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EXPORT CONTROLS

Commerce Department Has Improved Its Foreign Policy Reports to Congress

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

The Export Administration Act of 1979, as amended, requires that we assess each report the Secretary of Commerce issues that concerns imposing, expanding, or extending foreign policy export controls for compliance with the act. This report provides our assessment of three such reports the Secretary recently issued to the Congress. We reviewed the Secretary's reports on (1) imposing and expanding foreign policy-based controls on certain chemicals used as weapons precursors, dated December 12, 1989, (2) extending controls already in place, including those involving human rights and regional stability, dated January 19, 1990, and (3) imposing controls on equipment used to produce fuel for nuclear-capable missiles, also dated January 19, 1990. This report also provides our observations (1) on the decreasing distinction between national security-based and foreign policy-based controls and (2) the possibility of removing the requirement that we assess the Secretary's reports.

Background

The Export Administration Act authorizes the President to establish export controls for economic, national security, and foreign policy reasons. For foreign policy controls, it provides that the President, through the Secretary of Commerce, may prohibit or curtail exports to the extent necessary to further significantly the foreign policy objectives of the United States or to fulfill its declared international obligations. However, the President's use of such controls is limited. The act states that the President may impose, expand, or extend such controls only if he first (1) consults with the Congress, (2) makes certain determinations regarding the impact, significance, and effectiveness of proposed controls, and (3) reports to the Congress. The act also requires us to assess the reports to Congress to ensure that they fully comply with the statutory reporting requirements. Our assessments are not a review of the policy, administration, or scope of the controls themselves.

Results in Brief

Our review showed that these three reports comply with the act's reporting requirements. In our last assessment of Commerce reports, we found reporting deficiencies in two areas - foreign availability of controlled missile-related equipment and technology and industry consultation regarding controls on certain biological organisms used in weapons development. We found in our current review that Commerce has improved reporting on foreign availability of controlled missile-related items and more fully consulted with industry concerning biological organisms controls than it did when it reported to the Congress on the results of such consultations in February 1989.

Regarding foreign policy-based export controls generally, on several occasions in recent years the President has imposed such controls in part for the protection of U.S. security interests. We believe that imposing security-related foreign policy-based controls to some degree has blurred the distinction between foreign policy-based controls and national security-based controls.

Increased reliance on foreign policy-based controls may harm the competitiveness of U.S. industry because the act makes foreign policy-based controls easier to impose and more difficult to remove than national security-based controls. Moreover, foreign policy-based controls, when they are unilateral, do not deny the controlled items to the target country, except if the United States is the sole source of the controlled items.

Finally, Commerce's reports have improved markedly since we began assessing such reports in 1986. Therefore we believe that the Congress' intent that GAO's assessments help assure that the executive branch fully consider all the factors required by the act and keep the Congress fully informed about its intentions has been fulfilled. The Congress therefore may wish to consider deleting the requirement that GAO assess future reports.

Commerce's Latest Reports Comply With the Act's Reporting Requirements

Since our last assessment,[1] Commerce has issued the three previously cited reports. Based on our review of these reports and their underlying documentation, we believe that they comply with the act's reporting requirements. The act requires these reports to address nine subjects for each control. The subjects are the (1) 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) U.S. ability to enforce the control, (7) consequences of modifying the control, (8) alternative means for achieving the control's purpose, and (9) foreign availability of the controlled item. The act also requires the reports to

[1] Export Controls: Assessment of Commerce Department's Foreign Policy Report to Congress (GAO/NSIAD-89-190, Sept. 13, 1989).

discuss the Secretary of Commerce's efforts to consult with industry prior to imposing or expanding controls.

In our 1989 assessment of Commerce's report imposing new foreign policy-based controls on chemicals and biological agents, we found that Commerce did not give industry timely notice of a meeting in which new controls on biological organisms were to be discussed. In reviewing the Secretary's January 19, 1990, report on the extension of existing controls, however, we found that Commerce has adequately consulted with industry by holding a second meeting with industry representatives and has revised the controls to incorporate industry concerns.

Commerce also has more fully reported the information available to it on the foreign availability of missile-related technology and equipment than it has in previous reports. In our assessment of Commerce's 1987 report on the imposition of foreign policy export controls on missile-related items, we stated that the discussion of foreign availability focused on certain U.S. allies who were participating in an international effort to limit availability of these products.[2] We noted that the report did not present information on whether other countries might be capable of undermining the controls. In our review of Commerce's 1988 and 1989 reports extending and expanding these controls, we noted that Commerce's discussion of this issue had not improved.[3] However, this year's reports include pertinent information compiled by Commerce's Office of Foreign Availability. For example, the report names nine countries outside the eight-nation Missile Technology Control Regime that have manufacturing capabilities in this area.

