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U.S. SPEAKER

R. Richard Newcomb[†]

Thank you, Selma, for your kind introduction. It is truly a pleasure to be here in Cleveland, at the kind invitation of Henry King at the Case Western Reserve School of Law and the Canada-U.S. Law Institute.

I do find it especially gratifying to be back at my law school alma mater and see what truly outstanding work they are doing as evidenced by the institute, this event, and the multitude of innovative international law and the issues of the International Cox Law Center. It is very impressive.

Today I will talk about three topics. First, I will give an overview of economic sanctions, tracing their development up to the war on terrorism and terrorist financing, and I will spend a few minutes on how this touches global securities risk for companies worldwide.

Finally, I will address a subject that is always of concern to U.S. companies and our allies, and it invariably comes up in discussions like these, that is, the extent and nature of federal jurisdiction over foreign subsidiaries of U.S. companies operating abroad and how they are affected by U.S. sanctions regimes. I am going to try to keep to the 20-minute time frame, but if I do run over a minute or two, please forgive me in advance.

As you know, as Selma has pointed out, I had the very great honor having served until recently for 18 years as the Director of Office of Foreign Assets Control of the U.S. Treasury Department. Our job was to administer and en-

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force U.S. economic sanctions and embargo programs in furtherance of national security and foreign policy goals.

Looking back at all the programs we had since 1987, when I began in this position, we were charged with some 39 separate sanctions programs to be implemented. At the end of the day, I certainly hope it safely can be said that we demonstrated that sanctions can be an effective tool of U.S. foreign policy and national security.

I will also say they didn't always work as well as we might have liked, but when they worked well, they worked very well. And we tried everything. And by that, I mean the national security interagency group. And if that didn't work too well, the next time we tried something different until finally we got better at picking what worked well and how we could make sanctions work better. We tried everything until we got it right.

We had punitive asset freezes and protective freezes. We had comprehensive sanctions. We had extraterritorial and non-extraterritorial programs. We had asset freezes with no trade embargos. We had trade embargos with no assets freeze. We had specific trade bans, either imports, exports or both, or some kind of a combination. We had payment prohibitions where U.S. persons were prohibited from paying taxes to embargoed foreign jurisdictions.

We had a broad use of IEEPA, a narrow use of IEEPA, a laser use of IEEPA, and by IEEPA, I am referring to the International Emergency Economic Powers Act.[1] We had prohibitions on new investments. We required disinvestments. We had standstill agreements and reentry licenses. We blocked funds in aid of investigation. We blocked funds in aid of litigation. We regulated trade in diamonds. We froze payments for highly enriched uranium to prevent their attachment by creditors.

We targeted sanctions against groups, individuals, and nations. We targeted narcotics traffickers, first in Columbia, then around the world, and we targeted terrorists, terrorist supporting nations in the Middle East peace, then those individuals and groups disrupting the Middle East peace process, then Osama Bin Laden, the Taliban, al Qaeda, and then all terrorists worldwide.

And, of course, Congress always got into the act to provide guidance on what we did. So in addition to the International Emergency Economic Powers Act, we had the Comprehensive Anti-Apartheid Act,[2] the Cuban Democracy Act,[3] the Berman Amendment,[4] the Antiterrorism and Effective Death

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[1] Int'l Emergency Economic Powers Act of 1977, 50 U.S.C. §§ 1701-1706 (1977) [hereinafter IEEPA].

[2] Comprehensive Anti-Apartheid Act of 1986, 22 U.S.C. §§ 5001-5116 (1986), *repealed by* South African Democratic Transition Support Act, Pub. L. No. 103-149, 1993 U.S.C.C.A.N. (107 Stat.) 1503.

[3] Cuban Democracy Act of 1992, 22 U.S.C. §§ 6001-6010 (1992) [hereinafter Cuban Democracy Act].

[4] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 2502(a), 1988

Penalty Act,[5] the Iran-Libya Sanctions Act,[6] the Helms-Burton Act,[7] the Trade Sanctions Reform Act,[8] the Narcotics Kingpin Act,[9] the Judicial Review Commission,[10] and the 911 Commission,[11] to name just a few.

