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Report to the Congress

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EXPORT CONTROLS

Assessment of Commerce Department's Foreign Policy Report to Congress

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Comptroller General
of the United States

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To the President of the Senate and the
Speaker of the House of Representatives

This is our assessment of the Secretary of Commerce's January 1987 report to the Congress on extending existing foreign policy controls. We are required by the Export Administration Amendments Act of 1985 to assess the Secretary's report to ensure that it has fully complied with the statutory reporting requirements.

We found the report to be in compliance with the statutory reporting requirements of the 1985 Act. To enhance the completeness and utility of the report, we are recommending that the Commerce Department improve aspects of its reporting with regard to enforcement matters.

Appendix I presents the details of our assessment, and appendix II describes the objectives, scope, and methodology of our review.

We are providing copies of this report to appropriate House and Senate Committees; the Secretaries of Commerce and State; the Director, Office of Management and Budget; and other interested parties.

Frank C Conahan

for Charles A. Bowsher
Comptroller General
of the United States

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Assessment of the January 1987 Commerce Department Report on Extending Foreign Policy Export Controls

The Export Administration Act of 1979, as amended, authorizes the President to establish export controls for economic, national security, and foreign policy reasons. With respect to foreign policy controls, the 1979 Act provides that subject to certain limitations, the President, through the Secretary of Commerce, may prohibit or curtail exports to the extent necessary to support the foreign policy objectives of the United States. The 1979 Act was most recently amended by the Export Administration Amendments Act of 1985 (Public Law 99-64) to, among other things, limit the President's use of foreign policy controls. For example, the Secretary may impose, expand, or extend export controls only if he first (1) consults with Congress, (2) makes certain determinations regarding the impact, significance, and effectiveness of proposed controls, and (3) reports to Congress.

The 1985 Act also requires that we assess the Secretary's reports to Congress to ensure that Commerce has fully complied with the statutory reporting requirements. Our assessment is not a review of the policy, administration, or scope of the controls themselves.

The Secretary's January 1987 report to the Congress addresses nine subjects for each control being extended: (1) purpose, (2) probability of achieving its intended purpose, (3) compatibility with U.S. foreign policy objectives, (4) reaction of other countries, (5) economic impact, (6) U.S. ability to enforce the control, (7) consequences of modifying the control, (8) alternative means for achieving the control's purpose, and (9) foreign availability of the controlled item.

Our review showed that the Secretary's January 1987 report meets the requirements of the 1985 Act. The report also largely addresses the recommendations we made in our 1986 report (GAO/NSIAD-86-172) regarding fuller discussion of alternative means for achieving the purpose of the controls, the difficulties in enforcing them, and the limitations in assessing their economic impact. We are making two recommendations to further improve Commerce's reporting on enforcement matters.

Controls Are Largely Symbolic

As we noted in last year's annual report, most of the foreign policy controls extended in the Secretary's report are symbolic because (1) their stated purpose is to limit U.S. involvement with specific countries and (2) the targets of the controls can use available foreign items and so incur little or no added cost. The Secretary's report describes the purpose of each control in the context of restricting U.S. items or distancing the United States from specific actions rather than in the context of punishing the target countries or trying to change the target countries' behavior by imposing economic costs on them. These symbolic controls were unilaterally imposed, and the United States has not been successful in gaining support for them from other countries.

If the foreign policy purpose of the controls is symbolic, two significant consequences result. First, the costs are borne by American businesses through the loss of export sales to firms in other countries. (The Secretary's report details the substantial costs imposed on American businesses by many of the controls.) Second, the enhanced foreign availability provision of the 1985 Act is not applied. Under the 1979 Act, the President only had to take all feasible steps to secure the cooperation of foreign governments in controlling exports of controlled items. However, section 6(h) of the 1979 Act was amended by the 1985 Act to provide that (1) if the President is not successful in securing this cooperation and (2) if the Secretary determines that there is sufficient foreign availability of the controlled item to make denial of an export license ineffective in achieving the purposes of the controls, then the Secretary shall approve any required export license and remove the commodity from the export control list.