Foreign Policy-Based and National Security-Based Controls Are Becoming Blurred

Since 1986, the United States has imposed a number of foreign policy-based controls that are intended in part to protect U.S. security interests. We believe that imposing these controls has blurred the distinction between national security-based and foreign policy-based controls. This has occurred despite the fact that the act seeks to distinguish between the two types of controls.

Section 5 of the Export Administration Act, which deals with national security-based controls, authorizes the President to restrict the export of

[2]Export Controls: Assessment of Commerce Department's Report on Missile Technology Controls (GAO/NSIAD-88-159, May 24, 1988).

[3]Export Controls: Assessment of Commerce Department's Foreign Policy Report to Congress (GAO/NSIAD-89-190, Sept. 13, 1989).

any good or technology that would harm U.S. national security by making a significant contribution to the military potential of any country or combination of countries. Currently, the President imposes these controls on the seven members of the Warsaw Treaty Organization, the Peoples' Republic of China, and five other Communist countries.[4] Even though section 5 permits the President to add or remove countries from this list, President Reagan has been the only one to do this, when he removed Yugoslavia from the list in 1985. Thus, national security controls continue to target only traditional U.S. Communist adversaries.

Section 6 of the act, which deals with foreign policy-based controls, permits the President to impose such controls on any good, technology, or other information under the jurisdiction of the United States to significantly further U.S. foreign policy or to fulfill its declared international obligations. As we noted in our 1986 assessment, most controls imposed for foreign policy purposes are symbolic because (1) their stated purposes are 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.[5] However, some foreign policy-based controls are intended in part to respond to challenges to U.S. security interests around the world.

Imposing foreign policy-based controls that are security related has become more common in recent years. For example, in April 1987, in part to help curtail the proliferation of missile systems capable of delivering nuclear weapons, the United States imposed foreign policy-based controls on the export of certain missile-related technology. Similarly, in February 1989, in part to curb weapons proliferation, the United States imposed foreign policy-based controls on the export of certain chemicals and biological organisms used in weapons development.

Notwithstanding the legislative distinction between national security-based and foreign policy-based export controls, we believe that imposition of security-related controls under section 6 of the act has, to some extent, blurred the distinction between the two types of controls. Moreover, we believe that this blurring will become more pronounced if the United States increases its reliance on foreign policy-based controls as a result of redefining its security interests to emphasize preventing

[4]The seven Warsaw Treaty Organization countries are the Soviet Union, Rumania, Poland, Bulgaria, Hungary, the German Democratic Republic, and Czechoslovakia. The five other countries are Vietnam, Cuba, Albania, Mongolia, and North Korea.

[5]Export Controls: Assessment of Commerce Department's Foreign Policy Report to Congress (GAO/NSIAD-86-172, Aug. 19, 1986).

regional instability or proliferation of certain weapons and de-emphasizes more traditional national security objectives.

Foreign Policy-Based Controls May Harm U.S. Industry's Competitiveness and Pose Enforcement Problems

Increased reliance on foreign policy-based controls may harm the competitiveness of U.S. industry. The act makes foreign policy-based controls easier to impose and more difficult to remove than national security-based controls, and U.S. exporters bear the burden that unilateral foreign policy controls impose. Also, unilateral foreign policy-based controls do not deny the controlled items to the target countries, except if the United States is the sole source of the items.

Foreign policy-based controls are easier to impose than national security-based controls for two reasons. First, the act permits the President to impose foreign policy-based controls unilaterally, while a 1988 amendment to the act prohibits the United States from (1) maintaining unilateral national security-based controls unless it is the sole producer of the item and (2) temporarily maintaining them unless the President is actively pursuing negotiations to achieve multilateral control. Second, unlike national security-based controls, foreign policy-based controls are not necessarily coordinated with members of the multilateral body known as the Coordinating Committee on Multilateral Export Controls, or COCOM,[6] before they are imposed. Consequently, when the United States is contemplating imposing such a control, it is not formally constrained by any objections from its allies. In addition, because COCOM was organized to coordinate controls on exports to the Communist world, it is uncertain as to whether COCOM would impose controls on exports to other destinations.

Foreign policy-based controls are also harder to remove than national security-based controls because they can be retained despite widespread foreign availability and because they often come to symbolize U.S. resolve.