We had unilateral, bilateral, and multilateral sanctions. We worked with a multitude of foreign governments and international organizations: the UN, NATO, the EU, the OECD, the GCC (Gulf Cooperation Council), the OAS, to create dialogue, provide technical assistance and ensure uniformity in implementation and enforcement. And we traveled to visit target states, front line states and our allies. We imposed sanctions; we lifted sanctions; we fine-tuned, tightened, loosened, and re-imposed sanctions.

And we blocked every conceivable kind of property: billions, tens of billions of dollars of assets, office buildings, direct and portfolio investments, ships, vessels, art collections, oil on the high seas, oil in storage containers, foreign banks and financial services, homes, cars, warehouses, letters of credit, banker's acceptances and military equipment. And we licensed every conceivable kind of transaction: oil for food, travel, imports, exports, major league baseball games, sports events, project finance, construction projects, humanitarian relief for natural disasters such as earthquakes, hurricane, and famine. We licensed oil pipelines and refineries. We even once licensed a foreign head of state.

And we opened domestic offices outside of Washington. We had foreign offices with attaches at U.S. Embassies in Bogotá, Columbia, Mexico City, and Manama, Bahrain. We placed staff at the military combatant commands at CENTCOM in Florida, PACOM in Hawaii, EUCOM in Germany, and yes, we had an office in Miami, Florida to oversee the enforcement sanctions on Cuba.

In the United States, economic sanctions over the last two decades have emerged as one of the principal tools of foreign policy, not always to the agreement of our allies. We are very fortunate to have IEEPA, the Interna-

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U.S.C.C.A.N. (102 Stat.) 1107.

[5] Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, 1996 U.S.C.C.A.N. (110 Stat.) 1214.

[6] Iran and Libya Sanctions Act, 50 U.S.C. § 1701-1706 (1996), *amended by* ILSA Extension Act of Aug. 3, 2001, 50 U.S.C. § 1701 [hereinafter Iran-Libya Sanctions Act].

[7] Cuban Liberty and Democratic Solidarity (Helms-Burton) Act of 1996, 22 U.S.C. §§ 6021-6091 (1996).

[8] Trade Sanctions Reform Act of 2000, Pub. L. No. 106-387.

[9] Foreign Narcotics Kingpin Designation Act of 1999, 21 U.S.C. §§ 1901-1908 (1999) [hereinafter Kingpin Act].

[10] 21 U.S.C. § 1908(g) (establishing the Judicial Review Commission on Foreign Asset Control).

[11] Intelligence Authorization Act for Fiscal Year 2003, Pub. L. No. 107–306, §§ 601-611 (establishing the National Commission on Terrorist Attacks Upon the United States (9/11 Commission)).

tional Emergency Economic Powers Act as our basic implementing statute. No other country has anything like it, and we are unique. Under this statute, the President has very broadly delegated authority from the Congress to regulate economic transactions of any nature whatever by U.S. persons, very broadly defined, wherever in the world they are located, in times of national emergency.[12]

The President has the authority under the statute to declare a national emergency because of a threat from outside of the United States to the national security, foreign policy or economy of the United States.[13] Simultaneously, with the declaration of a national emergency, he issues an Executive Order, which contains the terms and requirement that all U.S. persons as a matter of law must follow with regard to the subject or target of the order, whether it be a nation, a terrorist group, a narcotics kingpin, or any person or entity determined to be an agent or affiliated with the target.[14] The order of the state of emergency must then be renewed annually as well as an annual report sent to the Congress.[15]

Under this authority, the President can then shape a program to meet the particular needs of the national security crisis that he believes the country faces. The actions I mentioned at the outset are among the many options that are available and have been used over time. As each program is shaped at different times by different people to address different problems, no two programs are ever exactly the same, often to the dismay of companies and our allies.

