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Foreign Policy Export Controls: A Proposal for Reform

Donald E. deKieffer*

I. Introduction

On May 1, 1985, several U.S. companies were stunned to receive notification that they had one week to sever their commercial ties with Nicaragua.¹ Although relations between the United States and the Sandinista regime had been deteriorating for some time,² there had been few hints of imminent imposition of economic sanctions.³

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¹ Exec. Order No. 12,513; 50 Fed. Reg. 18,629 (1985). The text of the order reads as follows:

Prohibiting Trade and Certain Other Transactions Involving Nicaragua

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act, (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 191 *et seq.*), and section 301 of Title 3 of the United States Code, I, RONALD REAGAN, President of the United States of America, find that the policies and actions of the Government of Nicaragua constitute an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with that threat.

I hereby prohibit all imports into the United States of goods and services of Nicaraguan origin; all exports from the United States of goods to or destined for Nicaragua, except those destined for the organized democratic resistance, and transactions relating thereto.

I hereby prohibit Nicaraguan air carriers from engaging in air transportation to or from points in the United States, and transactions relating thereto.

In addition, I hereby prohibit vessels of Nicaraguan registry from entering into United States ports, and transactions relating thereto.

The Secretary of the Treasury is delegated and authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the purposes of this Order.

The Prohibitions set forth in this Order shall be effective as of 12:01 a.m., Eastern Daylight Time, May 7, 1985, and shall be transmitted to the Congress and published in the *Federal Register*.

/s/ Ronald Reagan

THE WHITE HOUSE

May 1, 1985.

² See *U.S. Weighs Impact of a Nicaraguan Embargo*, Christian Sci. Monitor, May 1, 1985, at 1.

³ The Reagan Administration generally has opposed unilateral economic sanctions. In 1981 it lifted the U.S. grain embargo against the Soviet Union imposed by President Carter in retaliation for the invasion of Afghanistan, and continues to resist the imposition of new sanctions against South Africa. Its decision to subject Nicaragua to a trade embargo came two weeks after Congress declined to supply \$14 million in aid to the rebel

President Reagan's announcement was unequivocal—stop doing business immediately. No further commercial contacts with the Nicaraguan regime would be permitted. Although the amount of U.S. commercial activity in Nicaragua was not large in an absolute sense,⁴ the embargo was a severe economic blow to several U.S. companies which had ongoing business relations with Nicaragua.⁵ Shortly after the Administration's announcement of the embargo, the Sandinista government announced it had replaced former U.S. suppliers with other foreign sources.⁶

The Nicaraguan incident is one of the latest in a long series of government-imposed trade sanctions against countries whose policies the United States finds antithetical to its own.⁷ Some well-known examples of such sanctions include the Soviet Union's refusal in 1975 to implement the 1972 trade agreement with the United States because of restrictions added by Congress—primarily the refusal to extend most-favored-nation status to the Soviet Union because of its restriction on emigration.⁸ In 1978, the United States cancelled a computer sale to the Soviet Union and increased licensing restrictions for all U.S. exports of oil technology because of the Soviet government's arrest and trial of dissidents Aleksandr Ginzburg and Anatoly Shcharansky.⁹ In 1983, both houses of Congress opposed the export of safety-related spare parts for India's Tarapur Atomic Power reactors unless "stronger nuclear nonproliferation

Contras. A need emerged to rebuild the Administration's Central American policy, and an economic trade embargo was one of the available options.

⁴ In 1984 Nicaragua exported \$58.1 million worth of goods to the United States, mainly bananas, beef, shrimp, and coffee. U.S. exports to Nicaragua totaled \$109.8 million in 1984, including insecticides and other chemicals, paper, and paper products. Facts on File, World News Digest, May 3, 1985, at 313 A1. In fact, before the embargo, trade with the United States accounted for only 14% of Nicaragua's exports and imports, a significant drop from 35% in 1980. Hufbauer & Schott, *Nicaragua Sanctions: Too Little, Too Late*, Christian Sci. Monitor, May 28, 1985, at 15.

