

CHAPTER III

Implementation of the Export Administration Act of 1979

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Implementation of the Export Administration Act of 1979

The Export Administration Act (EAA) of 1979 has governed U.S. export control policy toward the Soviet Union under two different Presidents. Its implementation has of course been influenced by the general foreign policy stances of these administrations. But it has also been shaped in important ways by a series of events which have contributed to a fundamental reassessment of trade with the Soviet bloc.

Even before the December 1979 invasion of Afghanistan, the Carter administration had begun to express disillusionment with the detente-era view that trade with the West would moderate Soviet behavior. In 1978, for instance, export controls were placed on some U.S. oil and gas equipment as a response to Soviet treatment of dissidents. In the wake of the invasion, President Carter tightened the criteria for licensing equipment and technology exports to the U.S.S.R. and imposed embargoes on grain and other commodities. Thus, the Reagan Presidency began during a period of markedly cooler trade relations with the Soviet bloc. These relations further deteriorated with the declaration of martial law in Poland and in response to the Reagan administration's strong anti-Communist views.

This chapter presents a detailed account of events related to U.S. policy on exports to the U.S.S.R. from December 1979 through the spring of 1983. Two basic themes emerge: the use of export controls as instruments of U.S. foreign policy; and a focus on the importance of strengthening national security controls. The former development seems to have stemmed from the perception that other foreign policy instruments were either insufficiently forceful (diplomatic demarches, cancellation of academic and scientific exchanges) or unsuitable (military responses), and the belief that withholding U.S. exports can inflict real economic damage on the U.S.S.R. The latter trend first emerged under President Carter, but it particularly reflects the Reagan administration's concern over the magnitude of the Soviet military threat and the degree to which that threat has been enhanced by the acquisition of U.S. and other Western technology.

The developments discussed in this chapter focus first on these two themes. In addition, the chapter chronicles changes in licensing and enforcement procedures and describes the reactions of Congress and U.S. allies to these events.

FOREIGN POLICY CONTROLS

G R A I N

Background

The agricultural, and particularly the grain, sectors of the United States and the Soviet Union exhibit a high degree of complementarity. A net exporter until the early 1960's, the Soviet Union has since periodically imported large quantities of grain for the livestock feed

needed to fulfill plans to increase meat consumption. The United States, in turn, has followed an export-oriented agricultural strategy to dispose of large production increases. A major grain exporter during the 1960's, the United States exported more than half its wheat crop, 30 to 40 percent of its corn, and 50 percent of its soybean crop by the early 1980's. Agricultural commodities have ac-

counted for about three-quarters of U. S.-Soviet trade in recent years.

During the 1970's, the United States was clearly the U.S.S.R. preferred agricultural supplier. American farmers were able to sell to the U.S.S.R. the large quantities necessary to simplify purchasing and shipping arrangements. But from the American point of view, the Soviet Union was an unpredictable customer, purchasing large amounts in some years, and little in others. Following unexpectedly large Soviet grain purchases in 1972, which have been called "the great grain robbery," and again in 1975, which led the Ford administration to impose a temporary moratorium on grain sales to the Soviet Union, the United States and U.S.S.R. concluded a 5-year grain supply agreement. Beginning in October 1976, the agreement provided for minimum Soviet purchases of 6 million metric tons (MMT) of wheat and corn in approximately equal proportions each year, unless U.S. grain availability fell below a certain level. Purchases beyond 8 MMT could be made after consultation with the U.S. Government. The United States pledged not to apply export controls to the first 8 MMT of grain exports. During the first year of the agreement, the Soviets purchased the minimum amount; during the second and third years their imports were much larger. In calendar year 1979, sales to the U.S.S.R. accounted for 15 and 20 percent, respectively, of U.S. exports of wheat and feed grains.

The Carter Embargo¹

The partial grain embargo was the centerpiece of the Carter administration's Afghanistan sanctions. Unlike the other sanctions imposed at this time, those on wheat and corn were justified on both national security and foreign policy grounds. The President presumably took this step because EAA provides for a congressional veto of restrictions on agricul-

tural commodities when these are applied for reasons of foreign policy or short supply. The United States had agreed to sell the Soviet Union up to 25 MMT of wheat and corn between October 1979 and September 1980, the fourth year of the grain agreement. Under the sanctions, the United States would make available only 8 MMT.

This embargo was aimed at the feed grain-livestock complex, one of the most vulnerable sectors of the Soviet economy, and the administration expected it to have a significant impact on the Soviet Union. This belief was based on the fact that the Soviet Union's 1979 harvest had been poor, and the belief that export prospects of other grain-producing countries were less favorable than usual. Thus, the resulting import shortfall would begin to be felt before the U.S.S.R. harvested its 1980 winter wheat crop and before grain from the Southern Hemisphere became available. Agricultural experts outside the administration disagreed with this forecast, believing that the fungibility of grain, the diverse channels through which it is traded, and the availability of alternative suppliers would make grain difficult to embargo.

The administration recognized the critical importance of securing international support for the embargo, despite the strong U.S. market position: U.S. shares of world markets for corn and soybeans were 75 and 80 percent, respectively; in addition, the United States supplied 40 percent of all the wheat traded on international markets. On U.S. initiative, consultations were held in January 1980 with the other major grain-exporting countries (Canada, Australia, members of the European Economic Community (EEC), and Argentina) and with the other major exporters of soybeans (Argentina and Brazil). With the exception of Argentina, the wheat-exporting countries pledged not to directly or indirectly replace the embargoed grain. In practice, the other participants appeared to view this agreement as a commitment not to sell more than "normal" or "traditional" amounts of grain to the Soviet Union. According to administration spokesmen, the agreement was for an indefinite peri-

¹This and the following section are based on U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Europe and the Middle East, *An Assessment of the Afghanistan Sanctions: implications for Trade and Diplomacy in the 1980* (Washington: U.S. Government printing Office, 1981), pp. 23-52.

od. Argentina declared its refusal to “participate in economic sanctions or to control sales by destination on the grounds that it lacked a legal mechanism to control sales by private traders. Argentina did, however, declare that it did not intend to take commercial advantage of the embargo or to “seek to alter artificially the current demands of the different markets.” Argentina’s equivocal position threatened the effectiveness of the embargo since its grain crop was uncommitted and would not be available until May. Subsequent efforts by the Carter administration to secure Argentine cooperation failed. On the issue of soybeans, Brazil took a position similar to Argentina.

From late spring the grain embargo came under increasing criticism, and events in the United States and abroad threatened to undermine it. First, the U. S. Government decided to honor its commitment to sell the Soviets 8 MMT of grain during the fifth and final year of the grain agreement. Moreover, in a controversial move, the administration decided in June 1980 to release U.S. grain-trading companies from their pledge not to sell non-U.S. grain through their foreign affiliates. Farmers and some Members of Congress viewed the latter decision as an unfair easing of the embargo. Critics also charged that the embargo was having a greater impact on the United States than on the Soviet Union. The U.S. Department of Agriculture (USDA) statistics confirmed that the Soviet Union was obtaining significantly more grain than the administration had initially forecast, and the potential effect of the embargo on America’s own farm sector seemed significant. The record 1979 grain harvest and increases in the prices of machinery and inputs had led to preembargo forecasts of a 20-percent decline in 1980 farm income. USDA estimated that the loss of 17 MMT of grain exports would reduce farm income by an additional \$3 billion in 1980. No offsetting benefits to U.S. consumers were foreseen; the embargo was not expected to cause a significant decline in food prices.

Therefore, the Government introduced price support measures which included:

- incentives to farmers to place more grain in the farmer-owned grain reserve, thus siphoning it off the market;
- changes in the eligibility requirements for the grain reserve program, which allowed previously ineligible farmers to use the program on a limited basis;
- temporary assumption by the Commodity Credit Corporation (CCC) of exporters’ contracts;
- purchases by CCC of certain agricultural commodities, including 4 MMT of embargoed wheat;
- export promotion, including increases in CCC export credit and guarantee programs and the conclusion of grain supply agreements with China and Mexico; and
- incentives for alcohol fuels production.

According to initial official estimates, price supports would add \$2 billion to \$3 billion to the Federal budget for fiscal years 1980 and 1981. Some private sector estimates were higher— as much as \$4 billion to \$5 billion.

In response to pressure from the farm sector, Members of Congress of both parties and in both Houses introduced legislation to rescind the embargo. The key test of congressional opinion came on an amendment to an appropriations bill prohibiting the responsible agencies from using funds to carry out or enforce the embargo. The House rejected the amendment but the Senate approved it by voice vote. The amendment was deleted in conference after the 1980 Presidential election.

