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PROCEEDINGS OF
THE SENATE TASK FORCE
ON ECONOMIC SANCTIONS

MITCH McCONNELL, *Chairman*
JOE BIDEN, *Co-Chairman*

TASK FORCE ON ECONOMIC SANCTIONS
UNITED STATES SENATE



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SENATE TASK FORCE ON ECONOMIC SANCTIONS

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TASK FORCE ON ECONOMIC SANCTIONS

TUESDAY, SEPTEMBER 8, 1998

UNITED STATES SENATE,
TASK FORCE ON ECONOMIC SANCTIONS,
Washington, D.C.

The task force met, pursuant to notice, at 2:11 p.m., in Room SH-216, Hart Senate Office Building, Hon. Mitch McConnell (chairman of the Task Force) presiding.

Present: Senators McConnell, Hutchinson, Kyl, Lugar, Mack, Roberts, Warner, Baucus, Glenn, and Lieberman.

OPENING STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM THE COMMONWEALTH OF KENTUCKY

The CHAIRMAN. Good afternoon, everyone. We will start the hearing. We are pleased to have Secretary Eizenstat here.

The rules for the Task Force will be that the chairman and Senator Baucus, who is standing in for Senator Biden, who is not here today, will make a brief opening statement and then I would like to ask the other members to make whatever opening statements they may have in conjunction with the questioning. And we will do five-minute rounds, taking people in order of their arrival to the Task Force, which will give, hopefully, everybody an opportunity to have his or her say in the most efficient manner.

This Task Force was formed by Senator Lott and Senator Daschle to try to answer seven questions which I think are important to keep in mind as the hearings and the process move forward.

First, what defines a sanction? Is restricting U.S. assistance a sanction, or is a sanction only a ban on investment?

Second, what sanctions are in place already and what flexibility is afforded to modify or lift these existing sanctions?

Third, how is success determined or defined?

Fourth, how should goals be defined?

Fifth, is there an effective coordination between the executive and legislative branch when sanctions are imposed?

Sixth, is there monitoring of compliance with existing sanctions?

And, finally, should we adopt new Senate procedures for the consideration of sanctions?

At the heart of today's hearing and the broader debate is the very first question: what is a sanction? To determine the answers to every other question the leadership has included in our mandate, we must begin with a common understanding of the baseline.

I have always held the view that any interruption of commercial activity, especially a ban on investment or restrictions on exports, imports and financial transactions, certain constitute sanctions.

However, much of the public interest which generated this Task Force and this review of sanctions is based on frequently quoted statistics collected by the National Association of Manufacturers and widely circulated by USA Engage.

They report, "between 1993 and 1996, 61 new U.S. laws were enacted authorizing new unilateral sanctions on 35 countries, or 42 percent of the world's population, and 19 percent of the world's export markets." Now, that is a quote from the USA Engage publication. However, many, if not the majority of the sanctions identified are conditions imposed on the availability of foreign assistance to a recipient nation.

For example, the study cites a restriction I included in the fiscal year 1995 foreign operations bill which linked foreign aid to Russia with the government making progress on negotiating payment of commercial debt, enforcing contract sanctity, and providing equitable treatment to foreign private investment. Aid was also withheld if the government expropriated private assets.

I took the view then, as now, that if Moscow did not adequately protect and promote private investment, Russia would not grow and our aid would be wasted. This particular condition, in fact, was largely generated by problems described by U.S. firms struggling with an increasingly irrational commercial environment.

Nonetheless, the condition is cited by the National Association of Manufacturers and USA Engage as a sanction apparently because it generates an impression that the United States is an unreliable trading partner. I guess, to paraphrase an old cliché, one man's economic terrorist is another man's commercial freedom fighter.

As I have considered the boundaries of sanctions, it seems the current debate over definitions and merits turn upon whether the action is unilateral or multilateral and whether it has punitive consequences in terms of sales or market access and permanent share. Personally, I am extremely uncomfortable with these distinctions as a basis for evaluation or definition of a sanction, as it could invite a reconsideration of the merits of retaliatory trade actions which have historically been punitive and unilateral, but also successful. I think we need to refine the debate and the terms.

As has been suggested in the conversations leading up to these hearings, I expect our witnesses to begin with their understanding of what constitutes a sanction so that we can better frame the parameters of legislative or executive conduct which is the subject of review and potential revision. We will not be able to reach a consensus on recommendations if we can't agree on the scope of the problem we have been asked to consider.

While the leadership's questions are very specific, let me suggest our witnesses also consider three general themes which bear on the Task Force recommendations and my conclusions. They are: the relevance of U.S. leadership, the complexities of current international conditions, and the balance of power between branches of Government.