⁵ The four U.S. shipping companies that carry the bulk of Nicaraguan trade with North America may lose between \$15-\$20 million in freight charges per year. Other U.S. manufacturers, particularly those which export animal and vegetable fats, crop protection chemicals and fertilizers, electrical machinery, and transport and scientific equipment, stand to lose an annual market of between \$10-\$25 million. *Nicaragua Eases into New Export Markets*, Fin. Times, May 8, 1985, at 4, col. 1.

⁶ According to news reports, Latin American suppliers probably will fill the gap in supplying raw materials, while West and East European manufacturers will become the principal sources of advanced technology and machinery. See *id.*; see also *Ortega Visits Spain, Wins Continued Aid*, Wash. Post, May 12, 1985, at A22, col. 1 [hereinafter cited as *Ortega Visits Spain*]; *Ortega Says Moscow To Supply More Oil*, Wash. Post, May 21, 1985, at A22, col. 3; *Nicaragua Office Moving to Toronto*, Wash. Post, May 21, 1985, at A22, col. 3.

⁷ See G. HUFBAUER & J. SCHOTT, ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY 6 (1985) ("sanctions have been used on behalf of efforts to protect human rights, to halt nuclear proliferation, to settle expropriation claims, and to combat international terrorism . . . the United States has played the dominant role as guardian of its version of global morality").

⁸ *Id.* at 508-10.

⁹ *Id.* at 603.

guarantees" were obtained.¹⁰

While much of the export control debate concerns the types of restraints that the United States and its allies should place upon technology transfers to the Soviet bloc,¹¹ a less-discussed, but perhaps more important, aspect of export administration is the imposition of trade sanctions for political rather than security or defense reasons.¹² This article focuses upon some of the political, economic, and cultural consequences of restraints placed upon U.S. exporters and foreign importers for primarily ideological reasons.

II. Overview

While the immediate effect of foreign policy export controls is a significant decline in export earnings to affected U.S. industries,¹³ the economic impact on the "targeted" country is more difficult to calculate.¹⁴ Although the stated objective of foreign policy export controls is generally to force the "target" to make economic or political concessions, in most cases economic sanctions fail to accomplish this result.¹⁵ The United States rarely has the economic power to

¹⁰ *Id.* at 598-99. In addition, the United States has imposed various sanctions and restrictions on the Soviet Union (in response to the invasion of Afghanistan, interference in Poland, and the downing of Korean Airline Flight 007), Brazil (in response to its refusal to accept nuclear safeguards), South Africa (in response to apartheid), Iran (in response to the taking of U.S. hostages), Libya (in response to its support of terrorism), Cuba (in response to the policies of Fidel Castro), and Poland (in response to the declaration of martial law).

¹¹ The United States is a member of the Coordinating Committee (COCOM) which reviews and restricts certain exports of sensitive technology and equipment which may have military applications. See Aepfel, *The Evolution of Multilateral Export Controls: A Critical Study of the COCOM Regime*, 1 FLETCHER FORUM 105 (1985).

¹² The imposition of restrictions for security or defense purposes is highly contentious with regard to the practical aspects of controls. There has been a longstanding inter-agency dispute on this issue, principally between the Departments of Commerce and Defense. The recent reauthorization of the Export Administration Act was a time-consuming process, indicating the controversial nature of the program. Before renewal, the Act lapsed and the President was forced to declare a national emergency so that controls could remain in effect. Export controls administered by the United States also have engendered friction with allies. For example, a major West German exporter of helicopters, Delta-Avia Fluggerate GmbH, was prohibited, on political grounds, from selling helicopters to North Korea for civilian use. Delta-Avia also was subjected to U.S. sanctions. The West Germans protested the unilateral U.S. action. See *U.S. Blacklist Upsets West Germans: Helicopter Sale Illustrates Clash on Communist Trade*, Int'l Herald Tribune, July 16, 1985, at 1.

¹³ See *Nicaragua Eases into New Export Markets*, *supra* note 5. Domestic firms not only pay an immediate price when trade flows are disrupted, but also face long-term costs arising from the uncertainty of doing business abroad. When sanctions are imposed the target country as well as all of the sender country's trading partners, may be prompted to seek diversified sources of supplies and alternative partners for joint ventures. G. HUFBAUER & J. SCHOTT, *supra* note 7, at 64-66.