The embargo was a major Presidential campaign issue, with Ronald Reagan charging that the policy had failed. President Carter continued to hold that the United States had caused the Soviets a shortage of 10 to 11 MMT of grain, and pledged to continue the embargo until the Soviets made a “tangible and demonstrable” move to end the occupation of Afghanistan.

Overseas, support for U.S. policy was waning. In November 1980 the Canadian Government announced that it would no longer impose limitations on grain sales to the Soviet Union, but pledged, nonetheless, not to replace

grain embargoed by the United States. The Canadians also pledged that their sales would not be higher than they would have been in the absence of a U.S. embargo. Canada was reportedly acting here on the belief that limiting grain sales had harmed its own farm sector; and out of displeasure with the U.S. policy of promoting grain sales to China. China had been a steady customer for Canadian grain since 1970. Australia, another traditional supplier of grain to China, was also reported to be displeased with the U.S.-China grain agreement. Despite French efforts to end the Common Market support for the embargo, the European Economic Community (EEC) agreed to hold sales to the previous year's level (1.7 MMT).

The End of the Embargo

In light of candidate Reagan's opposition to the grain embargo, most observers expected him to lift controls on grain exports soon after taking office. The issue, however, proved to be difficult and controversial within the Reagan administration. The press reported that Agriculture Secretary Block was urging an end to the embargo, while Secretary of State Haig favored its retention.

Those who wished to lift the embargo argued that it was ineffective, and that it harmed the U.S. farm sector more than the Soviet Union. Their opponents rejoined that the sanctions were having an impact on the Soviet Union and that the impact on the United States had been overestimated. They argued that the embargo would become more effective in 1981, having only been in effect for half of the 1980/81 crop year, during which the United States had sold the Soviet Union a total of 15 MMT of grain. They also pointed out that the Soviet Union had recently experienced its second consecutive poor harvest and had drawn down grain stocks in response to the embargo. Most importantly, the timing was bad. Soviet troops remained in Afghanistan and were poised on the Polish border. Lifting the embargo would send the U.S.S.R. the wrong signal.

Despite these arguments, the President lifted the sanctions on agricultural commodities and phosphates (see next section) on April 24, 1981. Attempts by some Members of Congress to reinstate the embargo through an amendment to the Export Administration Amendments Act of 1981 were rejected in committee.

Impact of the Embargo on the United States and the Soviet Union

Assessment of the relative costs and benefits of the grain embargo remains a controversial issue, largely because of lack of agreement on the appropriate criteria for measuring its impacts. For example, some critics of the embargo argued that it failed because Soviet forces remained in Afghanistan. Others maintained that this was an unfair test as it was unrealistic to expect U.S. trade sanctions to force a Soviet withdrawal. President Carter himself appeared to take the latter view, emphasizing the use of trade controls as signals of U.S. disapproval designed to deter future Afghanistans. Alternatively, both critics and supporters of the embargo have focused on the degree of punishment inflicted on the Soviet Union as keys to its successor failure. In this view, the most important measurements are the gap between intended and actual imports by the Soviet Union, Soviet meat production, and livestock inventories. No unambiguous analyses of these have yet appeared, and experts continue to disagree on the costs to the U.S.S.R. of U.S. actions. The issue of the impact of the grain embargo on the U.S. economy is discussed in chapter IV.

Post-Embargo Policy on Grain Sales to the Soviet Union

After lifting the embargo, the Reagan administration had the options of authorizing above-agreement sales of grain for the remainder of the existing 5-year agreement, due to expire on September 30, 1981, and of renegotiating a new agreement. At this time, the administration was moving towards a policy

of normalized grain trade with the U. S. S. R., and offered to sell the Soviets an additional 3 MMT of wheat and 3 MMT of corn over the 8 MMT of grain already authorized for the remainder of the agreement. The administration also began to prepare a negotiating position on a new long-term grain agreement (LTA). Apparently because there was insufficient time for a full-scale renegotiation, both countries agreed to extend the existing agreement for a sixth year, through September 30, 1982. The administration immediately offered to sell the Soviet Union up to 23 MMT of grain during this year.

The declaration of martial law in Poland effectively postponed negotiations on a new LTA. But although the President left open the possibility of additional sanctions, on January 27, 1982, administration officials told Congress that another grain embargo had been rejected because the Soviets could obtain grain from other sources. This position was reaffirmed in March when the President stated that there would be no embargo on agricultural commodities "except in extreme situations and as part of a broader embargo." The President had previously expressed the opinion that equity required an embargo on all exports, not just agricultural commodities. The Agriculture and Food Act of 1981, which would have required expensive compensation for farmers in the event of a selective embargo on agricultural commodities, may have contributed to this decision (see below).

But to the dismay of farmers and grain traders, President Reagan ruled out a new LTA on the grounds that "[t]he Soviets should not be afforded the additional security of a new long-term grain agreement as long as repression continues in Poland." On the other hand, Reagan also instituted efforts to regain the U.S. share of the Soviet market lost following the embargo. On July 30, 1982, the President announced that he had authorized negotiations on a 1-year extension of the agreement for larger sales. He reiterated the administration's position that grain sales have little impact on Soviet military and industrial capabilities, and that they absorb hard currency that

the Soviets might otherwise spend on technology to improve their military and industrial capabilities. Thus, in a speech to the National Association of Corn Growers in August 1982, President Reagan stated that the embargo was still hurting U.S. farmers, that grain prices were still low, and that the United States had lost a significant share of the Soviet market. Having stated that "we must restore confidence in U.S. reliability as a supplier," he authorized U.S. negotiators to offer the Soviet Union 23 MMT of grain during the seventh year of the agreement. The embargo protection covering the first 8 MMT would apply to the whole amount, if the Soviets contracted for it in November and took delivery within 180 days. The U.S.S.R. declined this offer. It has apparently decided to wean itself as much as possible from dependence on American agricultural goods. In another effort to halt or reverse the erosion of the Soviet grain market and to reaffirm America's reliability as a supplier, on April 22, 1983 Reagan announced an end to the ban on negotiations for an LTA.

As will become clear in the next section, the Reagan administration has adopted differing policies on grain and on technology and equipment sales to the U. S. S. R.: it declines to embargo the former, while attempting to prohibit both U.S. and foreign companies from engaging in the latter. These policies have been controversial in the United States and abroad. Domestic critics have argued that withholding grain is the best leverage the United States has over the Soviet Union. First, American grain is difficult and expensive to replace in comparable quantities. Second, some argue that grain is a strategic good since it is vital to the Soviet economy. The ability to import it allows the Soviet Union to avoid agricultural reforms and to focus resources instead on industrial and military development. Europeans have charged that U.S. policies are hypocritical and unfair. In their view, the Government bowed to domestic pressures to lift sanctions on the one export in which the United States dominated the Soviet market; at the same time, however, U.S. officials continual-

ly call for allied restraint on sales of the items in which Europe and Japan have a greater economic stake. It could be argued that this seeming contradiction in U.S. policy has given the Europeans an additional justification for declining to endorse American views on East-West trade. This subject is discussed further in chapter V.

OIL AND GAS EQUIPMENT AND TECHNOLOGY

Background

The Soviet energy sector has long been considered an appropriate target for U.S. export controls, both because of its importance to the Soviet economy and because the strength of the American oil and gas industries has traditionally made the United States a preferred-if not sole—supplier of energy equipment and technology sought by the U.S.S.R. When in 1977 the Central Intelligence Agency projected that Soviet oil production would peak and sharply decline by the mid-1980's, proponents of trade leverage or linkage identified numerous items of American oil equipment and technology, the denial of which purportedly would have a serious impact on the Soviet oil industry. These items ranged from blow-out preventers and drill bits to sophisticated seismic equipment. (See *Technology and Soviet Energy Availability* for an evaluation of this claim.) The predicted collapse of Soviet oil production has not of course materialized. Meanwhile, the focus of attention has shifted from oil to gas, and particularly to the West Siberian gas pipeline project. This pipeline, which is being built almost entirely with West European credits and equipment, is destined to furnish significantly increased amounts of Soviet gas to West Germany, France, Italy, and other European nations.

From its inception, the idea of a West Siberian pipeline aroused the concern of many Members of Congress. Their anxieties centered on the potential dangers of West European dependence on Soviet gas and the opportunities provided by the pipeline for Soviet hard currency earnings. The Reagan admin-

istration has shared these concerns, and has attempted to dissuade the West European partners to the pipeline from participating in the project. These attempts have failed for several reasons:

- U.S. efforts to stop the pipeline began in earnest well after the West Europeans had committed themselves to its construction.
- An important motive for the pipeline was diversification of energy supplies to lessen European dependence on OPEC oil. U.S. suggestions for alternatives to Soviet gas (e.g., American coal and Norwegian gas) were considered either impractical or unacceptable in Europe.
- The prospect of equipment sales was at least as important to the West Europeans as the gas purchases. The West German steel industry, for example, has a large stake in the pipeline.
- The West Europeans have a different evaluation of the costs, benefits, and risks of engaging in such a cooperative effort with the U.S.S.R. (see ch. V).

