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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

National Security Council Meeting
March 23,1983, 1:30 p.m.
in the Cabinet Room

SUBJECT: Export Administration Act

PARTICIPANTS:

The President

The Vice President's Office
Mr. Philip Hughes

State
Secretary George P.Schultz
Mr. Allen Wallis (Under Secretary for Economic Affairs)
Mr. William Schneider (Under Secretary for Security Assistance, Science and Technology)

Treasury
Secretary Donald P. Regan
Mr. Marc E. Leland (Assistant Secretary for International Affairs)

Defense
Deputy Secretary Paul Thayer
Dr. Fred C. Ikle (Under Secretary for Policy)

Justice
Attorney Gen. William French Smith

Agriculture
Deputy Secretary Richard Lyng

Commerce
Secretary Malcolm Baldrige
Mr. Lionel Olmer (Under Secretary for International Trade)

OMB
Mr. Joseph Wright (Deputy Director)
Dr. Alton Keel (Associate Director for National Security and International Affairs)

CIA
Director William J. Casey

USTR
Ambassador William Brock

CEA
Mr. Geoffrey Carliner (Senior Staff Economist)

OPD
Mr. Roger Porter (Director)

JCS
Gen. Robert H. Barrow

White House
Mr. Edwin Meese III
Judge William P. Clark
Mr. Craig Fuller

NSC
Mr. Norman Bailey
Mr. Douglas McMinn

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MINUTES

Judge Clark: There are three outstanding issues for decision. They are the issue of contract sanctity for non-agricultural goods, the issue of new authority to impose import controls on countries whenever foreign policy export controls are imposed, and the issue of new authority to impose import controls as a penalty against companies in violation of COCOM or U.S. export controls. This last issue has subsections outlined in the options paper before you. As Commerce has the lead in the EAA review, Mac, I'll turn to you to frame the issues for us. I should note that State has changed its position on issue one and is now supporting the contract sanctity provision.

Secretary Baldrige: It's always good to be in a position to delegate, and in this case I'll call on Lionel Olmer to summarize the three issues. Lionel.

Under Secretary Olmer: Thank you. Mr. President, the first issue is contract sanctity. Should there be a provision that excludes pre-existing contracts from foreign policy export controls? Such a provision would provide equity with the agricultural sector. Any contract signed before export controls are put into place would be safe for 270 days unless there is an overriding national security interest--these exports would be fail-safe. This provision parallels the current law covering agricultural commodities; but is weaker. Issue two concerns import controls. Whenever export controls are imposed on a country for foreign policy reasons, the President would have discretion to impose import controls on that country (rather than on a specific company). Issue three concerns import controls as a penalty against companies that violate COCOM or U.S. export controls. There are two sub-parts to this issue: whether this authority should extend only to national security controls or to national foreign policy and short supply controls.

It is Commerce's view that some measures should be taken on the import side. It is a question of equity: our businesses face export controls but no action is taken on imports into the U.S. There is the question of how the EC would view the imposition of import controls. The extension of extraterritoriality could be seen as "sticking it to them."

Judge Clark: We should turn to issue one for decision. Mr. President, agencies supporting a contract sanctity provision are Agriculture, Commerce, State, Treasury, USTR, CEA and OPD. Those opposed are Defense, Justice and OMB. How would you like to proceed?

The President: Well, the disagreement appears to be very great, and I'd like to know why there are differences.

Judge Clark: Perhaps we should go around the table. We could begin with State.

Under Secretary Wallis: We support a contract sanctity provision because of the problem of supply assurance for our businesses. Without it the U.S. is an unsure trading partner.

Deputy Secretary Thayer: We are opposed because this provision could hamstring the President in a crisis; undercuts his authority; and would preclude timely Presidential action. Mr. President, it gives you a club with a hole in it.

Secretary Baldrige: The 270 day prohibition wouldn't weaken Presidential action significantly; there's always an out--the "overriding national interest" language. The contract sanctity provision gives assurance to our trading partners.

Deputy Director Wright: Mr. President, we are against any change that would include a contract sanctity provision. Instead of a simple extension of the law, it opens up the legislation to further amendment by Congress. I agree with others that it would mean giving up existing Presidential discretion. We are also against import controls being recommended for issues two and three. Import controls would violate GATT and complicate the Williamsburg Summit.

Roger Porter (OPD): There are two considerations to take into account in this issue. The first is equity--we have applied this concept to agriculture and now we need to do it across-the-board. The second is flexibility--how much room for maneuver is there for the President in a foreign policy situation. We believe that there is enough of a loophole; under the provisions of the law you could do it.

Mr. Meese: Mr. President, it is essential that we respect contracts. Interference by government is not good. There is enough of a loophole not to limit your action.

Secretary Regan: Manufacturers should have the same treatment as the agricultural community. There is enough of an escape clause for the President to take action.

Deputy Secretary Lyng: We support the contract sanctity provision, Mr. President. We need the image of a reliable supplier; we have it in agriculture and it needs to be extended.

