Sanctions and Export Controls in a Global Economy

Remarks by
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It is nice to be here, to see some old friends, and to have a chance to talk to people who are concerned about some of the same things that I am concerned about. I want to talk about some changes that have taken place in the world and how they affect what I do in the area of export controls and sanctions, which is a popular topic these days, and also about technology transfer and some issues that are there. I am going to try to tie all those together in some fashion and may end up wandering over the map a little bit, but I will do the best I can.

Obviously – and particularly from my perspective these days, which is a national security perspective – the world has changed a lot in the last ten years, and certainly a lot in the last forty or fifty years. The biggest event in my professional life, though, was the end of the Cold War, which brought with it the end to what I think might best be called the elegant simplicity of a bipolar world. A bipolar world was scary. People were always concerned about the Russians and the bomb and things like that, particularly if you grew up in the 50s, as I did. We worried about nuclear tests and fallout; but it had a certain advantage, too. You knew who the bad guys were and you knew where they were and you knew what you wanted to do with them. You had widespread allied agreement in the western, developed world on that, and we were able to bind together, by virtue of a common threat, a lot of disparate interests in Western Europe and in Asia and in the United States over a long period of time. By creating COCOM, in particular, we were able to keep out of Russian hands, or make very expensive for them to acquire, large amounts of critical technology that they needed for their military base.

Now we have a different structure. We do not have a bipolar world. We probably have a nonpolar world, for lack of a better term, and we have a much more ambiguous situation, because the USSR as a unifying force has disappeared. Instead, we have a small number of small countries, pariah nations or rogue nations as they have come to be called, who are actively seeking to acquire weapons of mass destruction and the means of their delivery – missiles – and are actively engaged in, more are financing or fostering, acts of regional or international terrorism. In an almost counterintuitive way, the very small size and, in some cases, the geographic isolation of these countries allows them to be more irresponsible than the Soviet Union was in its heyday.

The effect of that, of course, is to make the job of export controls and the issue of sanctions – which include both export and import sanctions – a more important issue in some respects than it has been in the past, and certainly a more complicated one, because we have a more complex kind of threat with which to deal.

At the same time, you have to factor into this equation the way that commerce has transformed itself in the world and, also, something you all know without
question, the growing importance of trade in every economy, including the historically insular economy of the United States. The percentage of this country’s GDP involved in trade has doubled in the last fifteen years, and that still lags behind most of our trading partners, particularly the Europeans.

This was brought home to me by means of a couple of examples, one that I read about and one that I learned about when I told the first story. The one I read indicated that more than half of the cut flowers you buy in this country today are imported from overseas, which says something about our transportation system and our ability to move quantities of perishable goods very quickly. Most people do not think about that, but twenty or thirty years ago, it could not have happened, because we did not have the infrastructure to permit it. Now it is routine, now it is a daily occurrence.

I told that story once when I was meeting with a group of Chamber of Commerce people from eastern North Carolina, which is not a community of big cities. This is the area north of Wilmington and east of Raleigh. They had come up to the Hill to visit their congressmen and congresswomen. I told that story, and one of them came up to me afterwards and said, "You know, that thing about the flowers is nothing. We've got a company down in my area that is in the business of going out in the Atlantic Ocean and catching flounder and daily shipping it fresh to Japan." That surprised me. To be able to crack the Japanese fresh fish market on a daily basis, and also to be able to transport the fish, is an extraordinary accomplishment.

To me, that is a symbol of the way the economy has transformed and commerce has become truly global in every sense of the word. It has also become more complex, as those of you on the manufacturing side of things know. The classic example, which is a hypothetical (but not very), is the chip that is made in Malaysia, put into a mother board in Taiwan, and then put into a computer assembled in Singapore, all by an American, or a U.S., company. Whose product is that? Where is it made? Where is the origin? This is increasingly becoming standard procedure and not the unusual exception, particularly in a lot of high-tech. sectors.