U.S. ability to unilaterally affect the construction of the pipeline has been limited by the fact that it is not the sole or even the preeminent producer of much of the Western equipment being used on the project. The United States, for instance, does not produce the large diameter steel pipe which constitutes the U.S.S.R.'s largest single energy-related import requirement. Two kinds of American equipment are relevant to the pipeline, however: pipelaying machinery and blades for the 25-megawatt turbine used in the gas compressor stations. These items, as well as many pieces of oil industry equipment, have been denied the U.S.S.R. in the trade sanctions policy described below.

The Embargo: Phase One²

Declaring that the Soviet Union bore a "heavy and direct responsibility" for the im-

²See Library of Congress, Congressional Research Service, Office of Senior Specialists, *Soviet Gas Pipeline: U.S. Options*, Issue Brief #IB82020, Jan. 20, 1983, (prepared by John P. Hardt and Donna L. Gold); and U.S. Congress, House Commit-

position of martial law in Poland, President Reagan announced on December 29, 1981 that exports of equipment for the transmission and refinement of oil and gas would require validated licenses. Since the issuance of such licenses for the U.S.S.R. was halted, this was tantamount to an embargo of the export of all U.S. oil and gas technology and equipment to the Soviet Union. Among the licenses affected by this action was one that had been pending for Caterpillar Tractor Co. to export 200 pipelayers, for use in gas pipelines.³

This embargo did not simply affect items shipped directly from the United States. It also applied to U.S.-origin equipment and technology abroad. Foreign subsidiaries and licensees of U.S. firms were allowed to conduct oil and gas-related business with the U.S.S.R. only under the conditions that their exports: 1) did not contain any U.S.-manufactured components; 2) did not contain any U.S.-origin material; and 3) were not manufactured using U.S. technology exported to the subsidiary or licensee after August 1, 1978. Thus, the British, Italian, French, and West German firms which had contracted to supply the U.S.S.R. with gas turbines for the West Siberian pipeline were prohibited from using General Electric rotors and blades in their machinery.

The Embargo: Phase Two

As of June 22, 1982, the U.S. Government materially escalated this situation by extending the oil and gas equipment embargo to overseas subsidiaries and licensees of U.S. firms. In other words, foreign subsidiaries of U.S. companies were prohibited from exporting oil and gas equipment to the U.S.S.R., regardless of whether the equipment contained U. S.-

origin components or material, or had been produced with U.S. technology. The controls were also applied retroactively, i.e., to contracts which had already been concluded and for which licenses had been granted.

European reaction to these controls was vociferous. Four days after their imposition, EEC foreign ministers declared them in violation of international law and in August EEC issued a formal protest. Meanwhile, the French Government officially ordered the affected French companies to defy the ban and honor their contracts. The British Government followed suit, and the Italian Foreign Ministry publicly announced that Italian contracts with the U.S.S.R. would be honored.

The first firm to export pipeline equipment to the Soviet Union in defiance of the United States was Dresser France, which shipped three compressors on August 26. The U.S. Department of Commerce (DOC) immediately placed a temporary order on it and on Creusot-Loire, a nationalized French company, denying them the right to import or use any U.S. goods, services, or technology. For Dresser the form of this ban was softened in early September (apparently after the intercession of the Secretaries of State, Commerce, and the Treasury) to cover only U.S. goods and technical data for oil and gas exploration, production, transmission, or refinement. Firms in Italy, Britain, and West Germany were placed under the revised and more limited denial order: however, the ban on Creusot-Loire was not modified to bring it in line with the sanctions on other firms until late October. All sanctions on European firms were lifted on November 13, under the circumstances described in chapter V.

Although both sets of sanctions were ostensibly undertaken in direct response to the situation in Poland, the Reagan administration has also justified them in terms of their effect on the construction of the West Siberian pipeline. Regardless of whether the pipeline was the direct or only a secondary target of the controls, the ensuing debate over the administration policy centered largely on the

tee on Science and Technology, Subcommittee on Investigations and Oversight, *American Technology Transfer and Soviet Energy Planning*, hearings, 97th Cong., 1st sess., Dec. 10, 1981 and Feb. 9, 1982 (Washington, D.C.: U.S. Government Printing Office, 1982).

³The Japanese firm Komatsu, which makes a similar machine, has since shipped pipelayers to the U.S.S.R. and obtained contracts for future deliveries. A discussion of the economic impact on the United States of this and other aspects of the oil and gas embargoes follows in ch. IV.

wisdom and utility of attempting to stop or delay this project. As might be expected, the imposition of the second phase of what came to be known as "the pipeline embargo" engendered a great deal of controversy in Congress and outrage in Europe and in the U.S. business community. In the House of Representatives, legislation was introduced to repeal the expanded oil and gas sanctions. In the Senate, hearings on the pipeline sanctions were held in March, July, and August 1982 before the Subcommittee on International Economic Policy of the Committee on Foreign Relations. Witnesses included administration officials as well as economists, lawyers, and businessmen. The latter group generally decried the sanctions, contending that they would have minimal impact on the U.S.S.R. (see ch. V) and inflict great damage on U.S. business interests. This issue is discussed at length in chapter IV.

OTHER COMMODITIES AND EQUIPMENT

Phosphates

On February 5, 1980, as part of its post-Afghanistan trade policy, the Carter administration imposed a validated licensing requirement on phosphate rock, all concentrates of phosphoric acid, and all concentrates of phosphatic fertilizer. No export applications for these commodities were to be considered, pending a policy review. Later that month, the Secretary of Commerce announced that the review had been completed and that the embargo would be continued indefinitely.

In 1979, the United States sold to the Soviet Union 543,000 tons of phosphates valued at \$93.6 million. Most of these exports consisted of superphosphoric acid (SPA) sold by the Occidental Petroleum Co. The phosphate sales constituted one part of a complex 20-year agreement with the Soviet Union, concluded in 1973 with the approval of the Nixon administration. A section of this agreement provided that Occidental exchange varying quantities of SPA, a high-quality liquid phosphate

concentrate used in the production of fertilizers, for varying quantities of other fertilizer chemicals, anhydrous ammonia, urea, and potash. In 1980, Occidental's exports of SPA were to rise to the contract maximum—1 MMT valued at \$400 million.

The rationale for the phosphate embargo was that it was inconsistent for the United States to sell phosphate—used in the fertilizer necessary to Soviet grain production—and at the same time embargo grain. Carter administration officials initially forecast that, although the embargo would have little impact on the Soviet Union's 1980 grain crop, it might reduce the 1981 crop by 2 to 2.5 MMT. Since the United States accounted for 90 percent of world production of SPA, they had little concern about Soviet ability to find alternative suppliers. Both the Departments of State and Commerce, however, believed that the Soviets might be able to substitute solid phosphate and phosphatic fertilizer from Morocco and Mexico.⁴

In fact, the phosphate embargo probably did come too late to have much impact in 1980. Nor is it likely that it seriously affected the 1981 grain crop. At the end of 1980, it was reported that the Soviet Union had replaced about 5 percent of the embargoed SPA with purchases from a Belgian company, and another 50 percent with raw phosphate rock from Mexico and Morocco. In addition, Occidental is believed to have shipped 40,000 tons of SPA in 1980 before the embargo went into effect. President Reagan lifted the phosphate embargo together with the partial grain embargo.

The Soviet Union probably was inconvenienced by the U.S. action—phosphate rock requires processing and is highly corrosive. On the other hand, it appears that the major effect of the embargo fell on the United States and the world phosphate market. According to a Carter administration report, the diversion of a large quantity of phosphates from the Soviet Union caused price declines, which pro-

⁴*Assessment of Afghanistan Sanctions*, op. cit., pp. 55-56.

duced losses for U.S. producers and gains for U.S. farmers. The impact naturally was greatest for Occidental, which converted one of its plants to produce the lower priced merchant-grade phosphoric acid, at the cost of some jobs. The Carter report forecast that the United States would maintain its dominant position on the world phosphate market, but as in the case of grain, there seems to have been some rearrangement of world trade patterns.

