

## APPENDIX I

### Summary of Comments on Foreign Policy Controls

In the *Federal Register* of October 13, 1998, the Department of Commerce requested comments from the public on existing foreign policy-based controls maintained under Section 6 of the Export Administration Act. In the notice, the Department sought comments on how existing foreign policy-based controls have affected exporters and the overall public. Specifically, the notice invited public comments about the effectiveness of controls where foreign availability exists; whether the goals of the controls can be achieved through other means such as negotiations; the compatibility of the overall U.S. policy toward the country in question; the effect of controls on U.S. economic performance; and the enforceability of the controls. The Department also requested comments from the member companies of its Technical Advisory Committees (TACs) and the President's Export Council Subcommittee on Export Administration (PECSEA).

The Department received eight responses to this request, from the Regulations and Procedures Technical Advisory Committee (RPTAC), MTS Systems Corporation, William A. Root, Electronic Industries Alliance (EIA), the Industry Coalition on Technology Transfer (ICOTT), Semiconductor Equipment and Materials International (SEMI) the National Association of Manufacturers (NAM), and Balzers und Leybold Deutschland Holding AG. The Bureau of Export Administration (BXA) makes the comments available for public review upon request. This Appendix summarizes the comments received and some of the various reports issued in 1998 on unilateral sanctions.

#### Industry Comments

MTS System Corporation's response centered on the negative effects of unilateral export controls and embargoes. MTS System believes that unilateral controls and embargoes do not deny equipment to the sanctioned entity and result in a significant losses of business and reputation for U.S. companies. Business opportunities lost in China, India and Iran were used to illustrate MTS System's comments.

William Root wrote urging complete harmonization of U.S. controls with multilateral regimes. Mr. Root advocates revamping U.S. export controls to include multilateral items not currently on the CCL, to bring CCL items currently above and/or below the standard of multilateral controls in line, and to remove unilateral controls. Additionally, his letter identifies fifteen unilateral ECCNs that are identified by numbers indicating that they are multilateral, and 105 ECCNs listed with their respective unilateral and multilateral portions incorrectly identified.

ICOTT wrote in support of William Root's comments in regard to accurate identification of controls on the CCL and harmonization of the CCL with multilateral regimes. In addition,

ICOTT opposes the imposition of export controls for symbolic reasons (such as distancing the United States from the actions of other countries) and urges the Administration to fulfill its promise that controls should not be imposed on items with demonstrated foreign availability. Finally, ICOTT urges the Administration to fulfill its promise to publish the names of all suspect end-users in the *Federal Register*.

Electronic Industries Alliance focused its response on two negative effects of unilateral controls: first, their negative impact on the international competitiveness of American industry, and second, the inability of unilateral controls to prevent sanctioned states from engaging in prohibited activities. EIA believes that when formulating export policy, the Department of Commerce should identify the actual effect of the controls on the target country, the potential effect of the proposed controls on U.S. industry, and the level of multilateral cooperation (catch-alls, etc.) available to support the controls. Development of these criteria to analyze the effectiveness of the controls would establish the rationale (or lack thereof) of the controls and therefore lead to a better balance between the level of international competition needed to maintain the health of the U.S. economy and the protection of foreign policy and national security interests.

The comments submitted by SEMI were also in opposition to unilateral export controls. In particular, SEMI believes that the continuation of unilateral EPCI controls penalizes U.S. business through the loss of sales revenues that could support domestic research and development efforts. SEMI urges the Department of Commerce to assess the costs of unilateral controls and to work in tandem with U.S. allies in pursuit of effective multilateral sanction policies.

The RPTAC's comments promote the use of unilateral controls when the control is demonstrably effective in achieving its intended purpose. RPTAC believes that unilateral controls should be regulated within specific parameters, including design of the control to meet specific objectives and the use of unilateral controls only when the control's objective can (as compared to may) be achieved. The India-Pakistan sanctions, NDAA computer controls, the Department of Commerce's relationship with China (PRC), the deemed export rule and the lack of conformity of some EAR revisions with multilateral requirements are all cited as examples of foreign-policy based controls that do not address their objective and result in unintended consequences for U.S. industry.

Balzer und Leybold Deutschland Holding AG (BLDH) commented that under the EAR, U.S. firms have a great number of advantages in exporting controlled goods as compared to their European counterparts. As an example, BLDH cited ECCNs 2B350 through 2B352, under which the U.S. Government allows exports from the United States to 154 countries under "No License Required" standards but requires licenses for the same goods being reexported from Germany to all but 21 countries. Additionally, BLDH stated that the EAR is too complicated, citing Section 744 (Control Policy: End-User and End-Use Based) as an overly complex section, the whole of which is contained in a few lines in the European Community's Council Regulation No. 3381/94.

### Unilateral Sanctions

Much attention in 1998 focused on the issue of U.S. unilateral sanctions. Many industry associations and research institutes published reports on sanctions. In addition, the USDA released a report analyzing the impact of U.S. sanctions on U.S. agricultural trade. This Appendix, while not inclusive, summarizes some of the reports published this year and highlights their major conclusions.

The report released by USDA during the summer of 1998 concluded that U.S. sanctions on six specific countries cost the United States a minimum of \$500 million in lost trade during 1996. Industry response to the report estimates the loss as much higher. The Foreign Agricultural Service's contribution to the report included an analysis of sanctions concluding that normalization of investment flows and the ability to get foreign investment into sanctioned countries (i.e., Cuba, North Korea, Iran, Iraq, etc.) would do more to expand consumption of U.S. agricultural products than would simply lifting agricultural sanctions.

In July, 1998, the Council on Foreign Relations published a book, Economic Sanctions and American Diplomacy, edited by Richard N. Haass, exploring the paradoxical role of sanctions in American foreign policy. The book focuses on the concept that although sanctions are often ineffective, they have become one of the foreign policy tools of choice for the United States in the post-Cold War world. In addition to exploring the role that sanctions play in American foreign policy, the book suggests reforms that would enable Congress and the Administration to make better decisions about sanctions and to implement them more effectively.

A policy brief released by The Brookings Institution in June, 1998, "Economic Sanctions: Too Much of a Bad Thing," explores the increasing use of sanctions to promote the full range of American foreign policy objectives. The brief concludes that sanctions too often turn out to be expressions of U.S. preferences that hurt American business interests without positively changing the target's behavior.

The Center for Strategic and International Studies released the interim report from its Steering Committee on Economic Sanctions in June, 1998. The theme of the report is that unilateral economic sanctions are ineffective and damage U.S. national interests.

NAM provided the Department of Commerce with two of its reports: "A Catalog of New U.S. Unilateral Economic Sanctions for Foreign Policy Purposes, 1993-96", and "Unilateral Economic Sanctions 1997-98." Although NAM recognizes the necessity of multilateral controls, it does not believe that the EPCI items the U.S. controls unilaterally are controllable and/or are sufficiently critical to proliferation programs to justify controls. Additionally, NAM believes that unilateral controls are an impediment to the international competitiveness of U.S. business.