That also makes the job I do in the export control and sanction area much more difficult, for two reasons. First of all, because of that web of interrelationships, it makes it much harder to come up with an action, a control or a sanction that hurts the people you want to hurt and does not hurt the people you want to protect. It simply is harder and harder to draw clean lines any more. In addition, by raising the stakes of commerce for ourselves, as well as for everybody, actions
that inhibit trade become much more important and have graver consequences than they used to have.

I mean, in simple terms, yesterday's adversaries, like the Russians, are today our customers and people we care about. Likewise, yesterday's allies are today still our allies, but they are also our competitors. When we go head-to-head for telephone systems or for satellite launchers, or computer sales or aircraft or machine tools or whatever, we are competing against people that we competed against before, obviously, but in a much more cutthroat way now, because the stakes are higher, and the relevance of those sales for continued growth in our economy is much greater.

Now, given that complexity, we also have to deal – factoring in the first point I made about the end of the Cold War – with a growing lack of allied consensus over what we ought to do with respect to some of the international problems we face. It is easy, as with everything, to reach a consensus in the abstract: bad countries are bad countries, and we all ought to do something about them. It is much more difficult to reach a consensus in specific, as to who those countries are and what it is we ought to do about them. The consensus is easiest to achieve when there is a small, isolated market such as North Korea; or it is easiest to achieve when there is some egregious action by the other party that has produced, say, U.N. sanctions, as in the case of Iraq or Libya. Countries ignore multilateral sanctions not so much at their peril but at least to their embarrassment.

It is much harder in a case such as that of Iran, which very clearly pursues policies of which we do not approve, actually pursues policies of which a lot of people do not approve, but other countries have chosen to deal with in a different way. Whereas international consensus in COCOM was relatively easy to achieve and, also, because the center core of discipline made it easier to enforce, what we find now is great difficulty getting any kind of multilateral support for a consensus on how to proceed, even when we have decided what we want to do.

Now, this is all particularly important in high-technology sectors. Clearly, what I do is spend most of my time looking at high-technology sectors, both at the technology itself and the products that embody the technology.

One of the hallmarks of this administration that distinguishes it from its predecessor and certainly distinguishes it from the Congress these days is the president's understanding that the country's economic strength and, indeed, its military strength are directly related to our economic strength and our competitiveness. Our economic and military strength are directly related to our
ability to make advanced products, to capture market share and sell those products, and to put the profits from those sales into R&D in order to make future generations of products. President Clinton understands that this has not just civilian application, but also direct military application.

You know, the era of the smart war has arrived. Anybody that watched Desert Storm and watched those pictures of the bombs going right down the pipe and blowing up the building knows what I am talking about when I talk about smart wars.

I heard Secretary Perry speak to the Semiconductor Industry Association two months ago, and he talked about what his field commanders want. One would expect a list of guns and missiles and other weaponry. What his field commanders really want now is real-time information. They want to know where the enemy is, what he is doing, and where he is moving. They also want to know about the weather; and they do not just want to know about the weather that you read in the Post Metro section. They want to know what is going to happen eighty kilometers from here, three hours from now, because that affects the operation that they have underway or that they will postpone, depending on the weather.

The ability to provide real-time information – whether it is about the weather, or whether it is using global positioning technology to determine where the enemy is, and where you are, also a complicated question in a situation of conflict – is really a matter of high technology, and it is a matter of civilian technology. It is a matter of technology that a number of you in this room are either manufacturing or selling.

Our ability to manufacture these products, and to lead the world in manufacturing them and marketing them, is directly related to our security and our ability to project our leadership in the world.

Now, that is the third thing I am trying to tie together – the first being the end of the Cold War and the security implications; the second, the change in the nature of trade; and third, the change in the role technology plays as a growth driver, as a security driver, and as a leadership driver for us.

What has been the American response to this; what has been the administration's response to this? That is really what I want to talk about, and I want to talk about it in terms of what we are doing on export controls, and what we are doing in the area of technology, which some of you have heard before, so I will be brief.