Equipment for the Kama River Plant

Even before the invasion of Afghanistan, U.S. participation in the Soviet Kama River Automotive Plant was controversial.⁷ The world's largest truck factory, Kama includes an IBM computer and other U.S.-origin equip-

⁷Ibid., pp. 68-70.

ment, purchased under licenses approved by the Nixon and Ford administrations. In the late 1970's, the U.S. Government began to receive reports that the Soviet military was using Kama trucks and that its diesel engines were being installed in military vehicles. This issue became a matter of public controversy in late 1979, when Lawrence J. Brady, then Deputy Director of the Office of Export Administration, told a congressional committee that the Soviet Union was violating U.S. export controls by diverting Kama trucks to military uses.

According to members of the defense and intelligence communities, the Government had known of the diversion of Kama products since 1977, but had not been aware of its scale until the time of Mr. Brady's testimony. U.S. experts concluded that the engines might be suitable for light armored vehicles, but not for ar-



Photo credit TASS from SOVFOTO

Civilian trucks on the main conveyor at the Soviet Kama River plant

mored personnel carriers or tanks. The United States also received information that Kama engines have been used in vehicles produced at ZIL, another Soviet factory. Nevertheless, the Secretary of Commerce held that no violations had occurred, since the licenses had not contained any end-use stipulations. The only restrictions on the computer license applied to the capability of the equipment.

The Carter administration established foreign policy controls on parts and components for truck engine assembly lines intended for Kama as part of its post-Afghanistan sanctions. Their chief effect was to block Ingersoll-Rand from exporting a truck engine assembly line. There was evidence that Kama trucks were appearing in Afghanistan, and the decision was justified on the grounds that it was inconsistent with U.S. policy for an American company to supply a factory that produced vehicles for the invasion. Moreover, U.S. equipment could be further used to increase production while Soviet forces remained in Afghanistan. These controls were extended before President Reagan took office. The Reagan administration broadened them to cover additional equipment and technical data and exports destined for ZIL.

The degree of impact of these controls on either the Soviet Union or the United States is debatable. In a report to Congress, the Reagan administration concluded that the denial of the Ingersoll-Rand equipment "... has greatly delayed Soviet expansion of engine production, and has probably caused them to forego planned production of a substantial number of trucks;" moreover, the expanded controls on exports to Kama and ZIL "should delay modification, updating, or expansion of these plants while alternate sources are developed."⁶ The report also noted the possibility of diversion from approved consignees in the Soviet Union (not all Soviet automotive factories are covered by the controls). After con-

sulting with Ingersoll-Rand, the administration concluded that the loss of the \$8 million contract had little impact on the company, its employees, or the community.

A somewhat different assessment was later presented to the Senate Foreign Relations Committee by Ingersoll-Rand officials.⁷ They testified that the Soviet Union had contracted with Comau, a division of Fiat, for replacement equipment. Ingersoll did not find an alternate use for the order, but it did receive partial compensation under a political risk insurance policy. However, insurance companies were unwilling to continue Ingersoll's political risk insurance for proposed sales of automotive equipment to the Soviet Union and East Germany. Without the insurance or assurances from the Government that the contracts would not be abrogated, Ingersoll decided not to pursue the deals, which were valued at \$60 million. Several hundred workers and contractors were laid off in consequence.

Sanctions Related to the Olympics

On May 28, 1980, the Carter administration imposed foreign policy controls on all exports except medicine and medical supplies intended for use or sale during the 1980 Moscow Summer Olympics. The control also applied to "payments or transactions which are in any way related to arrangements involving or requiring such exports, where such payments or transactions could provide financial support for such games." The prohibition on payments was aimed at NBC, winner of the network bidding war to televise the Olympics. In a directive to the Secretary of Commerce, the President explained that the purpose was to carry out his decision against "any United States participation in or aid to" the Games.⁸ The

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 "Report to the Congress Extending and Expanding Foreign Policy Export Controls," reprinted in U.S. Department of Commerce, International Trade Administration, *Export Administration Annual Report FY 1982*, Washington, D.C., February 1983, p. 152.

⁶Statement of T. A. Dukes, Jr., Executive Vice President, the Ingersoll-Rand Co., accompanied by Robert J. Secombe, Vice President, Automated Production Systems Division, Woodcliff Lake, N.J., in U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on International Economic Policy, *Economic Relations With the Soviet Union*, hearings, 97th Cong., 2d sess., July 30, Aug. 12 and 13, 1982 (Washington, D.C.: U.S. Government Printing Office, 1982), pp. 204-207.

⁷Reprinted in 45 FR 21613.

control followed a request, by DOC to the 20 or 30 firms involved to voluntarily refrain from exporting supplies for the Games. Several firms had announced that they would uphold the President request, but many urged the administration to impose a mandatory ban because of their concern that voluntary compliance would expose them to Soviet breach-of-contract suits.

These export controls, which lapsed in January 1983, appear to have had a minimal economic impact on either the Soviet Union or the United States as a whole. According to the Reagan administration report to Congress, licenses for goods valued at \$35 million were revoked or denied, and payments of \$27 million for special rights and privileges were stopped." Although press reports indicate that the Soviet Union was able to replace some of

the embargoed U.S. goods, this control caused inconvenience and somewhat reduced hard currency receipts. U.S. firms also suffered some short-term and, in the case of companies that sought to break into the Soviet market by being Olympic suppliers, possible long-term losses.¹⁰

In sum, while the foreign policy controls on grain and oil and gas technology are considered to have had the greatest impact on both the United States and the Soviet Union (these are discussed in ch. IV), the controls on phosphates, equipment for Kama, and Olympic-related goods and payments probably reinforced the message of the sanctions policy. At the same time, they may also have contributed to the perception of the United States as an unreliable supplier.

⁹ Report to the Congress Extending, *op cit.*, p. 155.

¹⁰ *Assessment of Afghanistan Sanctions*, *op. cit.*, pp. 91-92.

NATIONAL SECURITY CONTROLS

As in the case of foreign policy controls, the policies of the Carter and Reagan administrations on national security controls reflect a changed climate of opinion on the desirability of trade with the U.S.S.R. Since the passage of the 1979 EAA, licensing of exports to the Soviet Union was temporarily suspended twice and more stringent licensing criteria have been applied. Both administrations have differentiated between the Soviet Union and some East European nations.

SOVIET UNION

All outstanding validated licenses and the processing of applications for new licenses for exports to the Soviet Union were suspended in early January 1980 after the invasion of Afghanistan and U.S. licensing policy was reviewed. In April 1980 DOC began reviewing suspended validated licenses, and began to process new applications using more restric-

tive policy guidelines.¹¹ The new guidelines included the following:

- A "no exceptions" policy, under which the United States would deny most applications to export goods subject to CoCom controls. Thus, the United States would no longer request exceptions in CoCom. There were some "exceptions" for humanitarian exports (items essential to public health and safety), and for exports enhancing Western security (servicing for safeguards and items protecting Western access to vital commodities). At U.S. request, the other CoCom members also adopted a "no-exceptions" policy.
- Adoption of stricter technical criteria for computer exports.

¹¹ "U.S.-U.S.S.R. Trade After Afghanistan," *Business America*, Apr. 7, 1980, pp. 3-12.

- Applications involving process control technology in militarily relevant industries, technology for producing oil and gas equipment, and technical data related to items subject to multilateral controls would be subject to special scrutiny.
- A presumption of denial would exist for applications for proposed exports of technology for manufacturing oil and gas exploration and production equipment. A presumption of approval would exist for end-use products.

In addition, DOD canceled a delegation of authority to DOC, under which it exempted itself from reviewing applications for low-technology exports destined for the U.S.S.R. All license applications involving high-technology sales to the Soviet Union were denied during the 18 months ending September 30, 1981.¹² Of the more than 1,000 validated licenses returned to DOC after the suspension, over 500 were canceled before being reviewed because they had expired or because the export had been shipped. During the review, 281 were reinstated, 120 revoked, 54 more canceled, and processing of 21 was discontinued.¹³

The Reagan administration also conducted a lengthy review of licensing policy for the Soviet Union, concluding that a significant tightening of export licensing was required. It has retained the no-exceptions policy, and following the Polish declaration of martial law, suspended all licensing for exports to the Soviet Union for nearly 11 months. Licensing was resumed only after November 13, 1982. (See the Foreign Policy section above.) These actions all reflect the administration's view that security concerns must take precedence over commercial interests in cases of exports with possible military relevance.