¹⁴ See deKieffer, *The Purpose of Sanctions*, 15 CASE W. RES. J. INT'L L. 205 (1983). To calculate the cost of economic sanctions to the target country it is necessary to estimate the initial deprivation of markets, supplies, and finance. Additionally, the "welfare loss" to the target's economy must be considered in calculating economic costs. G. HUFBAUER & J. SCHOTT, *supra* note 7, at 60-61.

¹⁵ See G. HUFBAUER & J. SCHOTT, *supra* note 7, at 79; see also Moyer & Mabry, *Export*

deny the target country's access to replacement goods from other major trading countries.¹⁶ Furthermore, a predictable result of foreign policy export controls is to encourage the target to become self-sufficient in products it previously imported from the United States.¹⁷

Rarely, however, do U.S. policymakers *seriously* believe that economic sanctions will have a significant economic impact upon the miscreant.¹⁸ Rather, the sanctions are usually viewed as a diplomatic signal—part of the diplomatic “bag of tricks”—to indicate the U.S. displeasure with another country's policies.¹⁹ Economic sanctions represent the “middle ground” in the types of actions available to the President, which range from the filing of protest notes to the outright declaration of war.²⁰

In the early part of U.S. diplomatic history, economic sanctions were rarely employed. Beginning in the 1930s it became clear that the President had the unilateral power to impose peacetime foreign policy export controls.²¹ As the Cold War progressed and relative power of the United States declined, policymakers searched for non-military means to demonstrate the United States commitment to various ideals. Armed intervention by the United States in the post-war

Controls as Instruments of Foreign Policy: The History, Legal Issues, and Policy Lessons of Three Recent Cases, 15 LAW & POL'Y INT'L BUS. 142-43 (1983) (“[v]iewing the controls of the past three years in retrospect, most inflicted less economic injury on the target country than anticipated”).

¹⁶ See Moyer & Mabry, *supra* note 15, at 144-45 (“Controls can totally cut off sources of supply only if the country imposing controls has a monopoly on the embargoed items or if alternative suppliers join in the controls. Except in rare cases . . . the United States has not possessed a monopoly in the items it has embargoed. More important, in most of the cases discussed above, the United States was unable to secure the full cooperation of alternative supplier countries.”); cf. G. HUFBAUER & J. SCHOTT, *supra* note 7, at 11 (“offsetting compensation has occurred most conspicuously in episodes where the big powers were caught up in [an] ideological conflict over the policies of a smaller nation”).

¹⁷ See G. HUFBAUER & J. SCHOTT, *supra* note 7, at 687 (in response to U.S. sanctions against Poland for declaring martial law, Poland announced a planned reorientation of national priorities to make Poland self-sufficient in agriculture); see also Moyer & Mabry, *supra* note 15, at 147 (“the target can often diminish the damage [of economic sanctions] by . . . diversifying sources of imports and developing domestic production capabilities”); cf. G. HUFBAUER & J. SCHOTT, *supra* note 7, at 10 (“economic sanctions may unify the target country both in support of the government and in search of commercial alternatives”).

¹⁸ Cf. G. HUFBAUER & J. SCHOTT, *supra* note 7, at 11 (the limitations on the use of sanctions are “well known to most policy officials”).

¹⁹ See *When Sanctions Work*, THE ECONOMIST, Sept. 14, 1985, at 15.

²⁰ Other types of sanctions in this diplomatic array include the recall of our ambassador for “consultations,” reduction of embassy staff, termination of airline landing rights, cancellation of cultural exchanges, and many other diplomatic tools.