The Secretary of Commerce's reports over the past several years have disclosed that there is widespread foreign availability of virtually all controlled items. However, by defining the foreign policy purposes of these controls in a symbolic context—such as to distance the United States from the specific actions of certain foreign nations—controls on

[6]COCOM is an informal, nontreaty organization, composed of members of the North Atlantic Treaty Organization (excluding Iceland), plus Japan and Australia, that coordinates export control policy.

the specific items can continue despite foreign availability of the controlled items. Thus, as we reported in 1986, a foreign policy-based control may remain in force even if foreign availability renders the control unable to influence the target country's behavior that led to the control's imposition.

As we also reported in 1986, symbolic controls take on dimensions beyond their original purposes when their renewal is considered. Once in place, possible removal is viewed as signaling a lessening of U.S. resolve or commitment. Consequently, there is a reluctance to remove such controls without a quid pro quo.

When foreign policy-based controls serve symbolic purposes and are unilaterally imposed, which is generally the case, U.S. businesses lose export sales to firms in other countries. The Secretary's reports have consistently detailed the substantial costs imposed on U.S. businesses by many of the controls.

Finally, unilateral foreign policy-based controls are particularly difficult to enforce because, as we reported in our 1986 assessment, the United States has difficulty in controlling the items when other countries have not imposed similar controls. Thus, while enforcement difficulties do not render purely symbolic unilateral controls ineffective in achieving their intended purposes, the availability of the items from other countries and U.S. inability to control the flow of controlled U.S.-origin goods after they leave the United States make it difficult to prevent proliferation using a unilateral foreign policy-based control.

We discussed these matters with officials from the Departments of Commerce and State responsible for the foreign policy reports' preparation. The Commerce official generally agreed with our observations. He said he believed the distinction between the two types of controls has blurred in recent years, and that foreign policy-based controls are too easy to impose and too difficult to remove relative to national security-based controls. The Department of State official disagreed with us. He said he believed the two types of controls will remain distinct because, while national security-based controls are intended to protect the United States and its North Atlantic Treaty Organization allies from attack, foreign policy-based controls are intended to promote more purely foreign policy interests, including other security interests.

We agree that national security-based controls and foreign policy-based controls may remain analytically distinct concepts, even if the United

States redefines its security interests. Yet, in practice, the distinction between the two types of controls has blurred, and may blur further to the extent those interests are redefined.

Since 1986, Commerce's Reports Have Improved Markedly

Since we began assessing Commerce's foreign policy reports to Congress pursuant to the act, the quality of the reporting has improved considerably. As we testified in 1986, the Congress added the requirement to the act that we assess each report to ensure that the executive branch fully consider all the factors required by the act and keep the Congress fully informed about its intentions.[7]

Since then, we have reviewed 16 such reports. Although all of them met the act's reporting requirements, many of them contained a number of weaknesses, such as incomplete discussions of enforcement difficulties and foreign availability, and omission of other information on the controls' impact and effectiveness. We recommended ways to improve reporting in some of these areas. Commerce has largely incorporated these recommendations into subsequent reports. In fact, we believe the quality of this year's reports suggests that the Congress' intent has largely been realized.

Matters for Congressional Consideration

The Congress may wish to consider amending the Export Administration Act to delete the requirement that we assess future reports in light of their improved quality and compliance with the act's requirements.

Scope and Methodology

We (1) reviewed the act and its background to identify the requirements the Department of Commerce reports must meet, (2) examined the three recent Commerce reports for compliance with these requirements, (3) discussed development of the reports with the Commerce Department employees who prepared them, and (4) examined the documentation, analysis, and methodology supporting the reports. In addition to assessing each of the reports, we also determined the extent to which they presented all the information available to Commerce so as to enhance their completeness and utility to the Congress.

[7] Statement of Allan I. Mendelowitz Before the Senate Committee on Banking, Housing, and Urban Affairs on Foreign Policy Export Controls (Feb. 19, 1986).

Regarding the distinction between foreign policy-based and national security-based controls, we reviewed sections 5 and 6 of the act to determine how the two types of controls may be implemented, reviewed the history behind the imposition of certain such controls, and discussed blurring with Commerce and State Department officials responsible for the reports' preparation.

We conducted our review between February and March 1990 according to generally accepted government auditing standards. Throughout our review, we discussed these issues with agency officials and have incorporated their comments where appropriate.

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.

This report was prepared under the direction of Allan I. Mendelowitz, Director, Trade, Energy, and Finance Issues, who may be reached on (202) 275-4812. Other major contributors were Steven Sternlieb, Project Director, and David Genser, Project Manager.

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