APPENDIX I

SUMMARY OF COMMENTS ON FOREIGN POLICY CONTROLS

In the *Federal Register* of October 8, 1997, the Department of Commerce requested comments from the public on existing foreign policy-based controls maintained under Section 6 of the Export Administration Act. In the notice, the Department sought comments on how existing foreign policy-based controls have affected exporters and the overall public. Specifically, the notice invited public comments about such issues as the effectiveness of controls where foreign availability exists; whether the goals of the controls can be achieved through other means such as negotiations; the compatibility of the overall U.S. policy toward the country in question; the effect of controls on U.S. economic performance; and the enforceability of the controls. The Department also requested comments from the member companies of its Technical Advisory Committees (TACs) and the President's Export Council Subcommittee on Export Administration (PECSEA).

The Department received three responses to this request, from the Regulations and Procedures Technical Advisory Committee (RPTAC), Sun Microsystems, and Allegheny Teledyne. The Bureau of Export Administration (BXA) makes the comments available for public review upon request. This Appendix summarizes the comments received and some of the various reports issued in 1997 on unilateral sanctions.

<u>Industry Comments</u>

The RPTAC's response centered on its perception that foreign policy controls are expanding, thus penalizing U.S. industry without effecting noticeable change of behavior by the target countries. RPTAC noted that the United States is targeting more countries (*e.g.*, Sudan) and is also placing items that have been removed from multilateral control under unilateral control. The response recommended that BXA survey foreign governments and companies for their reactions to U.S. foreign policy export controls. It suggested that the United States reduce the number of both target destinations and items subject to unilateral export controls, and employ multilateral controls whenever possible.

Sun Microsystems focused its response on the "Catch-All" controls implemented as part of the Enhanced Proliferation Control Initiative. Sun recommends abolishing "Catch-All" provisions. If this is not feasible, Sun suggests that BXA subject "Catch-All" controls to the same analysis as other controls in its annual report on foreign policy export controls; expediting end-user checks; establishing procedures whereby BXA would inform all companies if it informs one about a foreign entity that poses a proliferation concern; eliminating license requirements for EAR99 items to parties on the "Entities List;" and publishing the Department of Energy's list of sensitive nuclear facilities and unsafeguarded facilities. Sun recommended revisions to the high-performance computer requirements, specifically to minimize control levels on items that are readily available elsewhere.

Allegheny Teledyne supported a recommendation made by the Materials Technical Advisory Committee (MATAC) that BXA eliminate controls on high-strength titanium alloys (ECCN 1C202). Allegheny Teledyne claims these alloys have widespread foreign availability and that substitute products exist that are not controlled.

BXA also received a copy of the "1997 Statement of Goals of the Industry Coalition on Technology Transfer (ICOTT)," a U.S. group of high technology trade associations whose member firms export controlled goods and technology. ICOTT submitted this Statement to BXA to advise the U.S. Government of its primary concerns about export controls. These goals include, *inter alia*, restricting the use of unilateral export controls; harmonizing nonproliferation, national security, and foreign policy controls; limiting interagency review; moving embargo functions administered by the Department of the Treasury to the Department of Commerce; halting extraterritorial application of export controls; limiting encryption controls; and having BXA conduct an annual review of the Commerce Control List.

Unilateral Sanctions

Much attention in 1997 focused on the issue of U.S. unilateral sanctions. Two Executive Branch advisory committees published reports on sanctions, as did several industry associations and research institutes. This Appendix, while not inclusive, summarizes some of the reports published this year and highlights their major conclusions.

The President's Export Council submitted a report to the President in June 1997, titled, "Unilateral Economic Sanctions: A Review of Existing Sanctions and Their Impacts on U.S. Economic Interests with Recommendations for Policy and Process Improvement." The Council concluded that unilateral economic sanctions could be an effective tool of U.S. foreign policy but may weaken U.S. competitiveness by creating advantages for foreign competitors, inviting retaliation, and creating uncertainty about the availability of U.S.-origin goods, services and technology. However, the Council states, "The negative economic impacts of unilateral sanctions could be substantially reduced with no significant negative impact on the domestic and foreign policy interests of the United States." The Council recommends *inter alia* that the President establish guidelines for the implementation of sanctions, consult with Congress and affected private parties before enacting sanctions, avoid extraterritorial measures, and set time limits and review procedures on sanctions to ensure their long-term effectiveness.

The Sanctions Working Group (SWG) of the Department of State's Advisory Committee on International Economic Policy completed its report on U.S. unilateral sanctions in September 1997. It focused on which factors the United States should consider when imposing sanctions, including the consideration of the vulnerabilities of the leaders of the target countries and groups, which may not be the same as the country or group as a whole. The SWG recommended use of a "response ramp" of alternative or complementary measures to achieve U.S. strategic aims, and the establishment of a G-7 Sanctions Working Group to coordinate multilateral cooperation.

The CATO Institute included a chapter on "Unilateral Sanctions" in its *Handbook* for the 105th Congress. It recommended, among other things, that Congress require economic analyses of the effects of all current and proposed sanctions on the U.S. economy and provide compensation to U.S. companies hurt by the imposition of sanctions.

The National Association of Manufacturers published "A Catalog of New U.S. Unilateral Economic Sanctions for Foreign Policy Purposes, 1993-1996" in March 1997. This report concluded that unilateral sanctions may be effective, if it can be proved that they will likely meet their foreign policy objectives and if the relevant goods, services or investment are not widely available. However, the report concludes that few existing sanctions meet these requirements. The report recommends that the United States produce an annual report of the effects of U.S. sanctions on their targets and U.S. industry.

The Institute for International Economics (IIE) published its working paper, "U.S. Economic Sanctions: Their Impact on Trade, Jobs, and Wages," in April 1997. This study concludes that U.S. unilateral sanctions reduced U.S. exports to 26 target countries by $15 to $20 billion in 1995, and provided export opportunities to U.S. trading partner nations not available to U.S. firms. While IIE found only limited proof that sanctions cause foreign importers to view U.S. firms as unreliable suppliers even after sanctions are lifted or expire, IIE found these effects may be more significant to exporters of high-technology and infrastructure equipment. IIE also expressed concern over the "disturbing precedents" set by such extraterritorial measures as the Libertad Act and the Iran/Libya Sanctions Act.

The Heritage Foundation published "A User's Guide to Economic Sanctions" in June 1997. Its unique recommendations included limiting the powers of the International Emergency Economic Powers Act to national security policies only (thus reducing or eliminating foreign policy controls), mandating presidential consultation with Congress after implementing sanctions via an Executive Order, requiring the Secretary of Commerce to identify all U.S. businesses hurt by U.S. sanctions, and forbidding state and local government from imposing sanctions contrary to U.S. national interests.

USA Engage, a coalition of over 650 U.S. businesses and industry associations working to promote U.S. economic engagement overseas and limit the use of U.S. unilateral sanctions, has published several articles on this subject in 1997. In summary, USA Engage argues that unilateral sanctions harm U.S. competitiveness and rarely achieve their stated foreign policy objectives.