E A S T E R N E U R O P E

The Carter administration never applied the "no-exceptions" policy to Eastern Europe, nor

did it change its policy of treating these countries individually rather than as members of the Soviet bloc. The rationale here was that the other Warsaw Pact countries did not participate in the Soviet invasion of Afghanistan. This policy, known as the "independent country" or "differentiated" policy, allowed the United States to apply more liberal licensing criteria to countries that maintain some distance from Soviet foreign policy (Romania¹⁴) or have more liberal domestic policies than the Soviet Union. The Carter administration liberalized licensing policy towards Hungary on the latter grounds. The change, which went into effect in June 1980, reflected the entry into force of the U.S.-Hungarian trade agreement, Hungary's relatively liberal internal and emigration policies, and its implementation of the Helsinki Final Act.¹⁵

At the same time, applications for licenses to East European countries have been more carefully scrutinized for possible diversion to the Soviet Union. Exporters have charged that this policy has significantly slowed license processing. Be that as it may, the value of approved high-technology exports to Eastern Europe increased from \$127 million in 1979 to \$340 million in 1980.¹⁶

In September 1982 a new interagency group on policy towards Eastern Europe affirmed the practice of differentiating U.S. relations with the countries of Eastern Europe. However, one sphere in which the Reagan administration's policy differs from that of its predecessor is on the question of technology transfers to non-Soviet Warsaw Pact nations. The current program involves tightening, in consultation with our allies, export controls across the board in order to guard against diversion to the Soviet Union.¹⁷ The following factors are

¹⁴Romania's recent imposition of an education tax on prospective emigres may possibly lead to the suspension of its MFN status. It is also possible that license applications for exports to Romania will now be reviewed more strictly.

¹⁵45 FR 37183-37184.

¹⁶GAO Report, op. cit., p. 33.

¹⁷Reprinted in U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Europe and the Middle East, *Developments in Europe August 1982*, hearings, 97th Cong., 2d sess., Aug. 10, 1982 (Washington, D. C.: U.S. Government Printing Office, 1982), p. 23.

¹²U.S. General Accounting Office, *Export Control Regulation Could Be Reduced Without Affecting National Security*, Washington, D. C., May 26, 1982, p. 8. (Hereafter, GAO Report.)

¹³*Export Administration Annual Report FY1982*, op. cit., p. 28.

now considered in licensing exports to Eastern Europe:

- For all items controlled for security purposes, the risk of diversion to military use in East European countries.
- For items which would not be approved for export to the U. S. S. R., the risk of diversion to that country.
- For items of marginal security concern, efforts by certain East European countries to distance themselves from Soviet foreign or domestic policies, particularly Romania and Hungary.]'

The administration distinguishes between technology and products, assuming that the former is more likely to be made available to the Soviet Union by East European importers.

In order to prevent possible diversion of embargoed items to the U. S. S. R., in June 1982 the Reagan administration adopted the practice of denying all applications involving high-technology exports to Poland and more carefully checking applications involving low technology. This practice was rescinded in November 1982.¹⁹ In the meantime, no validated licenses were issued for Poland. Moreover, there is some evidence that the entire

policy of differentiation has recently existed more in theory than in practice, and that in fact all of Eastern Europe is now being treated—particularly by the Department of Defense—much the same as the U.S.S.R. for export control purposes.

The Militarily Critical Technology List (MCTL)²⁰

The first version of the MCTL, compiled in DOD, was published in classified form in January 1980. DOD has since revised the list; and a second version was published in November 1981. Again, except for the Contents, the 800-page MCTL was classified. The administration has been using the MCTL and the information obtained in preparing it in its CoCom proposals. Defense is also using the MCTL as a guide in reviewing license applications, although Commerce only employs a small part of it in its own reviews. The MCTL will have to be further refined before being incorporated into the Commodity Control List, and CoCom approval will have to be obtained for multilateral use. Technical Advisory Committees, composed of technical representatives of business (predominately defense suppliers) and the Government, are presently working on these revisions. The MCTL is discussed further in chapter VI.

¹⁹Gerhard Many, "Technology Transfer Controls," *Department of State Bulletin*, vol. 82, No. 2068 (November 1982), p. 53.

¹⁹47FR 51858-61.

²⁰See also *Technology and East-West Trade*, op. cit., ch. V.

ADMINISTRATIVE ISSUES

L I C E N S I N G

The export licensing system has long been criticized as being too cumbersome, too slow, and too opaque, and the Export Administration Regulations have been described as complex and difficult to interpret. Licensing decisions have also been the subject of controversy. For some, too many applications are denied; for others, too few. Those of the former viewpoint have often complained that the Government denies licenses for goods and technology

freely available abroad, to the detriment of exporters and the U.S. balance of payments. Chapter II has listed the measures in the 1979 EAA designed to address these concerns. Events subsequent to 1979 have shown mixed results in implementing many of these provisions.

There is general agreement, for instance, that DOC has made little or no progress in establishing a capacity to monitor foreign availability, a perception supported by the fact that

no licenses were granted in fiscal years 1980 through 1982 for reasons of foreign availability.²¹ DOC officials have conceded in congressional testimony that this has been the case, but point out that Congress made no appropriation for staffing and that external research funds were impounded until fiscal year 1982. DOC has now established a foreign availability assessment program. This subject is discussed further in chapter VII.

Similarly, the creation of the Qualified General License (QGL) has resulted in little effective change in the administration of export licenses. Regulations establishing procedures for the use of the QGL were published in the *Federal Register* in July 1980.²² To be eligible for a QGL, the exporter must "reasonably expect" that it would replace at least 10 validated licenses annually to eligible countries. In addition, the foreign consignee must be the end user. Initial licenses are valid for a year, and may be extended for two more. But despite the language in EAA encouraging the use of QGLs wherever possible, only four such licenses had been issued through September 1982. The Reagan administration now proposes eliminating this license entirely from the new EAA.

Other measures to speed or improve the licensing process have fared better. The Commodity Control List was reformatted for easier use during 1982; the staff of DOC's Office of Export Administration has been increased; and the installation of a computer system to track license applications and provide enforcement information has met with some success. The elimination of the requirement that licenses be obtained to reexport items in CoCom-approved transactions has also resulted in some paperwork reduction.

Reagan administration officials have reported to Congress that the interagency licensing system has also been revitalized, although

²¹ *Export Administration Annual Report FY 1980*, pp. 13-14; *Export Administration Annual Report FY 1981*, p. 18; and *Export Administration Annual Report FY 1982*, p. 16.

²² 45 FR 45891-45898, Regulations implementing the new licensing procedures required by the act were also issued. Both went into effect on June 1, 1980, the deadline specified in the act

bureaucratic tugs of war between the agencies involved have by no means been eliminated. In addition to the formal interagency review process described in detail in chapter VII of *Technology and East-West Trade*, Senior Interagency Groups have been formed to provide an additional arena for issue resolution. While a large number of referrals to such groups might tend to slow the licensing process, and could potentially contradict the intent of Congress stated in the 1979 EAA that "a determination with respect to any export license application be made to the maximum extent possible by the Secretary [of Commerce] without referral of such application to any other department or agency, there is little evidence that this process is much used. Defense continues to review a relatively large number of applications, but only a few receive a formal interagency review. Of the 6,635 applications to export items controlled for national security purposes to proscribed countries received by Commerce in 1982, 1,800 were referred to DOD; interagency discussions were required for fewer than 200; and fewer than 20 were referred to the Assistant Secretary level or higher."

Administration policies adopted after 1979 have undoubtedly placed additional strains on an already overburdened licensing system. Among these were the Afghanistan-related review of previously issued validated licenses; the new guidelines for exports to the Soviet Union (see above) and China (see appendix), which increased the number of cases for which there were no precedents; and more careful checking for the possibility of diversion to the Soviet Union of exports to Eastern Europe. Officials have reported success in eliminating the backlog of unprocessed applications and meeting statutory deadlines, and the export

"Statement of Lionel H. Olmer, Under Secretary for International Trade, U. S. Department of Commerce," before the Senate Banking Committee, Feb. 3, 1983, mimeo., pp. 1-2.

²³ See testimony by representatives of Commerce and Defense in U. S. Congress, House Committee on Foreign Affairs, Subcommittee on International Economic Policy and Trade, *Export Administration Amendments Act of 1981*, hearings, 97th Cong., 1st sess., Mar. '26; Apr. 14, 28; May 13, 1981 (Washington, D. C.: U.S. Government Printing Office, 1981), pp. 93-94, 120-121.

community largely agrees that progress has been made. Nevertheless, as table 2 suggests, there may still be room for improvement.

Table 2.—Time Required To Process Licenses,
Fiscal Year 1982

Number of licenses	In process
64,682	< 30 days
7,651	30-59 days
2,295	60-89 days
1,530	90-179 days
350	> 180 days

SOURCE: Prepared statement of James H. O'Brien, Under Secretary for Trade Administration, Department of Commerce, before the Subcommittee on International Economic Policy and Trade, Committee on Foreign Affairs, House of Representatives, Washington, D.C., Mar. 1, 1983. (Hearings, p. 17.)

