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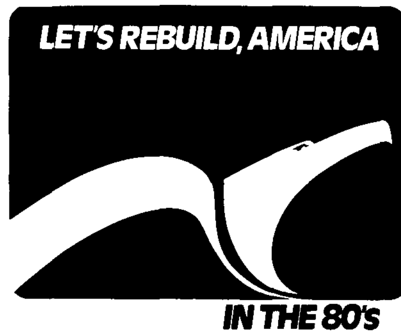

Statement of the Chamber of Commerce of the United States

ON: EXTENSION AND REVISION OF THE EXPORT ADMINISTRATION ACT OF 1979

TO: SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY OF THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

BY: ARTHUR T. DOWNEY

DATE: MARCH 16, 1983

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The Chamber of Commerce of the United States is the largest federation of business and professional organizations in the world, and is the principal spokesman for the American business community. The U.S. Chamber represents more than 226,000 members, of which more than 221,000 are business firms, more than 2,600 are state and local chambers of commerce, and more than 1,200 are trade and professional associations.

More than 90 percent of the Chamber's members are small business firms having fewer than 100 employees. Yet, virtually all of the nation's largest industrial and business concerns are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the U.S. Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- numbers more than 15,000 members in the U.S. Chamber. Yet no one group constitutes as much as 23 percent of the total Chamber membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity and not a threat. In addition to the 47 American Chambers of Commerce Abroad, an increasing number of Chamber members are engaged in the export and import of both goods and services, and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

STATEMENT
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CHAMBER OF COMMERCE OF THE UNITED STATES
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Arthur T. Downey
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Mr. Chairman, I am Arthur T. Downey, partner in the Washington office of the law firm of Sutherland, Asbill and Brennan. Prior to this position, I was responsible for the administration of the United States' export control process as Deputy Assistant Secretary of Commerce for East-West Trade. In addition to my private legal practice, I am also chairman of the U.S. Chamber of Commerce's Task Force on Trade with the Nonmarket Economies, the unit responsible for formulating the Chamber's positions on East-West trade policy.

I am pleased, Mr. Chairman, that you have called hearings on the foreign policy controls section of the Export Administration Act (EAA) and that you have given me the opportunity to testify on behalf of the Chamber on this most important subject. As you are aware, the Chamber is the world's largest business association with a membership of over 230,000 small, medium and large businesses, trade and professional associations, and state and local chambers.

In the course of the last several years, the U.S. Chamber of Commerce has repeatedly expressed its concern over this country's propensity to control unilaterally, for foreign policy purposes, the export of goods and technology. Since enactment of the EAA, such controls have cost the United States billions of dollars in export sales and tens of thousands of real and potential jobs. Most damagingly, the United States has suffered significant harm to its reputation for commercial reliability, while concomitantly encouraging the creation of long-term foreign competition.

Paradoxically, this has occurred at the same time our government has attempted to educate U.S. business as to the importance of exports for the economic well-being of our country. The result has been continued uncertainty

within both the agricultural and industrial communities and a frustration over what many see as undue regulation of the marketplace. While we hesitate, our trading competitors aggressively promote their exports around the world, including the United States.

Earlier this month, in a much welcomed speech, President Reagan referred to a "$2 trillion market abroad" and "a chance to create millions of jobs and more income security for our people" through an expanded national export program. As the President noted, four out of five new manufacturing jobs created in the last five years were in export-related industries. The President also correctly noted that 90 percent of American manufacturers, especially small and medium-sized firms, do not export at all.

In his speech, President Reagan outlined a plan to meet the trade challenges before us. Included in this plan are government efforts "to enhance the ability of U.S. producers and industries to compete on a fair and equal basis in the international marketplace." In this regard, the President noted the disincentive to export expansion created by U.S. controls on the export of technology, and referred positively to this Administration's success in eliminating a backlog of 2,000 export license applications and in relaxing export controls on low-technology items.

We applaud these efforts and, in particular, the personal commitment the President has made to export expansion through freer trade. We welcome the President's offer to work with American business and it is in this spirit that we offer our comments this morning. There is likely no other area of such importance in which to begin this joint effort than the administration of our country's exports.

The Realities of the Present International Economic System

During this year's reauthorization process, it is important that we dispel certain myths regarding our position in the world economic system which have impaired the effective implementation of the EAA. These points were discussed by Kempton Jenkins, Vice President of Armco Inc., during recent hearings before the House Foreign Affairs Committee and are worthy of repetition.

First is the view of the United States as the predominant supplier of equipment and technology. This view is a residue of the days when the United States was the preeminent economic power of the world. Although this no longer is the case, policymakers in this country have exhibited an increasing tendency to use export controls as a means to further political ideals without a careful assessment of foreign availability and, consequently, the costs or effectiveness of these decisions.