²¹ See *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936). In 1934 Congress passed a joint resolution authorizing the President to prohibit the sale of munitions and arms to Bolivia and Paraguay, countries then engaged in armed conflict in the Chaco. The President exercised his authority under the resolution, and Curtiss-Wright was indicted for conspiracy to sell arms to Bolivia. The Supreme Court held that the President's authority to act under his foreign affairs power did not depend upon an affirmative grant of power from Congress. Accordingly, the arms embargo was not an unlawful delegation of power as alleged by Curtiss-Wright.

era has been generally regarded as *passee*. Thus, for example, there was little President Carter could do about real or perceived violations of human rights in Brazil²² or that the United States could do about the lack of majority rule in Rhodesia.²³ The United States could indicate its displeasure with these regimes, however, by enforcing stringent export control regulations against them. Although the United States could not invade these countries, it could prevent U.S. citizens and corporations from participating in their markets.

III. Economic Costs

To dismiss the imposition of foreign policy export controls as merely symbolic would be both cynical and inaccurate. In most instances in which export controls were imposed, policymakers realized there would be costs.²⁴ In fact, had there not been such costs and a demonstrated willingness by the United States to pay them, the symbols would be far less compelling.²⁵ A candid analysis of both the goals and costs of imposing foreign policy export controls would be refreshing.²⁶ Rather than suggesting that U.S. sanctions will represent a devastating "economic blow" to the intended target, a more *morally* compelling argument would be recognition by policymakers that the sanctions may have little economic effect (except upon the United States). Policymakers should instead point out that the economic sanctions are so clearly morally justifiable that U.S. citizens are willing to suffer the resulting domestic economic harm, even though such sanctions may have no serious economic effect upon the target. It is precisely the willingness by the United States to suffer that gives foreign policy export controls their political—and moral—"punch."²⁷

While not uniquely a U.S. phenomenon, the imposition of foreign policy export controls is taken much more seriously in the United States than elsewhere. These controls have become so popular that politicians are latching onto them as the "sanction of choice" in their increasing micro-management of U.S. foreign policy.²⁸ As

²² President's News Conference of Mar. 30, 1978, 14 WEEKLY COMP. PRES. DOC. 627 (Apr. 3, 1978).

²³ U.N. Security Council Resolution No. 232, 21 U.N. SCOR (1340th mtg.) at 7, U.N. Doc. S/INF/21/Rev.1 (1966) imposed mandatory sanctions on Rhodesia, including prohibitions on certain imports and exports. In 1979, as Rhodesia moved towards majority rule, sanctions were lifted. This was, however, many years after the original imposition of restrictions on trade and after an extended internal guerrilla war had been waged.

²⁴ See G. HUFBAUER & J. SCHOTT, *supra* note 7, at 64-69.

²⁵ See deKieffer, *supra* note 14, at 207.

²⁶ See Moyer & Mabry, *supra* note 15, at 143 ("the anticipated harm [of U.S. export controls] was often expansively . . . stated when the controls were announced").

²⁷ See *When Sanctions Work*, *supra* note 19, at 15-16 ("[t]his self-denial worked its way through the markets to traumatize the South African currency more effectively than any act of congressional lobbying or symbolic act of the [P]resident").

²⁸ See, e.g., H.R. 1033, 99th Cong., 1st Sess. (1985); S. 677, 99th Cong., 1st Sess.

with any tool that is overused, however, economic sanctions will tend to lose their edge if employed too frequently.

Although the new Export Administration Act (the Act)²⁹ addresses some of the issues surrounding security-related and foreign policy export controls, it nevertheless allows the President and the Congress to take actions motivated by political, as opposed to security reasons. There is, however, a new provision which was added to the Act to protect "contract sanctity."³⁰ Although this provision is a significant constraint on the President's authority and results from great effort by Senator Heinz and other members of Congress, the effect of the provision in an emergency remains to be seen. The President may simply impose controls under the International Emergency Economic Powers Act,³¹ thereby avoiding the contract sanctity provision altogether.

Although other countries impose economic sanctions for political reasons,³² few nations take either the sanctions—or themselves—as seriously as do U.S. policymakers.³³ While some U.S. officials have been accused of cynicism in imposing sanctions that

(1985) (prohibiting the importation of certain products from Australia and New Zealand); H.R. 295, 1098, 1133, 99th Cong., 1st Sess. (1985) (prohibiting the export of certain militarily significant items to, new loans and new investments in, and the importation of Krugerrands or other gold or silver coins, coal and uranium from, South Africa).