IEEPA, the International Emergency Economic Powers Act, was passed by Congress and signed into law by the President in 1977.[16] It was the successor statute to the Trading with the Enemy Act, which dates back to the World War I and World War II eras.[17] It is the statute that had been used for the economic sanctions up until IEPPA and the authority used to promulgate the sanctions against Cuba from 1963 until the present.[18]

There are several differences between the two statutes, but for today's purposes as a practical matter, the principal difference is that the Trading with the Enemy Act has been traditionally applied extraterritorially to in-

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[12] IEEPA, *supra* note 1, at § 1701(a)(1).

[13] *Id.* at § 1701.

[14] *Id.*; *See also generally What Is An Executive Order?*, http://www.thisnation.com/question/040.html (last visited Nov. 7, 2005) (discussing the use of states of emergency).

[15] IEEPA, *supra* note 1, at § 1703.

[16] *See generally* 2 ECON. PERSPECTIVES (September 1997), *available at* http://www.usembassy.it/pdf/ej/ijee0997.pdf.

[17] Trading With The Enemy Act of 1917, 50 U.S.C. § 5 *et seq.* [hereinafter TWEA].

[18] *See generally What You Need to Know About the U.S. Embargo*, *available at* http://www.treas.gov/offices/enforcement/ofac/sanctions/t11cuba.pdf.

clude all persons subject to U.S. jurisdiction, including foreign subsidiaries of U.S. companies incorporated and operating outside of the United States – a source of some irritation to many of our allies.

I will speak more about this later, but as I look back, sanctions in the modern era have evolved in what I would describe as four stages. Stage one would be the period of 1977 to 1990, the – let me call it for our discussion purposes – the getting-to-know-you process.

First, there was Iran, the hostage crisis of 1979. Fifty-two U.S. nationals were taken hostage, and the Iran finance minister threatened to withdraw its considerable U.S. deposits.[19] The United States responded with the freeze of Iran's assets, which ultimately proved to be some $12 billion dollars of funds and other property.[20] The program was very successful. We got the hostages back, and the U.S. private corporate and bank claims were settled with Iran 100 cents on the dollar.

The Algiers accords between the United States and Iran,[21] which was the basis for the release of the hostages, set up the Iran-U.S. Claims Tribunal, which is functioning today as the largest and most successful program of its kind ever. Then followed a series of other programs, where sanctions were used, now with this new tool, IEEPA, with varying degrees of success: Nicaragua, South Africa, Libya, Iran again, and Panama.[22]

The Congress was also getting into the act by this time, seeing what sanctions could do. Senator Mack from Florida, coming to the aid of the powerful Cuban-American National Foundation, proposed to restrict our ability (i.e. OFAC's) to issue licenses to foreign subsidiaries of the U.S. companies for buying and selling goods to Cuba when certain criteria were met.[23]

It had become a brisk trade amounting to nearly a billion dollars, and seeing what sanctions could do, they wanted them applied more strictly to Cuba. The so-called Mack Amendment, first introduced in 1989, the subject of considerable debate, was finally passed into law several years later as part of the Cuba Democracy Act.[24]

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[19] *See generally The Hostage Crisis In Iran*, http://www.jimmycarterlibrary.org/documents/hostages.phtml (last visited Nov. 7, 2005).

[20] *See Iran Hostage Crisis*, *available at* http://www.bartleby.com/65/ir/Iranhost.html (last visited Nov. 7, 2005).

[21] Algiers Accords, Jan. 20, 1981, U.S.-Alg.-Iran, 20 I.L.M. 224.

[22] *See generally Treasury Office Of Foreign Assets Control Director R. Richard Newcomb S. Banking, Housing And Urban Affairs Committee*, http://fas.org/spp/starwars/congress/1997_h/s971031n.htm.

[23] *See generally* Harry L. Clark, *Dealing With U.S. Extraterritorial Sanctions And Foreign Countermeasures* (1999), *available at* http://www.dbtrade.com/publications/extra_territorial.pdf.

[24] Cuban Democracy Act, *supra* at note 3, at § 6005(a).