Second is the misconception that the Soviets and other potential adversaries are uniquely dependent upon Western technology. In fact, they are part of a real world in which we are, to differing degrees, all interdependent. Our Western competitors' and the Soviets' ability to channel resources into the development of specific technology is clear. Thus, the threat of export sanctions has led inevitably to investment in, and development of, the technology or product in question.

Third, corporations are not merely institutions. They encompass the workers, shareholders and communities in which they are located. This point was brought home to Congress during testimony last summer by the UAW representative from Springfield, Illinois, who aptly described the strains and dislocations caused to cities, such as Springfield, by non-security trade embargoes.

Finally, Mr. Chairman, we should deal with the myth that unilateral action by the United States is an act of strength and leadership. Any unilateral U.S. action that weakens alliance unity diminishes a most important strategic Western advantage and sends a signal to Moscow of weakness, not strength.

The Long-Term Cost to the United States of Unilateral Export Controls

Any discussion of the realities of the world marketplace must begin with the experiences of the U.S. agricultural community as a result of the administration of export controls. The United States has lost important shares of the world's agricultural markets in recent years, as a result of the imposition of unilateral agricultural export controls.

Through such controls, the United States has provided the incentives for the creation of a permanent foreign competition. This was as evident ten years ago when an embargo on U.S. soybean exports led Brazil to increase substantially its soya production and subsequently to become a major force in world markets, as it is today following the 1980 agricultural embargo against the USSR. As President Reagan pointed out on January 11 before the American Farm Bureau Federation, following the 1980 grain embargo, our 74 percent share of the Soviet market plummeted to 30 percent. This is particularly devastating in a period when we have massive surpluses in storage facilities around the country.

Leaders in the agricultural sector agree that the cumulative cost of the grain embargo to the United States has already exceeded $40 billion, and continues to grow. Coming at a time of perilous balance in the fragile agricultural market place, the unprecedented and ill-considered grain embargo of 1980 sparked a financial chain reaction. It affected planting, rail transportation, grain storage facilities, agricultural equipment purchases (International Harvester points to it as a major catalyst in its decline), farmbelt banking and insurance, grain mills, and on and on.

The recent Caterpillar experience with unilateral, non-security export controls on pipelayers is another graphic illustration. One need only examine what happened to Caterpillar's sales and those of Komatsu, its major international competitor, to the Soviet Union since mid-1978 when foreign policy export controls were placed on oil and natural gas equipment. Prior to mid-1978, Caterpillar dominated the Soviet market for large machines, supplying 85 percent of the market. Since the imposition of sanctions, the reversal has been dramatic. Komatsu now holds an 85 percent share of a rapidly growing market. Had Caterpillar maintained the share of business it held before the sanctions, as much as $400 million of additional U.S. exports and 12,000 man-years of employment at Caterpillar and its suppliers could have been generated. Follow-up sales of replacement parts would probably have added another 25 percent or $100 million in exports and 3,000 jobs. In view of the fact that these foreign policy export controls did not seriously disadvantage the Soviets, this seems an expensive price for Peoria and other communities to pay.

The U.S. aerospace industry has also incurred substantial costs as a result of the imposition of foreign policy export controls. One U.S. manufacturer alone estimates that it has lost $1 billion in the Middle East because the company is viewed as an unreliable supplier due to the proliferation of U.S. foreign policy export controls since enactment of the 1979 Act. An increasing number of customers are now requiring U.S. aircraft manufacturers to guarantee export licenses. Due to delays in licensing or through the cancellation of export licenses, U.S. manufacturers have had to repay to their customers progress payments, together with substantial interest penalties. In the case of contract cancellations, the manufacturer must also sustain the cost of modification of the aircraft for resale. This may run over $1 million per airplane. The affected U.S. firms must also pay substantial storage costs, for in many instances up to two years, as well as the costs of keeping the aircraft in operating condition. We must recognize that the transfer of business from U.S. aircraft producers to our European competition does not advance U.S. foreign policy; it erodes U.S. aerospace capacity.

The experiences of Armco Incorporated point to similar conclusions. After almost four years of technical and commercial negotiations, Armco and Nippon Steel Corporation signed in December 1979 a contract with the Soviets valued at $353 million. The contract provided that Armco and Nippon would supply technology, engineering services and equipment to build a plant in Novolipetsk for the manufacture of electrical steel. The U.S. portion of the contract was valued at $100 million. At the time of the contract signing, Armco had received 94 percent of all necessary licenses from the U.S. government. In January 1980, following the Soviet invasion of Afghanistan, President Carter suspended all export licenses for the Soviet Union. In April, the Armco contract was terminated by the Soviets because Armco's export licenses had not yet been reinstated. In August, Creusot-Loire of France signed a substantially similar contract with the Soviets despite "assurances" from the French government that they would not take over contracts from American firms. As a result, Armco lost $6.5 million in negotiating expenses, $16.7 million in profits, and $20-30 million in future spare parts orders, as well as the chance to participate in

the next phase of the plant development. Most importantly, the United States lost $100 million in exports and some 4,000 jobs.