ENFORCEMENT

Compliance with U.S. export control regulations has become a major focus of congressional, executive, and public interest. In part, this increased attention stems from a perception that the enforcement of U.S. export controls has been poorly handled by DOC, which has the primary responsibility for enforcement under the EAA. Interest has also been generated by the considerable media attention devoted recently to cases of export control violations. The most dramatic is the CTC-Mulata (or Bruchhausen) case, in which over a 3-year period the defendants illegally exported to the Soviet Union over \$10 million worth of equipment for manufacturing and testing semiconductors.

This attention is reflected in the numerous studies and hearings on enforcement which have taken place since 1979. These include the following:

- At the request of Senators Jake Garn and Harry Byrd, in February 1980 the General Accounting Office (GAO) studied the U.S. export control system. Part of this report, published on May 26, 1982, deals with enforcement problems.
- An inter-agency working group was formed in June 1980 at the request of President Carter to investigate enforcement efforts. It concluded that "much needed to be

done to strengthen our combined efforts in this area."²⁵

- Congress' perception that compliance by U.S. firms and cooperation among agencies with enforcement responsibilities needed improvement was reflected in the Export Administration Amendments Act of 1981 (see below).
- Two 1982 studies by DOC's Inspector General and the Minority Staff of the Permanent Subcommittee on Investigations were specifically addressed to the DOC's enforcement efforts.

Overview of U.S. Enforcement Efforts

Major responsibility for enforcement of the 1979 EAA lies in the Office of Export Enforcement (OEE), recently created by reorganization and expansion of the former Compliance Division (CD) of the Office of Export Administration. However, the Treasury Department's Customs Service and the Federal Bureau of Investigation (FBI) also have responsibilities in this area. Until the fall of 1981, the Customs Service's contribution primarily consisted of conducting searches under warrant, seizing cargo, and making arrests—activities for which DOC staff have no legal authority. In addition, Customs has undertaken its own domestic and overseas investigations and, with the launching of Project Exodus in fiscal year 1982, Customs has become more actively involved in enforcement.

The purpose of Operation Exodus is "to both assess the threat of technology loss to the security of the United States and actively disrupt the illicit flow of technology out of the United States."²⁶ Exodus has begun with a massive cargo inspection program. This represents a major policy change, as the United States previously mounted only token cargo

²⁵"Prepared Statement of Robert L. Keuch, Associate Deputy Attorney General, Department of Justice," in *ibid.*, p. 61.

²⁶*Operation Exodus: FY 1982 Report*. (Appended to testimony by William von Raab, Commissioner of Customs, to the Senate Committee on Banking, Housing, and Urban Affairs on Feb. 3, 1983.)

inspection efforts. Other stages will focus on investigations and the active involvement of Customs' agents stationed overseas in violation cases. Table 3 presents the first year results of the program. It is not clear, however, how many of the seizures involved genuine attempts at diversion, and how many simply resulted from errors in paperwork or documentation.

Exporters and some Members of Congress now complain that the Exodus program is delaying legal shipments and causing customer problems. The Customs Service's report on Operation Exodus acknowledges these complaints, but contends that delays "should diminish substantially in the near future" with the improved training of agents and liaison with DOC's licensing staff. Operation Exodus has also been criticized on the grounds that cargo inspection has been overemphasized. According to GAO, the utility of cargo inspection is limited by the following factors:

- the growing volume of exports,
- the large number of exit points,
- the difficulty of inspecting more than a fraction of U.S. exports,
- the problem of determining whether a given shipment requires a license,
- the trend towards containerization, and
- the fact that some exports do not become illegal until they are reexported.²⁷

From his experience as a prosecutor of cases involving export control violations, the Deputy Assistant Secretary of Commerce for Export Enforcement, Theodore Wai Wu, concluded that there is a role for cargo inspection, but that investigatory efforts "concentrated

²⁷GAO Report, pp. 24-25. GAO is preparing a report on Operation Exodus, which will be completed later this year.

Table 3.—Results of Operation Exodus During Fiscal Year 1982

Number of detentions	2,481
Number of shipments seized	765
Value of shipments seized	\$55,665,482
Percentage of detentions resulting in seizures	30.8
Average detention period (in days).	3-5

SOURCE: *Operation Exodus—FY 1982 Report*, p. 6

as far upstream as possible produce the best possible results."²⁸ Similarly, although the ratio of detentions to seizures is high, and has therefore been criticized, Customs asserts that the increase from the 196 seizures valued at \$9 million in calendar year 1981 to 765 seizures valued at \$56 million in 1982 is a significant result of Exodus.

Other Government agencies are also involved in enforcement. Although the FBI has no jurisdiction in cases involving unclassified technology subject to export controls, it can investigate enforcement cases if foreign intelligence agencies are involved; if unclassified technology valued at more than \$5,000 is stolen and transported across State lines; or if the technology is classified for national security reasons. Related FBI activities include the Development of Counterintelligence Awareness program for defense contractors.

The intelligence agencies provide information to DOC and Customs, and if the case has international aspects, the State Department may become involved.²⁹ State maintains a network of Economic Defense Officers (EDO), who perform the following functions on a full- or part-time basis:

- prelicensing and postshipment checks,
- reporting on potential diversions,
- service of legal papers, as permitted by local law,
- liaison with local enforcement authorities, and
- informing U.S. and local businessmen of U.S. export controls.

EDO's and Foreign Commercial Service personnel appear to be the major implementors of DOC investigations overseas. When the

²⁸"Prepared Statement of Theodore Wai Wu, Deputy Assistant Secretary for Export Enforcement, International Trade Administration, Department of Commerce, before the Subcommittee on International Economic Policy and Trade of the Foreign Affairs Committee and Subcommittee on Trade of the Ways and Means Committee, U.S. House of Representatives, Washington, D. C., Mar. 1, 1983," mimeo, pp. 3-4.

²⁹"Prepared Statement of Harry Kopp, Deputy Assistant Secretary of State for Economic and Business Affairs, Department of State, in *Export Administration Amendments Act of 1981*, op. cit., pp. 34-37.

State Department receives information on an attempted or actual diversion, it tries to determine whether U.S.-origin goods are involved. If so, State refers the case to DOC or to the Customs Service. If the goods are not thought to be of U.S.-origin, the case is referred to a high-level interagency committee in the United States, which may *refer* it to the appropriate foreign government.

Criticisms of DOC's Enforcement Effort

Most criticisms of U.S. enforcement efforts have targeted DOC. In April 1982 the Office of the Inspector General of the Commerce Department investigated the DOC's Compliance Division, and identified a number of deficiencies in its operations:

- no comprehensive appraisal of or effective overall strategy to address the Nation's technology leakage problem;
- insufficient trained personnel;
- inadequate management direction and oversight;
- failure to use modern, state-of-the-art intelligence, investigative, and enforcement techniques and systems;
- lack of strong leadership and clear lines of organizational responsibility within OEE/CD;
- unwarranted interference in the detailed conduct of OEE/CD investigative operations by the Deputy Assistant Secretary for Trade Administration;
- inadequate cooperation and coordination with the U.S. Customs Service and vital information sources in the U.S. intelligence community;
- inadequate travel funds, law enforcement equipment, and other support resources; and
- use of antiquated or inefficient internal administrative and management systems and procedures.

These deficiencies may partially reflect a conflict between DOC's dual roles of promoting and controlling exports but, as the Interagency Group concluded, this is not a full explanation of the difficulty:

It is clear, however, that the Department's failure to provide adequate resources, policy guidance and management direction has impeded the compliance effort and produced at very least the perception of a *de facto* supremacy of the trade promotion mission over the Department's export control function.

What is also clear, from the findings in this report, is that the Department of Commerce has not taken a bold lead in forging an aggressive multiagency effort to halt the illicit export of controlled products.³⁰

The staff of the Senate Permanent Subcommittee on Investigations (PSI) found many of the same deficiencies in the Compliance Division. Its report included findings that CD was understaffed and poorly equipped; that some of the staff were poorly trained; and that there was a backlog of cases in the Investigations and Intelligence Branches. The PSI report also noted a lack of good working relations between the Compliance Division and Customs, which it attributed to DOC's strict interpretation of EAA provisions on release of proprietary information and to concern on the part of Customs agents that the Compliance Division's "inexperienced personnel were involving themselves improperly in Customs' foreign work The PSI staff also found that DOC was "not comfortable" with controlling exports because it focused on export promotion and that Commerce had a "limited tradition and expertise in traditional law enforcement. They concluded, in short, that:

Understaffed, flagrantly short of resources, the Division cannot do the job effectively; but, by its very presence, prevents other components of government from taking on the task.³¹

³⁰U.S. Department of Commerce, Office of Inspector General, Office of Investigation, *Report on Inspection, Compliance Division, Office of Export Administration*. Reprinted in U.S. Congress, Senate Permanent Subcommittee on Investigations, *Transfer of United States High Technology to the Soviet Union and Soviet Bloc Nations*, hearings, 97th Cong., 2d sess., May 4, 5, 6, 11, and 12, 1982 (Washington, D. C.: U.S. Government Printing Office, 1982), pp. 606-637.