During this same time period – I am talking about '77-90 – programs were also being lifted and Vietnam, an old Trading with the Enemy Act program was being lifted as were others, South Africa, Panama, and Nicaragua.[25]

The Soviet Union had fallen, peace had broken out. There was even talk that the United States might lift sanctions on Cuba when suddenly on August 2, 1990 Iraq invaded Kuwait.[26]

This began what I describe as Phase II, the Internationalization process, which lasted from approximately August 1990 to 1995. Since the now former Soviet Union was no longer around to veto proposed action of this nature, the lead that President Bush took that warm summer night was soon followed a week later in the UN. And now, not since World War II was there a truly comprehensive coordinated multilateral embargo – in this case, against Iraq and also against Kuwait,[27] as a protective measure, UN resolution 661 began the process for a broad coalition using sanctions as a diplomatic tool.[28]

It now appeared sanctions were here to stay, and the UN began participating in other programs, targeting Serbia in 1992,[29] and tightening it in 1993.[30] It also developed programs against Haiti in response to a stolen election,[31] Libya following the discovery that it had been involved in the bombing of Pan Am 103 that crashed over Lockerbie, Scotland.[32]

But the sanctions committee at the UN, largely a licensing body at this time, became bogged down in the multitude of the inevitable tradeoffs that such a body must address at the request of member nations wishing to support their companies seeking licenses. Then in 1995 – in both March and in 1995 – in both March and May, the U.S. again imposed sanctions against Iran for its support of terrorism and terrorist activities.[33] Congress got into

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[25] *See generally* Cuban Assets Control Regulations: Publication of Economic Sanctions Enforcement Guidelines, 31 C.F.R. pt. 501 (2003), *available at* http://www.treas.gov/offices/enforcement/ofac/civpen/enfguide.txt (last visited Nov. 7, 2005).

[26] *See generally On This Day: Aug. 2*, http://news.bbc.co.uk/onthisday/hi/dates/stories/august/2/newsid_2526000/2526937.stm (last visited Nov. 7, 2005).

[27] *See Use Of Sanctions Under Chapter VII Of The UN Charter: Iraq*, http://www.un.org/News/ossg/iraq.htm (last visited Nov. 7, 2005) [hereinafter *Use of Sanctions*].

[28] Sec. Council Res. 57/511, ¶ 1-11, U.N. Doc. S/RES/661 (Aug. 6, 1990).

[29] *See generally Use Of Sanctions*, *supra* note 28.

[30] *Id.*

[31] Sec. Council Res. 933, ¶ 1-7, U.N. Doc. S/RES/933 (June 30, 1994).

[32] Youssef M. Ibrahim, *Sanctions on Libya Likely to Fuel Qaddafi's Chaos*, N.Y. TIMES, Apr. 1, 1992, at A12.

[33] *See Iran's Advantage: The Country Holds Ten Percent of the World's Proved Oil Reserves*, ENERGY, Mar. 22, 2005, at 213.

the act and passed ILSA, the Iran-Libya Sanctions Act,[34] in support of the perceived windfall that this was affording to foreign companies, especially oil companies.[35] Under this statute, the President was required to impose two or more sanctions out of a prescribed menu of six possible sanctions against any foreign person (U.S. persons were already prohibited by the March 1995 Executive Order against Iran) that, through an investment of $40 million dollar or more, "directly or significantly contributed to the enhancement of Iran's ability to develop petroleum resources in Iran."[36] The statute also had a waiver provision that permitted the President to waive this if he determined it to be in the national interests to do so.[37] He used this waiver authority often.

In effect, after the administration had prevented a U.S. oil company from completing its contract with Iran to develop its South Pars oil field, the U.S. Congress decided that sanctions would be used as a tool to ensure that no other foreign company did it either. This really got the back up of our allies whose oil companies wanted this work.