The realities of the world trade system also become strikingly clear when we examine the effects export sanctions have had on the American oil and gas equipment industry. Today we are witnessing widespread foreign production of advanced oil and gas equipment where a few years ago the United States was the sole supplier of advanced systems. In this regard, we should not delude ourselves over Soviet abilities to get these goods elsewhere in the world or their own capabilities to produce similar equipment. The Soviets are now perfecting their own technologies to produce oil and gas equipment, including compressors for use on natural gas pipelines. As a result, we are rapidly losing markets traditionally dominated by U.S. oil and gas equipment firms. Lost markets have translated into declining earnings and major constraints on research and development, all of which raises major concerns as to the international competitiveness of this U.S. industry in the years to come.

Foreign Policy Export Controls

The issue facing Congress as it reviews Section 6 of the EAA is how to fashion the most effective set of economic tools to assist the President in the implementation of this country's foreign policy. Furthermore, it is crucial that Congress devise a mechanism to assess more accurately the likely costs and effectiveness of the use of these economic tools.

The Chamber recognizes that the President must be able on his own -- without further Congressional action -- to restrict exports in order to fulfill obligations of the United States pursuant to international agreements. By their nature, controls imposed under this authority are multilateral in character.

In addition to this export control authority, the 1979 Act provides the President with authority to restrict the export of crime control and detection instruments to certain countries. The Chamber supports

these controls, which together with those provided for under separate legislative authority, constitute a body of law well understood by both American exporters and their foreign purchasers.

However, the Export Administration Act of 1979 also provides broad authority to control exports in order to further significantly the foreign policy of the United States. In recent years, this authority has been arbitrarily invoked with inadequate justification, without significant consultation and without adequate consideration of the effectiveness of export sanctions or the long-term cost to U.S. economic well-being.

To remedy this situation, in the absence of an international emergency, Congress should require that, prior to the imposition of foreign policy controls, meaningful consultations with the private sector and Congress must be undertaken to determine the full extent of the costs of these controls to the United States. The Act should prohibit the extension of export controls for foreign policy purposes on a retroactive basis to foreign companies, including U.S. foreign subsidiaries and the licensees of U.S. corporations. It should prohibit the imposition of foreign policy export controls so as to impair existing contracts, and, above all, it should provide specific restrictions against the imposition of unilateral export controls, given the futility and costs of such actions.

One way to achieve these principles would be to require that the President seek specific legislative authority, along the lines of the crime equipment controls, prior to the imposition of any new foreign policy controls. Special legislation -- such as occurred with the Uganda sanctions in 1978 -- could give the President clear authority to draw upon the full range of economic interactions, including imports and financial transactions, as well as exports. This would relieve the vital and vulnerable export sector from carrying the brunt of economic sanctions. This would also provide business, unions and other affected groups the full opportunity to express their views during the legislative process. It would also produce a solidly based foreign policy initiative, representing a full national statement, not simply a hasty act by the Executive Branch.

Another approach to this same goal would be to provide, in the absence of an international emergency, a forum to give the public an opportunity to consult with the Administration and Congress prior to the imposition of a foreign policy export control. Rather than requiring specific legislative authority, the Act could require that the Executive Branch receive public comment and submit to Congress a comprehensive cost/benefit analysis justifying the proposed controls prior to their taking effect. Such controls could expire after a six month period unless renewed following the same rigorous requirements for their imposition.

Whatever procedure is ultimately adopted, Congress must not lose sight of the general principles of contract sanctity, the avoidance of extraterritorial applications, and the requirement for multilateral controls, advanced consultations, a rigorous cost/benefit analysis, and assurance that export trade restrictions are imposed only when necessary to achieve a genuinely significant and fundamental foreign policy goal. These principles must be recognized in legislation so that an export control law that defends our international political interests will not undermine our competitiveness in international trade and erode our reputation for commercial reliability at a serious cost to U.S. economic well-being.

S.397, Export Administration Act Amendments of 1983

Commenting briefly on legislation currently before this body, we commend you, Mr. Chairman, as well as Senator Garn, for the serious attention you have given the export administration process, as exemplified by S.397 and S.434. As S.434 represents a simple extension of the present foreign policy controls authority, I would like to focus my comments on S.397.

As the events of the last five years have clearly indicated, unilateral foreign policy controls in situations where alternate suppliers exist impact almost exclusively on U.S. exporters. Again, there may be times when, regardless of foreign availability, as in the case of crime control and detection instruments, the United States may wish to place controls on the exports of specific items. It is important, however, that there be a consensus behind

the imposition of such controls rather than have them serve as a source of division between the Executive Branch on the one hand and Congress and business community on the other.