²⁹ Export Administration Amendments Act of 1985, Pub. L. No. 99-64, 99 Stat. 120 (to be codified at scattered sections of titles 2 U.S.C., 5 U.S.C., 15 U.S.C., 19 U.S.C., 22 U.S.C., 42 U.S.C., 46 U.S.C., 50 U.S.C. app.).

³⁰ The provision on contract sanctity reads as follows:

(1) Contract Sanctity, Extension of Certain Controls, and Expanded Authority. Section 6 is amended by adding at the end the following:

"(m) Effect on Existing Contracts and Licenses. The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information

"(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

"(2) under a validity license or other authorization issued under this Act, unless and until the President determines and certifies to the Congress that—

"(A) a breach of peace poses a serious and direct threat to the strategic interest of the United States,

"(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

"(C) the export controls will continue only so long as the direct threat persists."

Id. § 108.

³¹ 50 U.S.C. § 1703 (1982).

³² One example is the Arab League's economic embargo against Egypt in March, 1979 to show its resistance to President Anwar Sadat's policy for establishing peace with Israel. See G. HUFBAUER & J. SCHOTT, *supra* note 7, at 607.

³³ For instance, while the Arab League retaliated against Egypt for establishing peace with Israel by economically boycotting that country, it did not require the withdrawal of funds from Egyptian banks, nor the establishment of exchange controls. See *id.*

they know will not "work" in an economic sense, such actions are far more ingenious than those of some foreign governments which impose sanctions expecting they will be violated in fact and spirit from the first day.³⁴

When the United States adopts economic sanctions, it concomitantly seeks to enforce such measures against its own citizens.³⁵ While the degree to which other countries' announced export sanctions are violated is unknown and unascertainable, it is an open secret that some of the United Nations most ardent advocates of economic sanctions abide by these rules only in the breach.³⁶ Other countries, primarily in continental Western Europe and the Far East, take a more "pragmatic" approach to foreign policy export controls, applying them infrequently.³⁷ Although these countries have come under criticism from other lands clamoring for sanctions against countries with real or preceived faults, they are at least rarely guilty of hypocrisy. Although it might be suggested that this approach represents the triumph of mercantilism over morality, such questions are better debated in a theological journal.

The effects of politically-motivated export controls on U.S. international trade are matters of objective fact. The initial consequences of trade embargoes are predictable. U.S. companies doing business in the target nation almost immediately lose most or all of that business.³⁸ Furthermore, the target country reacts predictably. First, it angrily condemns the country imposing sanctions for interfering in its internal affairs. Next, it announces that the sanctions will have no effect upon its policies or economy.³⁹ Third, it sets out to

³⁴ In response to the United Nations economic sanctions against Rhodesia, Roger Hawkins, Rhodesian Minister of Transport and Power, stated on April 26, 1967 that "whatever any particular government says, of course, is quite different to what their businessmen do and this is precisely how Rhodesia . . . is winning the war." *Id.* at 411.

³⁵ When President Carter took action against the Soviet Union in January, 1980 for its invasion of Afghanistan, the Commerce Department immediately began to enforce the imposed restrictions. Seven days after the announcement of U.S. sanctions, this governmental department began a review of high technology strategic goods exports to the U.S.S.R., and suspended issuance of new licenses and previously issued validated licenses for goods not yet shipped. *Id.* at 655.

³⁶ See *No Color Bar in South Africa's Trade*, U.S. NEWS & WORLD REP., Apr. 10, 1978, at 31 ("yet most countries give only lip service to the sanctions"). *Id.*

³⁷ See G. HUFBAUER & J. SCHOTT, *supra* note 7, at 9. A recent exception is the French decision to impose sanctions against South Africa following the declaration of a national emergency. See *Paris Recalls Envoy, Halts Investments in South Africa*, Wash. Post, July 25, 1985, at A1, col. 5.

³⁸ See *Nicaragua Eases into New Export Markets*, *supra* note 5; see also Moyer & Mabry, *supra* note 15, at 151 ("For firms directly involved in the affected transactions [total transaction price] translates into lost profits, unrecouped expenses, cancellation charges, and other incidental costs, such as negotiating expenses.")