Ambassador Brock: There should be equity by treating our manufacturers the same as we treat the agricultural sector. I agree with Ed Meese that we should only take government action in a national security situation.

Attorney General Smith: This is a close call, Mr. President. It is the language at issue, not the substance. We are opposed because it would be a confession of error in our economic sanctions policy.

The President: Well, thank you. I approve of the contract sanctity provision. There is a window that allows enough flexibility.

Judge Clark: We can now move on to issue two, Mr. President.

The President: The majority opposes this proposal. I'd like each side to present its case.

Secretary Baldrige: Mr. President, you would expect the Department of Commerce to be opposed to import controls. But we believe that you or any other President would only use these controls in the interest of national security, and when you use it, we want to be able to win. Winning means going all-out, and that means favoring this proposal.

Deputy Secretary Thayer: We agree with the Commerce position. The equity argument made in discussing issue one also applies here.

Under Secretary Wallis: The State Department is strongly opposed to issue two. We do recognize that some good might come from this new authority, but extraterritoriality is now a major issue with the EC and could endanger East-West discussions. This proposal violates GATT; retaliation is very probable; and it would shatter COCOM. The timing of this proposal is inauspicious since negotiations are currently going on in COCOM to expand coverage. There is the danger that this proposal would discourage foreign buyers from buying our products.

Ambassador Brock: There are two points, Mr. President. By this proposal we would be tweaking the EC's nose and would destroy our negotiations with Europe--COCOM and East-West. It would be an outrageous violation of GATT. We would be breaking our contract as a nation.

Deputy Secretary Lyng: We are strongly opposed. The EC would use this proposal against us; they would call us two-faced. It could also affect our access negotiations with Japan.

Secretary Regan: We oppose because it is a violation of GATT and the timing is very bad.

The President: I am concerned about the timing of this proposal. We can always come back to it. I disapprove of the proposal in issue two.

Judge Clark: We should move on quickly to issue three.

Secretary Baldrige: It is a fundamental fact, Mr. President, that just controls on exports are not effective. We must agree to the proposals in issue three to be effective; it is not just fairness but effectiveness. Current controls have not enough teeth. We need extra penalties to discourage foreign companies.

Deputy Secretary Thayer: Defense strongly supports the proposal. It puts additional controls on technology. The recent incident with Sweden where there was a transfer of technology to the Soviet Union could have been prevented if the Swedes had known that U.S. import sanctions could be forthcoming. The Finns have already been restrained from transferring technology to the Soviets because of the possibility of this proposal. We need this authority to help stop the drain of technology.

Secretary Regan: It is appropriate to punish individual foreign firms for national security reasons, but sub-part B goes too far. It threatens COCOM; countries will never agree to add goods to the list. It is also a GATT violation.

Ambassador Brock: I am opposed to issue three, period. I don't even like extension only to national security controls. It intrudes on sovereignty.

Deputy Secretary Thayer: Defense could go along with extension to only national security controls.

Under Secretary Wallis: Our position against is exactly the same as with issue two.

The President: If the security of the nation is involved, I don't like limitations.

Ambassador Brock: Mr. President, when the national security is threatened, we can do almost anything we want. If what we do breaks up COCOM, it's not in our interest. There is a sovereignty problem when it is U.S. equity, patents, licenses, etc.

Director Casey: We must make COCOM work.

Secretary Shultz: We are extending the COCOM list, adding on to it and strengthening administration of it. We are making headway.

Mr. Meese: Could we take COCOM out of proposal three?

Under Secretary Olmer: It wouldn't remove the irritant with the EC--extraterritoriality.

Mr. Meese: We could limit it to U.S. export controls only.

Ambassador Brock: That would not be a change from current law.

Deputy Secretary Thayer: The jurisdiction is not all-encompassing; we are just limiting imports.

Ambassador Brock: But we would be setting ourselves up as the unilateral enforcer of COCOM.

Deputy Secretary Thayer: COCOM is not effective in dealing with the technology drain.

Secretary Shultz: It is best to manage export controls at home. We do not want to load the dice and affect the ability of U.S. firms to do business. We do not want a situation where our trading partners don't do business with the U.S. because of the possible costs.

Deputy Secretary Thayer: The Japanese haven't found this to be a problem.

Mr. Meese: We should eliminate COCOM from the authority extending to national security controls.

Judge Clark: Mr. President, how do you wish to proceed? Do you want some additional time to take this issue under advisement?

The President: Yes, I will take it under advisement.

The meeting adjourned at 2:24 p.m.

Summary of Presidential Decisions

Issue 1: The President approved including in the Export Administration Bill a contract sanctity provision that excludes pre-existing contracts from foreign policy export controls. (This prohibition would apply for 270 days, except where the President determines that the absence of foreign policy controls on these exports would prove detrimental to the overriding national interests of the United States.

Issue 2: The President disapproved including in the Administration bill new Presidential discretionary authority to impose import controls on a country whenever foreign policy export controls are imposed on that country.

Issue 3: The President took under advisement the proposal to give the President new discretionary authority to impose import controls as a penalty against companies that violate COCOM or U.S. export controls.