, export controls do not precede efforts to pursue alternative means. On the contrary, export controls are generally imposed only following unsuccessful efforts to affect a country's behavior with alternative means. The foreign policy report often noted that export controls were imposed in conjunction with diplomatic means.

Second, your paper described the section on enforcement in the foreign policy report as an incomplete assessment of the problems inherent in enforcement. I believe we can do a better job in future reports in identifying in a preamble the enforcement problems common to certain types of controls, such as unilateral controls and reexport controls. With the common enforcement problems defined at the outset, a statement that no "unusual" enforcement problems exist for a specific foreign policy control would suffice for the majority of foreign policy controls. We would continue to note unusual enforcement issues, as was done in several sections of this year's report.

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Third, addressing your comments on the economic impact section of the foreign policy report, future reports will contain an introductory statement on the limitations of assessing the economic impact of controls on industry. We concur with your comment that, inter alia, quantifying the value and number of export license applications denied does not present an accurate indication of the economic impact of controls on industry.

Finally, in the context of the entire foreign policy report, we are pleased that most of your comments were favorable. Your comments are most helpful, and we will take measures to strengthen future reports in the areas GAO emphasized.

Sincerely,

Bruce Smart

Bruce Smart

Mr. Frank C Conahan
Director
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