³¹U.S. Congress, Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, *Transfer of United States High Technology to the Soviet Union and Soviet Bloc Nations*, Report No. 97-664 (Washington, D. C.: U.S. Government Printing Office, 1982), pp. 36-40.

Consequently, PSI staff recommended giving Customs temporary responsibility for enforcement and then creating an Office of Strategic Trade, as proposed by Senator Garn. (See ch. VII.)

Even before these reports, DOC itself had been concerned about the effectiveness of its enforcement activities, and it has now introduced or planned several measures to improve them. They included an organizational change in which the Compliance Division was upgraded to become the Office of Export Enforcement, and the appointment of a Deputy Assistant Secretary for Export Enforcement. Perhaps more importantly, DOC has now devoted more resources to enforcement by shifting funds from other offices within the International Trade Administration. More investigative equipment has been purchased and travel funds increased. Two field offices in California were opened. There are plans to improve intelligence operations and to automate certain functions. DOC has also taken some steps to improve cooperation with the Customs Service. For instance, the Secretary of Commerce has issued blanket authority for release of proprietary data. In addition, the two agencies are negotiating a Memorandum of Understanding, setting out the responsibilities of each. In sum, in the words of Commerce's Inspector General,

... the Department clearly has taken steps since last spring to give its export enforcement mission additional resources, greater cohesion, and more professional management.

Many of the problems we identified in our inspection have been corrected, and others seem well on the way to correction. Does this mean that everything necessary has been done to evolve an effective national strategy to combat the illicit leakage of technology? Of course not. The operative word is "evolve,"³²

DOC officials have assured Congress that DOC does have an enforcement strategy and has made considerable progress. They report that OEE was the sole or primary investigator or initial referee of 16 of the 23 cases involving possible criminal violations referred to the Justice Department since July 1, 1982. Table 4 presents statistics comparing Commerce's and Customs' cargo inspection programs.

Other Problems

It has been charged that action is taken on too few detected violations, and that penalties are too lenient, often the imposition of administrative rather than criminal sanctions. A variety of explanations for this situation have been advanced. First, a number of violations, such as exporting under expired licenses, are minor. Second, to be prosecuted as criminal the violation must have been a knowing or willful act.³³ Third, criminal prosecution

³²"Statement by Sherman M. Funk, Inspector General, U.S. Department of Commerce, Before the Senate Committee on Banking, Housing and Urban Affairs, Feb. 3, 1983, " mimeo, p. 8.

³³"Prepared Statement of William V. Skidmore, Director, Office of Export Administration, Department of Commerce, " in *Export Administration Amendments Act of 1981*, op. cit., p. 14.

Table 4.—Comparison of OEE and Customs Cargo Seizures

Time period	Detentions	Violations resulting in seizures	Percentage of detentions resulting in seizures
FY 81 —Commerce.	628	128	25.5 [sic]
FY 82—Commerce.	584	242	42.5 [sic]
FY 82—Customs OPEXODUS ... , . . .	2,481	765	30.8'
FY 83—Commerce ^b	167	81	48.5
FY 83—Customs ^c OPEXODUS	809'	286 ^c	35.3

aAccording to DOC, these figures include 82 seizures pursuant to the Arms Export Control Act so the Percentage connected

with the Export Administration Act is 275.

bThrough Jan. 11, 1983.

cReported to OEE by Customs

SOURCE" "Statement of Lionel H. Olmer, Under Secretary for International Trade, U. S. Department of Commerce, Before the Senate Banking Committee, Feb. 3, 1983, " mimeo, Attachment B

of foreign nationals is extremely difficult unless they are arrested in the United States. Few countries view export control violations as seriously as does the United States, and many countries are hesitant to permit extradition. Fourth, GAO has found that due to the length of investigations and a growing backlog of cases, DOC is closing a high percentage of cases with warning letters instead of stricter penalties. One of the reasons for this backlog is the length of time needed to conduct a major investigation overseas.

Overseas investigations of potential export control violations are carried out by both Commerce and Customs. GAO has criticized DOC for conducting their activities through embassy officials instead of relying on Customs. It argues that these officials have little experience in such cases and accord them low priority, whereas the Customs Service has agents stationed abroad and mutual assistance agreements with parallel agencies and police in other countries. These issues are discussed further in chapter VII.

LEGISLATIVE DEVELOPMENTS

Export administration, and particularly the President's use of foreign policy controls, was a controversial issue in the 96th and 97th Congresses. Many in Congress supported both President Carter's and President Reagan's use of embargoes and sanctions. Others were concerned about the impact of the grain embargo on the U.S. farm sector and on the U.S. reputation as a reliable supplier. These legislators sought embargo protection, and their concerns led to the adoption of provisions enforcing existing agricultural export contracts and requiring compensation for farmers in the event of a selective embargo on agricultural commodities. Several highly publicized violations of U.S. export controls raised the level of congressional attention to enforcement and compliance. These issues were the subjects of the legislation described below.

EXPORT ADMINISTRATION AMENDMENTS ACT OF 1981

In addition to extending authority for export controls through September 30, 1983, and authorizing appropriations for export administration in fiscal years 1982 and 1983, the Export Administration Amendments Act of 1981 (Public Law 97-145) was intended to improve enforcement and compliance. Reacting in large measure to testimony by GAO that the agencies responsible for enforcement—DOC, FBI, and Customs—were not cooperat-

ing in investigating suspected violations of the 1979 EAA, the drafters included a provision requiring responsible agencies to share information relevant to enforcement in a manner consistent with the "protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities."³⁴ This provision does not apply to Census Bureau data or to certain information from tax returns. The act increased maximum penalties for violations, distinguishing between individuals and entities such as corporations, which are liable to higher fines. Maximum criminal penalties were increased from \$100,000 to \$250,000 for individuals and \$1,000,000 for businesses. Maximum civil penalties for violations of national security controls, but not of other controls, jumped from \$10,000 to \$100,000 per violation. (Many cases involve multiple violations.)

The 1981 act also stipulates that information on export controls be made available to the Chairmen and Ranking Minority Members of the committees of jurisdiction and, subject to certain restrictions, to GAO. The impetus for this provision was the delay GAO experienced in obtaining information from DOC for a congressionally mandated study.³⁵

Reflecting widespread concern that the Soviet Union might invade Poland to crush

³⁴Senate Report No. 97-91, p. 2.

³⁵*Ibid.*

Solidarity, the act includes a provision that no legislation should be construed as prohibiting the imposition of a total embargo in the event of "military action" against Poland by the Soviet Union or the Warsaw Pact. The legislation does prohibit the President from imposing foreign policy controls on agricultural commodities that would cause "measurable malnutrition," unless he determines that controls are necessary to protect U.S. national security or that the food would not be distributed to those most in need.

AGRICULTURE AND FOOD ACT OF 1981

The Agriculture and Food Act of 1981 (Public Law 97-98) reflected congressional concern on the issue of agricultural embargoes which, many felt, had not been adequately addressed in the Export Administration Amendments Act. It did not directly limit the President's ability to embargo agricultural commodities, but established compensation for farmers for losses due to selective controls on the assumption that the increased budgetary costs would tend to discourage the President from selectively barring agricultural exports in cases not serious enough to warrant embargoing all exports.

The act stipulates that if a selective embargo is imposed on agricultural commodities for reasons of national security or foreign policy, the Government must:

1. set the loan rate at 100 percent of parity,
2. make direct payments to producers equal to the difference between parity and post-embargo prices, or
3. introduce an equivalent combination of loans and cash payments. To become effective, the embargoed country must account for more than 3 percent of U.S. exports of the affected commodity.

FUTURES TRADING ACT OF 1982

Congressional concern that the sanctity of existing agricultural export contracts be guaranteed in the event of another embargo was reflected in an amendment to the Futures Trading Act of 1982 (Public Law 97-444), passed in October 1982. Known as the contract sanctity provision, it prohibits restrictions on export contracts concluded before the imposition of an embargo, if they call for delivery within 270 days following the embargo announcement. The provision is not applicable when the United States is at war or during a national emergency declared by the President. There was speculation that President Reagan would veto the bill because the contract sanctity provision would reduce his flexibility to conduct foreign policy. The State Department was reported to have recommended a veto. Nonetheless, the President announced at a meeting of the Farm Bureau Federation on January 11, 1983, that he had signed the bill.