³⁹ See, e.g., G. HUFBAUER & J. SCHOTT, *supra* note 7, at 714. A spokesman at the Turkish Embassy labeled recommendation of sanctions against Turkey "an attempt to interfere in domestic Turkish politics," and added, "such pressure has never succeeded in the past, so I don't see why it should now." *Id.*

enforce literally this statement.

In the wake of U.S. imposed economic sanctions, third-country businessmen immediately descend upon the affected capital, eagerly offering their goods and services to replace those denied by the Yankees.⁴⁰ Some countries (for example Cuba) make a fetish out of their independence from the United States, extolling the virtues of dealing with such "reliable" suppliers as the Soviet Union.

In addition to replacing U.S. goods and services with those from other countries, many nations subjected to sanctions are forced to reanalyze their own resources, often developing indigenous industries to supply products once provided by imports.⁴¹ For example, the arms embargoes imposed against South Africa and Brazil gave strong impetus to their development of domestic weapons industries.⁴²

When sanctions are ultimately removed, U.S. firms may find they have been replaced by foreign suppliers or home-grown entrepreneurs. Reentering the market is made doubly difficult by the U.S. company's loss of reputation for reliability.⁴³ Although most foreign countries do not blame the U.S. company directly, this is of little consequence when the domestic supplier is unable to deliver its goods due to adverse action by the U.S. government. Additionally, the frequency with which the U.S. authorities have either undertaken or threatened to undertake economic sanctions has raised real questions about the general reliability of U.S. companies throughout the world.⁴⁴ The precise economic effect of this loss of national reputation cannot be calculated, but it is likely to be significant. Given equally competitive bids from American and third-country suppliers and the penchant of the United States to restrain trade flows for political reasons, it would not be unreasonable for a foreign purchaser to prefer a third-country contract.

This factor has induced another phenomenon. Given the relative portability of many industries, particularly in "sensitive" fields,⁴⁵

⁴⁰ For example, when U.S. grain sales to the Soviet Union were embargoed following the invasion of Afghanistan, Argentina increased grain exports to the Soviet Union at premium prices. See Moyer & Mabry, *supra* note 15, at 45. Additionally, responding in 1960 to President Eisenhower's ban on exports to Cuba, the Soviet Union began an extensive program of shipping goods and extending credits to Cuba which has lasted into the 1980s. See G. HUFBAUER & J. SCHOTT, *supra* note 7, at 318.

⁴¹ See *supra* note 17.

⁴² See *Third-World Lands Join Ranks of Arms Exporters*, N.Y. Times, Dec. 13, 1981, § 1, at 20, col. 4; *Embargo Spurs South Africa To Build Weapons Industry*, Wash. Post, July 7, 1981, at A12, col. 1.

⁴³ See G. HUFBAUER & J. SCHOTT, *supra* note 7, at 11 ("[o]utcries from U.S. business . . . arose as much from the fear of future competitive weakness as 'unreliable suppliers' . . .").

⁴⁴ See *id.* at 9 (the United States "frequently has deployed sanctions to assert its leadership in world affairs"); see also *supra* note 13.

⁴⁵ See *Fragile Frontier*, Wash. Post, Feb. 27, 1983, at F1, col. 5. "[T]he manufacture of

U.S. firms have increasingly established themselves in countries with a more mercantile view of foreign policy. Although it would be difficult to calculate precisely the weight "run-away companies" have given to the vagaries of U.S. foreign policy export controls in making their decisions to transplant themselves, it is likely to be a significant consideration, given the enormous economic costs companies suffer when these controls are imposed.

Thus, while the short-term effects of foreign policy export controls are more neatly calculable, the long-term effects upon U.S. industries' reputations for reliability and the long-term loss of jobs in the United States are more profound.

