

# APPENDIX I

## SUMMARY OF COMMENTS ON FOREIGN POLICY EXPORT CONTROLS

In the Federal Register of October 2, 1996 (Vol. 61 No. 192, p. 51395), the Department requested comments from the public on existing foreign policy-based controls maintained under Section 6 of the 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 nine comments. All are available for review in the Department of Commerce, Bureau of Export Administration. The Department has included some of the substantive comments under the "Consultation with Industry" section of each of the control areas where the comments were specific to particular controls. Three members of the PECSEA commented in both their capacity as members of the PECSEA and as members of the companies that they represent, specifically, Hardinge Inc., International Business Machines Corporation(IBM) and United Technologies. Two of the Department of Commerce's TACs responded: the Information System TAC (ISTAC) and the Regulatory Procedures TAC (RPTAC). Three other companies sent comments: Sun Microsystems, Inc., The Boeing Company, Varian Associates, Inc. and an association representing nuclear energy industries, called the Nuclear Energy Institute. The Department attributes each comment to the trade association or manufacturer providing the information.

A summary of the major issues raised in the public submission follows. Most of the comments fell into three broad areas: unilateral controls, the "catch-all" in the Enhanced Proliferation Control Initiative (EPCI), and the "unfair impact" provision of the proposed Export Administration Act which did not pass the 104th Congress.

### Unilateral Controls

United Technologies supported a recommendation to the President from the President's Export Council to appoint a government-industry panel to assess the current status of all economic sanctions, particularly those that are unilateral, and recommend policies to guide the use of unilateral controls in the future. United Technologies felt this would be "a much more meaningful exercise than the current annual review of existing, entrenched foreign policy based export controls."

The RPTAC also supported the letter that the President's Export Council sent to the President. The letter discussed the adverse effect that unilateral sanctions have on the economic security of our nation. The limited purpose of distancing the United States from abhorrent acts or actors is questionable and may be counterproductive when friendly foreign governments openly refuse to follow the U.S. lead and offer competitive products. The ISTAC said it was difficult to imagine how unilateral controls could be effective for commodities for which the United States is not the sole supplier.

Varian Associates, Inc. claimed that many decisions made to further the U.S. foreign policy goals fail to balance the economic impact on vital American industries. The U.S. Government needs to work harder to limit its own use of foreign policy measures which are unilateral in nature. IBM believes that this discretionary power of imposing unilateral controls has been used in recent years as the "weapon of first resort," rather than as the last resort. The impact of U.S. foreign policy actions against other countries has, therefore, fallen unfairly on American exports and jobs. Under the old COCOM system, a U.S. veto of another country's exports both safeguarded U.S. national security prerogatives and ensured that U.S. producers would not suffer a competitive disadvantage. As the Wassenaar Arrangement allows no similar veto, the possibility exists that the United States will resort to unilateral controls more often.

Sun Microsystems was concerned that the United States is considering retaining current unilateral controls on Eastern European countries and the PRC when the Wassenaar Arrangement national security controls are implemented. Unilateral export controls are generally ineffective, other than to distance the United States from an offensive nation. While such distancing may be a laudable symbolic goal, it seriously undercuts U.S. competitiveness and imposes a substantial price in terms of an economic drag on the U.S. economy.

Hardinge, Inc. gave a specific example of being hurt by unilateral controls when Chengdu Aircraft Industrial Corporation did not invite any American machine tool builders to China for technical discussions. Hardinge says that was because of Chengdu's difficulty in obtaining export licenses for American products and because Chengdu had not encountered such difficulties with the Europeans or Japanese. Insistence on rigid export controls for items beyond the nuclear control list is a guarantee that U.S. machine tool builders will suffer unfair competition in the world marketplace. Hardinge has simply stopped trying to sell highly accurate machine tools to Chinese customers because numerous past license rejections has shown that the U.S. Government has no intention of allowing these sales. Other U.S. machine tool builders have reached the same conclusion.

### EPCI

Varian Associates, Inc. said that the "catch-all" provisions of the Enhanced Proliferation Control Initiative (EPCI) should be eliminated. The only items which should be controlled are those which have been multilaterally agreed to by one of the four export control regimes, i.e., the

Wassenaar Arrangement, the MTCR, the NSG and the Australia Group. Varian indicated that it has lost a long-standing customer in India due to the U.S. Government's over-reaching interpretation of the EPCI rules. U.S. policy makers need to remember that by denying a particular export to a U.S. exporter, it is often not just a single sale which is lost. Many times, the lost opportunity of a single sale permits other foreign competitors to enter a market which was previously closed to them. The end result is far greater than the loss of the single transaction.

Sun Microsystems protested that they have had particular difficulty in complying with EPCI regulations, especially the so-called "catch-all" controls on the export of items otherwise eligible for general license shipment. Providing clean economic data is very difficult given that these rules are so vague and the standards for compliance so unclear. Sun recommends that these catch-all rules be abolished. Sun has asked Commerce for guidance and help from time to time and received very little helpful guidance in response to these requests. In some cases Sun was informed not to make sales to the entities in question, but other U.S. competitors, who were not so informed, sold comparable U.S. products to the same entities. Sun's failure to sell the product to the foreign company only took a sale away from Sun and gave it to a competitor who was not as diligent. In another case, it took Sun six months to get a response from Commerce, despite repeated requests.

The RPTAC noted that in 1995 the European Community(EC) acceded to a U.S. initiative to adopt a catch-all control regulation; yet, the majority of EC countries have not implemented in national regulations functional "catch-all" controls. The U.S. regulations and practices are generally broader than those of other countries.

### EAA Renewal

IBM was pleased to see an "Unfair Impact on U.S. Exporters" provision in the most recent attempts of the Clinton Administration to secure a reauthorization of the Export Administration Act. The unfair impact provision would help to focus the attention of American policy-makers on the breakneck speed that is so characteristic of the computer industry, thereby helping to ensure that U.S. industry remains competitive in the global marketplace. However, this version of a new EAA (H.R. 361) was not passed in the 104th Congress.

Hardinge Associates, Inc. also mention the "unfair impact" provision and its disappointment that H.R. 361 was not passed by this Congress. The unfair impact provision would have provided the opportunity for relief from the advantage given our foreign competitors by their governments' lax interpretation of international export control regimes. Hardinge indicated that it recently lost an order for multiple machines because a German competition agreed to supply a Chinese manufacturer with machines well in excess of existing accuracy limits. Hardinge felt compelled to offer only products within the parameters of the limits of the Nuclear Non-Proliferation Controls. In a recent Chinese machine tool show, this same competitor openly displayed and offered for sale machines with published and advertised accuracies well beyond existing control limits. Hardinge submitted for the records photographs of the competitor's display

and copies of its sales brochures to the Senate Subcommittee on International Finance at its July 31, 1996, hearing on HR 361, the Export Administration Act of 1996. Hardinge recognizes that the Nuclear Non-Proliferation controls exclude any consideration of foreign availability but continues to stress the unfair disadvantage caused by unequal enforcement of these controls.