Finally, I want to say some words about sanctions and the peculiar and particular challenge that sanctions, and sanctions policy, create for us. This is
timely, given the fact that Ways and Means this week is working on the Iran-
Libya bill, we are about to enter formally into the China debate that has been
going on informally for a year, and we are only going to have more of these. So,
I want to close with some comments about sanctions.

First, on export controls, in order to deal with the world I have just described
and to secure foreign policy and national security goals without, at the same
time, losing our competitiveness, we have tried to focus our control system on a
smaller number of items and to focus more intensely on bad end-users and bad
end-uses. Some of you heard me say this before. We have a system now where
we can permit the export of some advanced piece of equipment to Company A
because we know what Company A is going to do with it, and Company A has
got a track record in which we have some confidence. We put some conditions
into the license that give us reasons to be confident that Company A will
continue to do what we want, but we will deny the export of that same item to
Company B, two-hundred kilometers down the road in the same country,
because we know some things about Company B that are not so reassuring.

That is the kind of system we have now and, from my point of view, it is a
healthier system, certainly a more market-driven system, because it allows more
exports. It allows all those Company As to buy American, whereas, previously,
we just shut a country out of the product or out of the technology. At the same
time, this system imposes greater burdens on us and on our clients, if you will,
the American manufacturers. It imposes a burden on them to know their
customers; it imposes a burden on us to know their customers, too, which is a
burden on our intelligence resources and on my budget, which is another story.
What we have been able to do by this refocusing and streamlining, first, has
been to reduce drastically the number of licenses. We peaked at 120,000 or so in
late Reagan, early Bush years. When President Clinton came in, we were still
above fifty thousand per year. Right now, we are slightly under ten thousand,
which has meant a significant clearing away of a lot of controls on old-
generation stuff that did not need to be controlled. Particularly in computers and
telecom, we have made major advances, to the point where we are able to say we
have freed some $42 billion worth of items from the requirement of advanced
government approval. Computers and telecommunications equipment, in many
respects, have dropped off our screen in terms of things that we control or for
which we require individual licenses.

Now, in some respects, of course, that could be temporary. These are
technologies that are moving very fast. If we do not keep up with the advances
of technology, in a relatively short period of time – i.e., a couple of years – we
will find ourselves controlling old-generation technology just as we were three
or four years ago, simply because what today is high end will tomorrow be low
end. Then you will find the Department of Commerce once again having to issue
hundreds and thousands of computer licenses, as we used to do. We are
committed, at least, to continue our process of regular review so that does not happen, and thus far it has been working.

We have also made some more progress with respect to semiconductors, semiconductor manufacturing equipment, and a variety of other items. We have undertaken a lot of process reform in terms of the way we do licenses, and we are about to undertake the same reform with respect to the way we decide whether we will do a license or whether the State Department will do a license – the so-called "commodity jurisdiction" process.

I was worried, when we undertook these reforms, that they would make everything worse in the short run, because they let more people play, more agencies play in individual cases, albeit under a disciplined system with time limits. It is too early to say definitively, because this has only been operating a few months, but what we seem to be discovering is that things are not worse. Somewhat to my surprise, they are actually better. I give credit for that to the other agencies, particularly the Defense Department. I know that people might be surprised that the Commerce Department would say something nice about the Defense Department, but, in fact, we have a very effective, efficient, professional relationship with them these days; and they take their responsibility seriously and they are getting the work done. Now, maybe that will change but, right now, we are pleased with what we think is an improved process.

We have also rewritten our regs. After forty years, we did something innovative: we rewrote them in English, and we think that is going to help. We are engaged now in a multi-city effort to tell everybody about them. The rewritten regs are much more user friendly for the small-time exporter. The big-time exporters might complain, because they can hire eight people to do this anyway; and those eight people are going to have to learn how to do it a little differently, so those eight people are not very happy. To the extent that we have made things simpler, maybe in the future you will only need six, not eight, and so those other two are really unhappy. We think that is reform, and it is particularly reform for the small businessman.