IV. A Proposal for Reform

While the adverse effects in the United States of politically-inspired export controls are undeniable, the United States should not necessarily abandon these measures as an instrument of national policy. Indeed, given the more severe limitations on other types of sanctions,⁴⁶ trade embargoes often represent the only meaningful diplomatic gesture short of armed force.⁴⁷

Furthermore, because the United States is (rightly) perceived as a touchstone of international morality, its trade sanctions are more essential as foreign policy tools than other countries'. The political and moral principles that motivate domestic policymakers—and U.S. citizens—though sometimes naive, are deeply felt. U.S. citizens also seem less troubled than other Westerners in expressing their philosophical beliefs by self sacrifice. Thus, to suggest that the United States completely eschew export control measures runs contrary to U.S. ideals and severely limits the policy options available to U.S. leaders.

What is needed, however, is a realistic standard before the decision to impose export controls is made. Although the total burden to U.S. industry of politically-motivated sanctions is incalculable, the short- to medium-range costs are monetarily ascertainable. To the extent that foreign policy decisions benefit all U.S. citizens, it seems incongruous that a specific group—those doing business in the target country—should be expected to bear the entire cost of these decisions. Moreover, once these costs are borne, there is little

integrated circuits . . . began moving to Taiwan, South Korea and Singapore about 15 years ago." *Id.*

⁴⁶ Less extreme measures, such as a diplomatic slap on the wrist, "may not hit where it hurts," G. HUFBAUER & J. SCHOTT, *supra* note 7, at 10, and covert action or military measures may be both politically and economically excessive. *See id.* *See also* Moyer & Mabry, *supra* note 15, at 169 ("[export controls] also offer obvious advantages over the use of military force and various diplomatic actions").

⁴⁷ *See* G. HUFBAUER & J. SCHOTT, *supra* note 7, at 10; *see also* Moyer & Mabry, *supra* note 15, at 169.

provision under U.S. law for compensating the companies prohibited from trading by the imposed sanctions.

Recently, the imposition of trade sanctions against other countries entails no cost to the U.S. government. Yet, the same source that imposes the sanctions concurrently deprives U.S. business of enormous revenues. If the U.S. government feels morally or politically compelled to take diplomatic action against our trading partners, it is incumbent upon the government to absorb the costs of its decision. To accomplish this objective, an "economic impact statement" should be required before either the Executive or the Congress mandates the restriction or cessation of trade with other countries. This study would have a three-fold purpose:

First, the study would quantify the price the United States is willing to pay to make the moral or political statement. This would further underscore the United States determination to take "hostile" action even though such action involves some costs to itself.

Second, the prospect of having to make out-of-pocket payments for a political decision might dissuade the U.S. government from taking trade actions for frivolous reasons. If the imposition of trade sanctions were perceived to be a very serious event, the sanctions would be taken more seriously not only by the affected countries, but also by the world community. Economic sanctions will lose their emotional effect if used too liberally. Thus, an effective restraint on the use of trade sanctions for political purposes would enhance their moral suasion when the U.S. government employs them.

Third, when the U.S. government finds it necessary to impose economic sanctions against its trading partners, part of the burden should fall upon those who stand to benefit the most—U.S. citizens. Domestic companies, while unable to be made entirely whole (they will still suffer the lingering effects of perceived unreliability and market reentry problems), should be partially compensated from public funds. Compensation could range from outright payment to equivalent income tax credits.

This article is not intended to outline all factors which could go into such an economic impact statement. This analysis should, however, include considerations of historical and present levels of trade, foreign availability, existing contracts, historical and present profits, inventory, capital investment directly related to the trading relationship, breach of contract claims, and other liabilities. The economic impact statement would have to be prepared *before* the sanctions are imposed if objectives one and two (above) are to be fulfilled. When secrecy or national security reasons preclude this, an estimate should be made before imposition of the sanctions, and domestic companies should be allowed to make their specific claims at a later date. The purpose of such a program would not be to prohibit U.S. economic

sanctions, but to make policymakers carefully consider imposing penalties to ensure that those who innocently stand in the way of a foreign policy juggernaut are not irreparably injured.

In the debate over export controls, politicians have not given serious consideration to proposals such as this. Because these persons can recommend sanctions with few "downside" risks, a mindset has developed giving trade sanctions high priority on the list of available retaliatory actions. In turn, the moral currency of such sanctions has been cheapened, and the risks to U.S. businesses at home and abroad have increased.