But the ire for this type of extraterritorial reach probably reached its apogee with the Helms-Burton Act[38] enacted after the shoot down of the Brothers to the Rescue plane over international waters by the Government of Cuba in 1996.[39] Under this act, a private right of action was established under U.S. law for U.S. nationals against foreign entities and individuals to recover treble damages from those who traffic in the property which was confiscated from them by Fidel Castro.[40] Additionally, the State Department was required to deny a visa to a trafficker in such confiscated property.[41] The term "trafficker" included the company involved in the activity, its officers, and their immediate family members.[42]

By this time, the U.S. business community was really getting its back up about the seemingly unrelenting and unstoppable pace of ever new sanctions programs from the Executive and Legislative branches of the United States and international bodies.

It cried "no more," and this began a third phase, "sanctions reform," and a new idea emerged, "targeted financial sanctions." This was to last for about

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[34] Iran-Libya Sanctions Act, *supra* note 6.

[35] *Government Developments*, OIL AND GAS J., Feb. 2, 2004, at 7.

[36] Iran-Libya Sanctions Act, *supra* note 6.

[37] *Id.*

[38] *See* Lissa Weinmann, *Washington's Irrational Cuba Policy*, WORLD POLICY J., Apr. 1, 2004, at 22.

[39] David Rivera, *Grill the GOP's 2008 Presidential Hopefuls*, MIAMI HERALD, Oct. 10, 2005, at A22.

[40] Cuban Liberty and Democratic Solidarity (Libertad) Act, 22 U.S.C. § § 6021-6091 (1996).

[41] 22 U.S.C. § 6032(e) (1996).

[42] *See id.* at §6032 (defining "traffics" as used in the statute).

six years from about 1995 to 2001. Of course, all these dates are rough approximations. During this time period, literally dozens or more think tanks, study groups, Congressional committees looked at how sanctions could be reformed and shaped so they were not proliferated at such a feverish pace and they could be more targeted.[43] International conferences, like the Swiss Government's "Interlaken Process," became the first of a series of "Smart Sanctions" dialogues with scholars and Government officials from around the world to address the question. Everyone agreed that smart sanctions were the best way forward, but there was a clear lack of consensus on the direction of the way forward and how to do it. In fact, I suspect that at the time that few of the multitude of those offering opinions on the subject really understood the full ramifications of what was at stake and what they were advocating.

This targeted sanctions craze had been partly answered by the model developed and successfully used by President Clinton in 1995, first against those disrupting the Middle East peace process and then against the Cali Cartel in Columbia – the so-called "specially designated terrorists" (SDT)[44] and "specially designated narcotic trafficker" (SDNT)[45] programs. The SDNT program, in particular, was wildly successful and was the model for the foreign narcotics Kingpin Designation Act of 2000.[46] This process was also adopted in the Antiterrorism Act of 1996[47] where the Executive branch, Justice, State, and Treasury began the Foreign Terrorist Organization, or the FTO, designation process, naming on a biennial basis the worldwide terrorist organizations currently involved in terrorist activity, and, thus, prohibiting fundraising on their behalf and freezing their funds in the United States.[48]

We were moving more and more by this time into the counter terrorism arena, especially in the wake of the embassy bombings in Nairobi and Dar-es-Salam. Osama Bin Laden and al Qaeda were named in 1999 as especially designated terrorists,[49] and the first of a series of trips was begun in the Middle East to consult with our allies, Saudi Arabia, Kuwait, and Bahrain, about steps to be taken to disrupt the flow of funds to terrorist groups and the fund-

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[43] *See* Peter L. Fitzgerald, *Managing "Smart Sanctions" Against Terrorism Wisely*, 36 NEW ENG. L. REV. 957, 960-962 (2002); *see also* L. Kirk Wolcott, *Seeking Effective Sanctions*, 11 EMORY INT'L L. REV. 351, 355-356, 362-363.

[44] Exec. Order No. 12,947, 60 Fed. Reg. 5,079 (Jan. 23, 1995).

[45] Exec. Order No. 12,978, 60 Fed. Reg. 54,579 (Oct. 21, 1995).

[46] Kingpin Act, *supra* note 9.

