

## APPENDIX I

### Summary of Comments on Foreign Policy Controls

In the *Federal Register* of November 30, 1999, 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 such issues as 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 15 responses to this request from the following organizations: the Regulations and Technical Advisory Committee ("RPTAC"); the Information Systems Technical Advisory Committee ("ISTAC"); the Transportation Technical Advisory Committee ("TRANSTAC"); and the Materials Advisory Committee ("MTAC"); the National Foreign Trade Council; the National Association of Manufacturers; the Industry Coalition on Technology Transfer ("ICOTT"); Pacific Scientific Instruments; Hanex, Inc.; Innotec Group Inc.; Sector Microwave Industries, Inc.; Baker Hughes International; Conoco Inc.; Amerada Hess Corp.; and Pamir Electronics Corp. The Bureau of Export Administration (BXA) makes the comments available for public review upon request. This Appendix summarizes the comments received.

#### Industry Comments

The TRANSTAC's comments addressed controls on gas turbine technology and aviation sensors technology. The TRANSTAC believes that the U.S. Government should grant relief for after-sale support for civil aircraft engines in the event of a U.S. embargo, as failure to allow such support could inadvertently result in the operation of unsafe equipment within the embargoed country. The committee also believes that controls on hot section technology prior to its receiving civil certification serve little purpose, given that the technology tends to become available internationally on foreign civil engines long before U.S. civil certification. Regarding aviation sensors technology, the committee believes that the regulations need to be updated more frequently given the pace of technological change.

The ISTAC's comments focused on need for a rigorous process of evaluation before

implementing controls, an ongoing evaluation of the effectiveness of controls, and the establishment of criteria to disengage from the controls. The committee also noted the importance of enlisting support from other countries when implementing controls.

The MTAC focused its comments on chemical/biological controls. The committee believes that the current export controls on chemical/biological warfare agent manufacturing have a low probability of controlling the access to materials and equipment by countries that desire to obtain them due to foreign availability. Nonetheless, the committee believes that negotiations on the Biological Weapons Convention, which is currently under review, could be useful, and that overall the chemical/biological controls are compatible with the foreign policy objectives of the United States.

The RAPTAC stated that foreign policy-based controls should be imposed only on a limited basis, be designed to achieve a specific objective, and be removed if the objective is not met. The committee cited controls on India, Pakistan, and Iran as examples in which unilateral sanctions have not met their intended purpose and require revision. The committee also urged changing U.S. licensing policy toward China, given that other Wassenaar members do not adhere to the same “Cold War” policies toward the PRC as the United States does. Other controls that the RAPTAC considered to be de facto unilateral sanctions that should be removed are the deemed export rule, selective anti-terrorism controls (those items with Export Control Classification Numbers of xx99x), and in-transit controls (General Prohibition 8, Section 736.2(b)(8)).

The National Association of Manufacturers (“NAM”) stated that although foreign policy-based controls are primarily unilateral and should be allowed to expire, controls on India/Pakistan and Libya could be altered until legislation is passed that would rewrite all export controls. The controls on India and Pakistan went beyond what is required under the Glenn Amendment by including in the sanctions items other than those controlled for nonproliferation reasons. NAM believes that Commerce should revise its policy of denying licenses for a wide range of items to a wide range of end users to one of case-by-case review of only proliferation-controlled items to a much smaller list of end users. Regarding Libya, NAM argued that reexport controls are ineffective and have resulted in firms designing out U.S. goods for export to Libya.

The National Foreign Trade Council recommended that export controls on foreign-manufactured products with U.S.-origin content to Libya not be reauthorized. Among other reasons for not reauthorizing the controls, the Council maintains that their main effect is a “designing out” of US products from goods manufactured overseas destined for the Libyan market, and that the controls are unenforceable. The controls are also regarded by other governments, including U.S. allies, as an extraterritorial sanction.

The ICOTT stated that unilateral controls are generally ineffective because of foreign availability. Absent a removal of these controls, however, the association recommended regulatory changes to

the India/Pakistan sanctions, antiterrorism controls, and in-transit controls. Regarding India and Pakistan, ICOTT recommended that both the entities and items sanctioned adhere to congressional criteria stipulated in the Glenn Amendment, and not to the wide range of items to a wide range of end users currently affected. ICOTT also recommended that items controlled for anti-terrorism purposes, i.e., those numbered xx99x, be decontrolled. Such controls cover such items as computers over 6 million theoretical operations per second (MTOPS) despite the fact that the U.S. Government has conceded that computer below 6,500 MTOPS cannot be controlled effectively. ICOTT also recommended removal of controls on exports transiting countries considered to be Cold War adversaries primarily because the control does not appear to meet any foreign policy objective but also because unclear regulations make establishing an accurate internal compliance program difficult.

Several companies commented on the India/Pakistan sanctions. Pacific Scientific Instruments estimated that its losses due to the sanctions on India cost it \$60,000 - \$100,000 annually, and noted that Indian end users no longer include the firm in tenders. In a similar vein, Hanex, Inc. noted that the sanctions on low-tech items (EAR99 items) to India have affected them considerably. Innotec noted that their economic losses as a result of the sanctions on specific entities in India has been considerable. Sector Microwave Industries, a supplier of telecommunications equipment, commented on the losses of pre-existing and new contracts since the United States imposed sanctions on India, and noted that European competitors are gaining at the firm's expense. Pamir Electronics also commented that the India/Pakistan sanctions are only helping European competitors rather than bringing about change on the part of the Indian government.

Baker Hughes International, Conoco Inc., and Amerada Hess Corp. commented on reexport controls on Libya. Baker Hughes stated that at a minimum, controls on Libya should be brought into line with those imposed on North Korea and Iran. Namely, they should be reduced to the level that would be directly related to national security, non-proliferation, or anti-terrorism concerns. Among other reasons in support of relaxing the reexport sanctions, the company cited the suspension of UN sanctions and the resulting involvement by European firms in Libya. Conoco Inc. also urged that the controls not be reauthorized in their current form. The company stated that the circumstances surrounding the implementation of the controls no longer exist, and the controls cannot be monitored and hand over advantages to international competitors. Amerada Hess Corp.'s comments also emphasized that the reexport controls are difficult to monitor and unfairly penalize U.S. companies by encouraging the elimination of U.S. components from goods that are sold into the Libyan market.