DEVELOPMENTS IN COCOM

The Reagan administration's review of U.S. East-West trade policy placed special emphasis on CoCom. Its concern reflected the recognition that cooperation with other major Western countries was essential to stemming the flow of technology to the Soviet Union, and the belief that CoCom was not as effective a control mechanism as it could and should be. The administration's assessment of CoCom was capsulized in the testimony of a

high-ranking Commerce official, who told Congress, "Quite frankly, CoCom needs rejuvenating. Even the strategic criteria on which the institutional structure rests may require examination."³⁶

³⁶U.S. Congress, Senate Committee on Foreign Relations, Subcommittee on International Economic Policy, *East-West Economic Relations*, hearings, 97th Cong., 1st sess., Sept. 16, 1981 (Washington, D. C.: U.S. Government Printing Office, 1981), p. 9.

In general terms, the Reagan administration's approach to CoCom has consisted of stressing the following elements:

- tighter controls on exports of goods and technology to the Soviet Union,
- improved enforcement by members of national and multilateral export controls,
- "harmonization" of members' licensing procedures,
- greater involvement of other members' military establishments in export policy, and
- incorporation of the critical technologies approach into CoCom's licensing criteria.

By "harmonization" the administration seems to mean ascertaining that the licensing processes of member countries are such as to ensure a thorough review of proposed transactions, and encouraging the participation of foreign defense ministries in licensing decisions. Achievement of the fourth goal would bring allied practice more in line with that of the United States, where DOD plays an important role in licensing decisions. Concomitantly, the Reagan administration appears to be trying to involve NATO in the export control process.

Efforts to incorporate the critical technologies approach and to tighten controls on exports to the Soviet Union did not originate under the Reagan administration. Like its predecessors, the Carter administration sought the inclusion of new items on the list. In addition, it began the work on the critical technologies approach and, following the invasion of Afghanistan, persuaded the other members of CoCom to agree to the no-exceptions policy for exports to the Soviet Union.

The Reagan initiative started publicly at the Ottawa summit in July 1981, where the President raised U.S. concerns about CoCom's operations and emphasized the importance of the issue to the United States. The communique issued at the end of the summit made a vague reference to "ensur[ing] that, in the field of East-West relations, our economic policies continue to be compatible with our political and security objectives." Presumably, the lack

of details indicated the persistence of differing views, but the United States did obtain the participants' agreement to "consult to improve the present system of controls on trade in strategic goods and related technology with the U. S. S. R."³⁷ This agreement resulted in the scheduling of a high-level CoCom meeting for January 1982 in Paris.

U.S. officials billed the high-level meeting as "the first broad reconsideration of our technology control system in nearly thirty years."³⁸ In large measure, U.S. officials respected CoCom's tradition of confidentiality in describing both the specifics of U.S. proposals and the results of the meeting. Nonetheless, some of the details have been made available. According to press reports, the United States proposed tighter controls on advanced computers, other electronics, fiber optics, semiconductors, and certain metallurgical processes; and restrictions on turn-key plants in military-related industries and on training programs for Soviet bloc nationals in military-related technologies. The U.S. delegation may also have reiterated an earlier proposal that CoCom review all contracts worth over \$100 million and proposed a moratorium on exceptions requests for the entire Soviet bloc.³⁹

Under Secretary of State James L. Buckley, who led the U.S. delegation, has testified that

... there was a concrete consensus that the member governments should increase their effort to improve CoCom's effectiveness. We have been encouraged by what appears to be a new and more constructive attitude of other CoCom governments and feel that this meeting forms a basis for a revitalization of the CoCom system.⁴⁰

³⁷Reprinted in *Department of State Bulletin*, vol. 81, No. 2053 (August 1981).

³⁸Caspar W. Weinberger, "Technology Transfers to the Soviet Union," *Wall Street Journal*, Jan. 12, 1982, p. 32.

³⁹Paul Lewis, "Allies Discuss More Curbs on Sales to Soviet Bloc," *New York Times*, Jan. 20, 1982, p. A8; "U.S. Allies Agree to Redefine Rules on Sales to Soviets," *Wall Street Journal*, Jan. 21, 1982, p. 31; and Paul Lewis, "Soviet Pipeline Called Vulnerable," *New York Times*, Jan. 21, 1982, p. A4.

⁴⁰"Statement of James L. Buckley, Under Secretary for Security Assistance, Science, and Technology, Department of State," in *Transfer of United States Technology* (hearings), op. cit., p. 158.

It was reported that the other CoCom members agreed to "redefine" CoCom's guidelines, to include modern technologies on the list, and to refrain from requesting exceptions for exports to the Soviet bloc until the 1982/83 list review had been completed.⁴¹

In a communique issued at the end of the 1982 Versailles summit, participants pledged to continue work on improving the CoCom control system and members' enforcement arrangements.⁴² This will be a two-pronged effort. First, as part of the program of studies announced in November 1982, and discussed in chapter V, the United States, the major West European countries, and Japan will study ways to speed up and broaden CoCom's work and CoCom will study whether to include oil and gas equipment on the List even though it does not have direct military applications.

The second effort is the routine List review, which occurs approximately every three years. The first round of the 1982/83 List review ran for 4 months, concluding in February 1983; the second round may have begun as this document goes to press. Under Secretary Buckley's testimony in May 1982 indicated that the United States was working on proposals to "expand CoCom control Lists into previous-

ly uncovered priority industries,"⁴³ including the following: gas turbine engines, large floating dry docks, certain metallurgical processes, electronic grade silicon, printed circuit board technology, space launch vehicles and spacecraft, robotics, ceramic materials for engines, certain advanced composites, communications switching equipment, computer hardware, and computer software technology and know-how. This is an ambitious agenda and particular resistance is expected in the case of gas turbine engines and computer software technology. The administration also plans proposals on harmonization and enforcement.

In nonspecific terms, U.S. officials have noted progress in obtaining approval of U.S. positions in CoCom. Their lack of specificity may reflect their observance of confidentiality. Many observers, however, suspect that it also reflects persistent differences within the organization. Members of the administration concede that the process of reaching agreement will be lengthy and difficult, but they cite U.S. successes in obtaining greater involvement of allied military and defense officials in CoCom proceedings and in using information obtained from the Defense Intelligence Agency and other intelligence sources to convince CoCom to add items to its List or to deny license applications. In addition to its importance for East-West trade, the CoCom List review is critical to West-West trade since the Reagan administration has linked progress in CoCom to changes in controls on U.S. trade with CoCom countries.

⁴¹U.S. Allies Agree to Redefine Rules on Sales to Soviets, " op. cit., p. 31 and Lewis, "Soviet Pipeline Called Vulnerable." The former followed up on an agreement to add specific references to technology as well as to products to the CoCom strategic criteria and to include controls on technology in the CoCom List itself rather than as an "administrative principle" appended to the List, which was proposed by the Carter administration during the 1978/79 List review.

⁴²For the text of the Communique, see *Department of State Bulletin*, vol. 82, No. 2064 (July 1982), pp. 7-9.

⁴³*Transfer of United States Technology*, OP. cit., pp. 158-59.

SUMMARY AND CONCLUSIONS

Since 1979 both the Carter and Reagan administrations have significantly tightened national security controls on exports to the Soviet Union and employed a number of controversial foreign policy controls in response to Soviet actions. Particularly controversial

were the grain embargo and the expanded controls on oil and gas equipment. The former led to passage of legislation to prevent agricultural commodities from being singled out for use as a foreign policy tool and to guarantee the sanctity of agricultural export contracts.

The latter elicited strong negative reactions both at home—in Congress and in the business world—and abroad.

Allied support for the new U.S. policies has been mixed. The allies pledged not to take commercial advantage of the U.S. restrictions on grain and high technology. However, increased exports of grain and the fact that European companies obtained several major contracts that U.S. companies were barred from fulfilling have led many observers to conclude that Europe and Japan are following a policy of “business as usual.” Allied support for tighter CoCom controls is said to be growing, but many remain skeptical of the prospects for timely or comprehensive results.

Another major development has been a renewed focus on the enforcement of export controls. This concern was reflected in the Export Administration Amendments Act of 1981, and in efforts by the Reagan administration to improve compliance and to persuade other members of CoCom to make similar efforts. Extensive criticism has been directed at DOC, which has primary responsibility for enforcement and compliance, and increased attention is now being devoted by the Customs Service to export licensing violations. The implications of these events for the U.S. economy, its political relations, and its national security position are discussed in the chapters which follow.