[47] 8 U.S.C. § 1189 (1996), *amended by* Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

[48] *Id.*

[49] Kevin Johnson, *Two Names Placed on List of "Ten Most Wanted,"* USA TODAY, Jun. 8, 1999, at 03A.

ing of terror.[50] There were also rumblings, especially following the chance discovery by an alert U.S. Customs agent on the northwest border of the U.S. of an attempted import from Canada of the materials for the bombing of Los Angeles Airport, the so-called "millennium plot" of New Years 2000,[51] that a more systematic public approach must be taken to target terrorist activity and terrorist financing. This led to the creation of the Foreign Terrorist Asset Tracking Center, which first began its life at OFAC.

This leads me to the fourth period of sanctions development, 2001 to the present. Our world changed dramatically with the events of September 11th, when suddenly, we were called upon to administer economic sanctions (along with all other UN member states) against a new kind of target: Osama Bin Laden, al Qaeda, and other terrorist groups acting worldwide on what was soon thereafter described as the "global war on terrorism." Working with other key elements of our Government law enforcement, intelligence, and the military communities and very closely with our allies, the financial war on terror seeks to disrupt the flow of funds to and business relationships and transactions of any nature whatever with terrorist groups, their members and their support structure; that is, all individuals and entities that are owned or controlled by, act for or on behalf of, provide material, financial, or technological support for or otherwise provide assistance to these groups. These terms are very broadly defined and seek to affect any and all business relationships by persons subject to U.S. jurisdiction. The United States maintains lists of these persons, and, whenever appropriate because sufficient evidence has been developed, submits these names to the UN for multilateral enforcement action under United Nations Security Council Resolution 1333,[52] 1363,[53] and other resolutions that followed.

Due to the transnational nature of the terrorist infrastructure, support and cooperation with our allies is a critical part of making all enforcement initiatives, including multilateral designation actions, successful. By developing and establishing authorities and procedures for entities associated with al Qaeda to be submitted to the UN, together we have institutionalized on a global scale the importance of sanctions as a critical tool against the terrorist support networks.

Terrorist organizations like al Qaeda, Hamas, Hezbollah, and many others rely on their infrastructure for support and to shield their activities from scrutiny. The funds necessary for the support of their infrastructure are substan-

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[50] John Diamond, *Defense Secretary Begins tour of Skeptical Gulf States*, Associated Press, Mar. 5, 1999.

[51] Sam Skolnik & Paul Shukovsky, *Ressam: Seattle No Target, Convicted Terrorist Says Bomb Was Intended for L.A. Airport*, SEATTLE POST-INTELLIGENCER, May 31, 2001, at A1.

[52] S.C. Res. 1333, ¶ 5, U.N. Doc. S/RES/1333 (December 19, 2000).

[53] S.C. Res. 1363, ¶ 3, U.N. Doc. S/RES/1363 (July 30, 2001).

tial. The secretive nature of their activities and their frequent reliance on charitable, humanitarian, educational, and religious cover are vulnerabilities that can be exploited by making designations as specially designated global terrorists. This prohibits U.S. persons, and, when coordinated with the UN, the world at large, from transactions or dealings with designated individuals and entities. Decisive action against high impact targets by the U.S. and UN and others deters others, forcing key modes of financial support to choose between public exposure of support for terrorist activity or tarnishing their reputation to the detriment of their business and commercial interests.

From a corporate governance perspective, being in compliance with these multilateral legal requirements – in other words, making sure that no business is done directly or indirectly with these named parties – is of critical importance. It is also of critical importance that when any party is conducting business within or subject to the jurisdiction of the United States, that all legal requirements with respect to sanctioned and embargoed parties are met. Otherwise, civil or criminal penalties could apply.[54]

But especially in a post 9/11 era, pressure is also mounting from many different directions that there may be a need for more than a mere letter of the law compliance attitude. Shareholders, regulators, corporate officers, directors, pension fund managers, politicians, and the public at large are becoming sensitized and aware more and more of how corporate decisions about who, where, and how they do business may affect their lives and the lives of others. They are becoming aware of the power they have to affect these decisions through private actions by such methods as boycotts, disinvestment campaigns, and lawsuits. And though there may be no per se legal requirement to follow a particular course of action, the court of public opinion may heavily influence such action. This is a major new challenge for the future for the business community worldwide.