Equally important, we are continuing a long-standing effort to build multilateral approaches to controls. These controls work best when all of our allies who make the same items are adhering to the same rules. We have the Nuclear Suppliers Group, the substance of which is obvious. We have the Australia Group, which deals with chemical weapons. We have the Missile Technology Control Regime, the purpose of which is obvious. We are in the process of launching what is going to be called the Wassenaar Arrangement, which is the successor to COCOM, this time to control not only critical dual-use technology but also advanced conventional weapons, which is a significant step forward in the coverage of this regime. The Wassenaar regime will operate much like the
other regimes that currently exist – that is, without having a strong central authority, each country interpreting the principles of the regime within its own national discretion.

In April, with the Russians, we ran into a glitch, about which I think most of you know. The next meeting is in July, after the Russian election, and we are hopeful that, at that time, we will be able to reach a consensus on the information sharing procedures, which are the issues that remain unresolved.

Another thing on which we have been working – which is also multilateral, and about which some of you may not know, but it is important – is our effort to help other countries develop competent control systems of their own. You have read all these stories about nuclear smuggling and mysterious canisters that pop up in various countries outside of Russia, usually for sale on the black market at exorbitant sums, very often not containing anything particularly usable, but sometimes containing things we would prefer not be there.

These countries do not have a lot of experience with export controls or with export control systems. They handled this a different way in the Soviet Union in the past, and one of the things we do is teach them how to put in good systems. We do not just give advice; we send them hardware, we send them software, we train their customs officials, we train their border officials, we train their licensing people. We help them draft their laws. This is a small program. We do it mostly with Nunn-Lugar money from the Defense Department, which can pay for all the program activity, but it cannot pay for the salaries of the people in my department that do the work. We spend a lot of time, particularly with Russia, Belarus, Ukraine and Kazakhstan, where Nunn-Lugar is focused, although we have done similar things in the Baltics and, in earlier years, in Hungary and Poland. We have some projects going on now in Rumania and may have some possibly in the future in Bulgaria, and we have consultations in other countries well outside the former Soviet Union.

Countries that are neighbors of an Iraq or a North Korea or a Libya can certainly appreciate the threat and the risk these countries pose, and they appreciate the need to keep out of their hands things that might enhance their ability to destabilize the system. As more and more countries get involved in high tech, either because they are producing their own products or because they are the mother-board factory in Taiwan or the assembly facility in Singapore, or they may even be handling production for American companies, the possibility grows of leakage from heretofore unexpected places. Therefore, the need also grows for all of these countries to have good systems and good laws so they can do something about the people that violate them.
One of the missions we have embarked upon that is not well publicized – partly accidentally, partly deliberately – is simply to help these countries develop better systems of their own, and we have had a good bit of success at that. Anyway, that is what we have been doing at the home front on the control system.

On the technology front, one of the hallmarks of this administration has been its belief that there is a role for the public sector, meaning the government, in partnering with the private sector in high-technology R&D, to fill gaps in the venture capital market. The venture capital market focuses on short-term payoffs, sure things. It gets real nervous about long-term projects where the thing you are inventing might or might not work. There is a real gap there that venture capitalists will tell you about.

The ATP program on the commercial side and the TRP program of the Defense Department are both designed to fill those gaps and take people with good ideas, help them develop their good ideas, and help them turn them into ideas that can function and be viable in the marketplace. This has been an American weakness for a long time, particularly vis-à-vis the Japanese, and it is something we are determined to correct. It is also something, as you know, on which we are having a major fight with the Congress, because the current Congress simply does not believe that this is an important objective, and so, this money ends up being cut or restricted in a variety of ways. We intend to persevere, because the evidence of the need for this program is clearly there.