A positive feature of S.397 is the way in which it deals with the criteria that currently must be considered before the imposition of foreign policy export controls. By strengthening the criteria, including the addition of language on the extraterritorial effects of proposed controls, and modifying them from a "consider" format to a "determine" one, the bill represents a significant effort to achieve a more thorough analysis of the costs of foreign policy controls prior to the imposition of such controls.

With regard to the requirement that other countries support the imposition or expansion of those controls invoked under the foreign policy controls section, we suggest that it be strengthened to require that those controls be imposed on a multilateral basis by the major suppliers of the goods or technologies in question. Such a revision would preclude situations experienced in the past where our trading competitors voiced support for our efforts and then proceeded to fill those orders lost by U.S. suppliers.

The most interesting of the criteria established in S.397 is the requirement that the President determine that proposed controls will not have an adverse effect on the United States' export performance, international competitiveness, and reputation for commercial reliability or an adverse effect on individual U.S. companies, their employees and the communities in which they reside. It is time that we recognized that any export sanction is going to have a domestic economic cost. Consequently, while we agree that the President must carefully weigh these costs, it is difficult to accept this provision as either realistic or workable.

One criterion which S.397 deletes from the present Act is consideration of "the foreign policy consequences of not imposing controls." We suggest that a variant of this criterion be retained to require a

determination that significant negative consequences would occur if no export action were taken. After considering other forms of political and economic actions, the President should determine that export controls are required in order to achieve the intended foreign policy purpose and that no other form of political or economic action would have a similar result.

By requiring that the President transmit a report to Congress on his determinations no later than the date on which controls are imposed, S.397 represents a serious effort to achieve a more meaningful consultative mechanism between the Executive Branch and Congress. This mechanism should be even further refined and strengthened to ensure that the consultation process is in motion well in advance of decisions to impose foreign policy export controls. It is also important that the business community become an integral part of this process. If previous consultations with industry advisory groups are indicative of the future, strict guidelines need to be included in the Act, as well as the legislative history of the Act.

S.397 also provides that foreign policy export controls "shall not apply to exports pursuant to a contract or other agreement entered into prior to the imposition of such controls." We applaud this language. It is a step in the right direction toward giving U.S. industry similar protections to those achieved for the farm community through the Commodity Futures Trading Commission legislation.

However, we caution that, unlike agricultural commodity contracts, contracts for the sale of industrial equipment and technology are frequently long-term and may require years of implementation. Technology transfer, in particular, is generally an ongoing process and may require several export licenses and license renewals. Any interruption of this process would have major consequences for the entire contract. It is, therefore, important that any contract sanctity provision recognize this long-term nature of industrial cooperation. Without long-term protection in the EAA, our Western trading partners will continue to look upon the United States as an unreliable supplier of technology.

Another area that deserves consideration is the question of judicial review. We do not suggest that the Courts review questions of foreign policy. However, we do feel that the Courts have a proper role in reviewing whether administrative determinations were supported by evidence or at least were not arbitrary and capricious. In the enforcement area, we witnessed last summer, following the extraterritorial application of oil and gas equipment controls, the costs and unintended difficulties created by the lack of judicial review in the export administration process.

Judicial review need not retard the export control process. Rather, it can strengthen the integrity of the export control process by making provision for firms seeking relief from arbitrary and capricious administrative decisions. In this regard, we propose that the Act provide exporters a right to appeal to independent or judicial authorities Department of Commerce administrative decisions, including statutory procedural requirements and administrative penalties.

Finally, we question the provision in S.397 requiring the President to prohibit all imports from a country that is the subject of U.S. foreign policy export controls, while at the same time giving the President authority to make sweeping exemptions. Export controls should not necessarily trigger import restrictions, particularly as the target of a foreign policy export control may be purposely limited, such as in the case of crime equipment. To mandate import controls or export controls would needlessly impair the President's flexibility to use the most appropriate mix of economic tools before him.

Conclusion

We applaud the Administration's "new priority for trade" as outlined in the President's State of the Union address. It is time that we all worked together to restore U.S. leadership in world trade. To this end, it is crucial that we strengthen the reputation of the United States as a reliable supplier and competitive trader operating under a clearly

defined and internationally recognized system of export incentives and export controls.

This will require, above all, that the United States reassert its position of leadership within the Western Alliance, working with our allies to refine and improve Western trade practices and controls. For the United States, meeting this challenge will require a joint effort by the public and private sectors.

In conclusion, we wish to underline the fact that the business community and specifically the Chamber is dedicated to protecting the security interests of the United States. A sound domestic economy is an essential part of these security interests. We want to work in the spirit of partnership with the Administration and Congress to strengthen this country's security and economic well-being. We thank you, Mr. Chairman, and the members of this subcommittee for this opportunity.