Consider, for example, in doing business with a terrorist supporting country that products sold to it become a component part of a product that causes mass destruction that results in the deaths of hundreds of people. That company could find themselves as a Defendant in a court in a wrongful death action. Win or lose, the representational harm could be enormous, and the loss could conceivably do irreparable harm to the company.

Consider another example of a Third Country bank that allegedly holds accounts and transfers money on behalf of a known terrorist organization, and that organization is responsible for the death of innocent parties, the families of whom bring lawsuits for financing of terrorist acts and the resulting deaths.

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[54] Export Administration Act, 50 U.S.C.§ § 2401-2420 (1976).

Consider an even less aggravated situation where a pension fund or a group of pension funds decides and such-and-such a company has a particularly robust business relationship involving high tech goods with a terrorist supporting nation or is an ally of a terrorist supporting nation or that supports a terrorist group that decides to make that fact public and dump all of its considerable equity holdings.

These are but three examples of "global security risk." That is, risk that a company faces merely by doing business in the global market place when there is otherwise full compliance with local laws but where certain other factors are at play. In the cases cited above, it was the involvement one way or another with a nation or group supporting terrorism.

Call it the inevitable by-product of globalization, and in many respects it is an expansion of sorts of the financial standards of the financial action task force and its 48 principals into the corporate world, a sort of expanded the "know your customer" rule. This applies to the U.S. business community conduct of business worldwide as well as the companies of many other major industrial nations.

And when doing business in high risk areas – that is countries known to support or provide assistance to terrorist groups – certain extraordinary steps are necessary to ensure to the greatest extent possible that sound business judgment is exercised in all respects in the decision-making process, irrespective as to whether as a legal matter they are subject to U.S. or any other country's jurisdiction.

In this regard, I have many real life examples. I will give four, and then I will stop. Okay. Three examples, Henry, and then I will stop.

Three large U.S. companies voluntarily pulled their subsidiaries out of Iran because the costs were too high.[55] One was the subject of a 60 Minutes story.[56] The other two were subject to inquires from the various state and local investment arms, for example, the New York Comptroller and various state government pension investment authorities.[57]

A Canadian company suffered a significant decline in share value, nearly 30 percent, because of a divestment campaign organized against it because of its business activities associated with its operations in Sudan.[58]

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[55] David Ivanovich, *Oil-Field Firm Pulls Out of Iran*, HOUSTON CHRON., Mar. 10, 2005 (regarding Cooper Cameron Corp.).

[56] Lesley Stahl, *Doing Business with the Enemy*, CBS NEWS, Jan. 25, 2004, *available at* http://www.cbsnews.com/stories/2004/08/27/60minutes/main639003.shtml.

[57] *Id.*

[58] *See* Marcy Gordon, *Activists Pressing Pension Funds to Divest $91 Billion in Sudan-Related Holdings*, ASSOC. PRESS, Nov. 14, 2004, (referring to Canadian company Talisman as on target of the divestment campaign); *but see also Correction: Pension-Funds-Sudan Story*, ASSOC. PRESS, Nov. 15, 2004 (retracting report that Talisman was a subject of the campaign); *see also generally* Gordon Pitts, *Corporate Responsibility: CEOs Heading to Unique Global*

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And now, finally, there is legislation on Capitol Hill that would require all U.S. sanctions extended to foreign subsidiaries of U.S. companies when certain criteria are met, irrespective of how the issue is defined in executive orders by respective administrations under IEEPA.

This would have been a good segue to talk about federal jurisdiction over foreign subsidiaries of U.S. companies and their dealings with U.S. sanctioned countries, but I will stop here, and if any of you would like to ask the question, I will go through that at a later time, but it has been my pleasure to have the opportunity to talk here this morning.

MS. LUSSENBERG: Thank you, Richard.

(Applause.)

Now, Navin, over to you.

Summit, GLOBE AND MAIL (Toronto), June 3, 2004, at B3 (reporting that Talisman had since divested itself of dealings in the Sudan).