We also are beginning to deal with the more complicated problem of the implications of technology transfer. I dropped off at the front door a report we just did on offsets, which was required by law, and it relates to this, but offsets are not the only manifestation of technology transfer. The dilemma we face in this over and over again is balancing short-term jobs versus long-term competition and short-term company shareholder interest vis-à-vis long-term national interest. A big example of offsets is in aerospace. Nobody really likes offsets, but they may be the condition of a deal. The Chinese say, "We won't buy unless you do the following production in the country," or, "You take the following buy-backs." The seller does not want to do that, but maybe Airbus will. So, you get shoved into these deals, and the buyers play the sellers off against each other brilliantly. I give them great credit: they are masters at that. The result moving the production over there. The companies come back and say, "Well, you know, a hundred percent of the loaf isn't on the table. The choice is fifty percent of the loaf with offsets or zero percent of the loaf when Airbus gets the contract." So, they have that little fight and then you argue, well, maybe it is not fifty, maybe it is only twenty-five or maybe it is seventy-five, but that is one problem.
The more important problem from the governmental perspective is whether we are creating overseas the capacity to compete against us over the long term. Are we competing, in this case, or are we creating a domestic aircraft industry in Country X – you name it, China, Japan, whatever – that, in turn, will come back and compete against Airbus, Boeing or McDonnell Douglas, in this example. I do not mean to pick on aircraft; there are a lot of other cases.

That has long-term competitiveness consequences for these companies, but it also has long-term consequences for the United States – in terms of security and foreign policy, as well as economics. The companies, of course, have to think about their short-term survival as well as their long-term competitiveness, and if they are not selling any planes to anybody this year, they have a short-term problem that may supersede these long-term difficulties. It is something we are thinking about, but we do not have a good answer.

There was a wonderful little study, done by the National Academy of Sciences four or five years ago, of all the semiconductor joint ventures that had been done as of that time, most of them with Japan. The study concluded that each and every one of the joint ventures was in the interest of the corporate participants but, taken collectively, they were not in the national interest because of the technology transfer that was involved and the manufacturing capacity that was being moved from here to Japan.

I do not have an answer to that question. Who speaks for the national interest? We have no right, I think, to tell companies: "Ignore the shareholder interest, ignore your profit interest, ignore your job interest, and don't enter into a deal that is demonstrably in your interest in favor of an abstraction for the long term." Somebody, however, ought to be looking at that abstraction for the long term.

If there is a national security issue there, the government is equipped to deal with it through export controls – through the Exxon-Florio law in the case of an acquisition – but if it is a competitiveness question rather than a national security question, the government is not equipped to deal with it. Neither, however, are companies. So, we are left with a dilemma, which brings me to the final issue I want to mention.

One of the things I fear we are heading into, in a lot of these situations, is the drive for more sanctions. Eight hundred years ago, the standard method of solving disputes was to have a war or to schedule a joust: people killed each other and somebody prevailed. As war has become not only devastating, which it has been for a long time, but also truly apocalyptic, nations quite intelligently search for other means of coercion. They search for other means of dispute settlement, too, but that is not what I am talking about. I am talking today about
how we push other countries into doing what we want. What we come up with, nine times out of ten, is economic sanctions as a means of dealing with some of these problems.

How do you deal with the Libyans or the Iranians? Well, to destroy Tehran with nuclear weapons is unacceptable these days, as it should be. If that is unacceptable, and that is war, and we are not going to invade them conventionally either, which is also unacceptable, but we do not like what they are doing, what is the answer? The answer most people come back to is, "Let’s sanction them. Let’s control exports to them. Let’s control imports from them." Given their behavior, it is no surprise that people are taking that position. It turns out, as I think all of you have realized and as you are going to realize more and more as Congress debates these issues, actually implementing that kind of an approach is not very simple. It is easier when sanctions are multilateral. It is also easier, historically, when you are dealing with small, weak countries rather than large, strong countries, such as China; but, as has been demonstrated in a number of cases, it is not always simple, even when countries are small and weak: witness Cuba.

The fact is, we have a lot of problems trying to develop a coherent policy here. We have problems with our allies, which I have enumerated. We have problems with our allies, in practice, because they do not feel the same way we do about some of these countries. We have problems with our allies, in principle, because they do not like using economic tools to achieve foreign policy goals – national goals, maybe; defense goals, maybe; but foreign policy goals are different. They have an enormous fear of the actual territorial implications, real or potential, of these actions.