The Secretary's report discloses that there is widespread foreign availability of virtually all controlled items. However, by defining the foreign policy purpose of these controls in a symbolic context—i.e., to distance the United States from the specific actions of foreign nations—controls on specific items can continue despite their foreign availability.

Each type of control covered in the report includes a section describing the availability from other countries of goods or technology comparable to the goods or technology subject to export control, except for those controls explicitly excluded. In addition to export controls for symbolic purposes, the 1979 Act states that foreign availability provisions are not applicable to export controls in effect before July 12, 1985, for human rights and antiterrorism purposes, or to meet international obligations.

We found the sections on foreign availability to be straightforward in noting that other countries have not enacted similar controls and that foreign availability of the controlled items does exist. In fact, as the report makes clear, other major supplier countries have enacted similarly strict controls only on chemical weapons.

This year's report recognized the costs of symbolic export controls. Because of such costs, the controls on exports to the Soviet Union, and derivatively to Afghanistan, of oil and gas equipment and technology are not being extended. The Secretary stated that it is in the national interest to allow these foreign policy controls to lapse because they do not meet the criteria established by the Congress and have resulted in harm to significant U.S. economic interests.

Enforcement

The enforcement sections of the report are generally more complete than in the 1986 report in terms of discussing potential enforcement problems. Also, the difficulties of guarding against unauthorized reexports or diversions from third countries to the target country are more fully described now in a preface to the report. This preface states in part that:

> "When regulations are implemented without the imposition of corresponding restrictions by other countries, it is difficult to guard against reexports from third countries to the country that is the target of the control. If unauthorized reexports violate U.S. export controls, as is the case with crime control and detection instruments and equipment and related technical data, no violation of the laws of the third country exist. This makes it difficult to detect violations abroad and initiate proper enforcement action. The relative ease or difficulty to identify the movement of controlled goods and technical data is also a factor. Controls on items that are small, inexpensive, easy to transport and that have many producers and end-users are more difficult to enforce."

U.S. exporters are required in many instances to include a destination control statement on all copies of the bill of lading, the airway bill and the commercial invoice covering an export from the United States. This statement advises the recipient that there are restrictions on reexports to certain countries and that diversion contrary to U.S. law is prohibited. Destination control statements are most commonly required for exports subject to national security controls.

We believe it would be useful for the report to disclose to the Congress when the worldwide foreign availability of some of the controlled items includes large quantities of used, U.S.-origin equipment. For example, there is an active market for used light helicopters that includes a large number of U.S. helicopters.

The report contains virtually no discussion of (1) the Administration's knowledge of actual or suspected diversions or (2) measures taken to improve enforcement. We believe that Commerce reporting on these matters would assist the Congress in evaluating export control capabilities.

Recommendations

With respect to section 6(b)(1)(E) of the 1979 Act as amended, we recommend that in future reports to the Congress the Secretary of Commerce include

- readily available information on the U.S.-origin share of the existing worldwide inventory of controlled items and related enforcement efforts and problems and
- a description of all known or suspected diversions identified during the prior year, including analyses of how they occurred, remedial actions taken, expectations as to the prospects for preventing future diversions, and an assessment of the government's capability to be knowledgeable of such diversions.

Agency Comments

The Commerce Department reviewed this report and concurred with its contents and recommendations.

Objectives, Scope, and Methodology

The Export Administration Amendments Act of 1985 requires that we assess each report of the Secretary of Commerce that concerns imposing, expanding, or extending foreign policy export controls for compliance with the Act.

To assess the report, we (1) reviewed the 1985 Act and its background to identify the requirements the report must meet, (2) examined the report for compliance with the requirements of the 1985 Act, (3) discussed development of the report with the Commerce and State Department employees who prepared the report, (4) examined the documentation, analysis, and methodology supporting the report, and (5) compared the 1987 report with earlier reports to determine changes made in response to our earlier recommendations.

This review was performed in accordance with generally accepted government auditing standards.

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