What worries me particularly is the trend, and it is most noticeable in Congress, toward using sanctions effectively as kind of a chest-beating exercise, rather than as the result of some dispassionate policy analysis. This is not unexpected; it has been happening for a long time. Congress works in a different way. They have a different set of constituent pressures; they are narrower. If your district has more Albanians in it than there are in Tirana, you will have a different perspective on the Albanian problem, whatever it is, than does the president of the United States, who has to represent the entire country. That is a hypothetical example; in fact, there are numerous real cases.

The role of the media has changed significantly. The media, thanks to television, thanks to the nightly news, is adept at displaying horrible pictures of atrocities and deaths and violence every night. They force us to confront unpleasant realities, and they force us to confront those realities in the rawest possible and most emotional way – which is fine – but they do it without forcing us to address the viability of solutions that are put on the table.
The Congress, finally, operates in the context of political advantage. Members of Congress at the end of the day inevitably are individuals and, as individuals, they are not responsible for policy. They can appeal, therefore, to the irresponsible without any consequences, which is not true in the executive branch, which has to bear the burden of the decision it has made. Especially in an election year, of course, it is tempting and easy to "out-tough" whichever administration is in. Both parties are guilty of this, I would add; you do not have to think back very many elections to realize that both parties are guilty of it. It continues to be a problem. It will be a problem this year, and that means what we see is a rush to the extreme, to the oversimplified analysis, to the hard, inflexible position, and to the rhetoric of condemnation.

Then what we see, and what we have seen in some of these bills, is a tendency to equate lack of success with lack of effort. If the administration takes an action with respect to Iran and nothing happens — the government does not collapse, it does not apologize, it keeps doing what it is doing and we keep doing what we are doing — the congressional assumption increasingly has been, "well, we're not trying." So, what is the answer to not trying? Do something that is more serious, do something that is tougher. Do something that reaches out and covers more people — more Americans, but maybe also more foreigners — which raises the extraterritorial issue, which is exactly what is on the table right now with the Iran-Libya bill.

As you know from what I have been talking about earlier, this is an extraordinarily difficult question. What is an American product? Take the computer example. What is an American company, even? Who controls a subsidiary or an affiliate that is incorporated under somebody else's law? To whose law does that French subsidiary of the American company have to adhere, ours or France's? I know for certain that the two governments have very different views about that. The company ends up in a situation — and this happened in the Soviet pipeline case thirteen years ago — where no matter what it does, it will be breaking somebody's law, which is an impossible position in which to be.

Furthermore, how do we control re-exports from uninvolved third parties? How do we deal with products, grain or fruit or whatever, shipped from many countries and commingled in shipment? How do we deal with blocking statutes, retaliatory legislation, all the things that people are beginning to talk about now in the wake of the Helms-Burton Cuba bill? We will be talking about them even more in the wake of the Iran-Libya bill, if that is what gets passed, and I am sure we will be talking about it before it passes.

This is, in my view, a Pandora's box of the first order, which is why I come back to what the administration has tried to do and what I was talking about earlier:
the need to focus on multilateral cooperation and to achieve consensus on how we move. Working through the United Nations is good but, if not through the United Nations, we should work through some other organization or simply work multilaterally with our allies. We have not always succeeded in that regard; Iran is a case. Sometimes we have been impelled by the Congress to go further than we would like; I think Cuba is an example of that. As we walk down these roads, we do so at our peril, because the extraterritorial consequences of this are going to be dangerous for commerce, and dangerous also for our long-term relationships with our allies and the friends we are counting on to assist us in this battle.

Anyway, those are some thoughts that I hope were coherent, that are not on the trade policy subjects about which some of you remember me talking. These are the things I do now. I have not talked about the EAA; most of you will bless me for that, probably. I have not talked about Japan or a thousand other things, but I will be happy to respond to any questions you want to raise.

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