The United States stands today as the only real, relevant political, military and economic superpower, a position which rests on the firm foundation of the unparalleled success of a free market democracy. We stand in marked contrast to the failed protectionist cronyism which has crippled economies from Tokyo to Thailand.

Inherent in this position of leadership is the responsibility to serve and advance fundamental standards of conduct. Thus, the first issue to consider is the following. In the interest of protecting American economic opportunities, how should we balance or consider our long-term interests in encouraging improvements in basic civil liberties, human rights and non-proliferation, or defeating terrorism, narcotics trafficking and crime?

Second, in today's world is it possible, or even advisable, to produce a bill or a policy position that, in essence, is a "one-size-fits-all" package? Should the procedures available to Congress or the President be identical when dealing with problems related to political repression as they would be with dealing with a nuclear threat? For example, are Burma and Iraq so similar we can legislate a standardized approach for future application?

While the prolonged review period over Burma sanctions was frustrating for some of us, it did allow for a full discussion and reasonable decision to be reached. I am not so sure this or a similar extended process would be as effective in a case where a nation threatened to expand or use its arsenal of weapons of mass destruction. If the United Nations or the Europeans balk, should the President be required to wait three months before taking action to impose a military-enforced trade embargo on such a pariah?

Obviously, there are circumstances of an immediate threat in which emergency powers could justifiably be used to preempt any uniform approach we develop. But many involved in this debate believe there should be a standardized threshold with uniform expectations about timing and terms before any action is taken. If I have learned anything in this job, it is that the frequency of unanticipated contingencies usually outpaces most legislative proposals attempting to fit or manage all future policy options.

Finally, having agreed the world is an increasingly complex place, I am uncertain about the wisdom of ceding any branch of the Government new and, relatively speaking, more of a role in shaping our future. The administration's proposal, which I understand Secretary Eizenstat will explain, reflects a balance in principle, but if I understand it correctly, not in actual power.

While all congressional sanctions procedures would be a matter of statute, the administration would be subject to executive order or Presidential policy directive, which is somewhat easier to overturn, reverse or modify on short notice. The final question, therefore, is can we achieve a balance in any proposal which preserves the prerogatives of each branch of Government and still satisfy the important concerns raised by our business and agricultural communities.

I would hope these hearings lead to a report and legislation which will offer a rational, yet flexible plan for the consideration and imposition of sanctions. In discussions with my colleagues on the Task Force, I have suggested that we attempt to bring the same level of confidence and reasoning which governs the 301 trade sanctions process to the broader universe of sanctions.

I believe we need to develop a matrix which makes clear what U.S. actions can be taken in response to types of actions by foreign governments. There is an obvious range of options, from the positive, such as opening embassies and expanding trade, to the nega-

tive, visa reviews and limiting joint commission activities, to actual bans on financing, trade or investment.

The 301 process succeeds because there are clear rules, with a steady, moderated and monitored increase in the pressure applied with each step designed to modify government or corporate conduct. This Task Force can succeed if we bring that level of confidence to this discussion and to our results.

With that, let me turn to Senator Baucus.

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Thank you, Mr. Chairman. I am here, as you know, substituting for the co-chairman of the Task Force, Senator Biden. He is unable to be here today. In fact, it is a very urgent call. His daughter-in-law was in labor, so he is attending to his duties being a good grandfather.

I have just a few brief remarks. I will ask that my full statement be included in the record. Just several points. One is that we are all perplexed as to what the use of sanctions should be, and this is nothing new to the 1990's. It was, after all, the United States that imposed sanctions with the Stamp Act because of taxation without representation. There was a blockade during the Civil War. We all approved the South African sanctions.

Not too long ago, I was reading a biography of President John Adams, who said that sanctions just don't work, and he was giving all the reasons why unilateral sanctions don't work. And it is *deja vu*; we actually should have had him here today. It is amazing how similar his reasoning was in opposition to unilateral sanctions then as it is to many today.

I read somewhere that we have sanctions affecting over two dozen countries, about one-third of the world's population. I am sure that is not the case with the European Community, with Japan or any other country. I also note that sanctions often hurt ourselves more than they hurt the intended country or people. They also hurt innocent people in other countries, particularly in this interrelated world where different countries and companies can find other ways of accomplishing their purposes.

The main point I want to make—a couple points, actually—is one you made, Mr. Chairman, that we have to do a lot better job in figuring out where sanctions fit in the whole quiver of arrows of foreign policy. There are lots of different actions this Government can take with respect to another country, and I think that we should have a much more methodical and organized and orderly examination of where sanctions fit in compared with some of the other actions that you mention. I know the administration is thinking more along those lines, but it is my sense that we are not nearly as far along on that as we could and should be.

And my final point is that partisan politics—we have heard it many, many times—should stop at the water's edge. And to go a bit further with that point, I think it would be very useful if the administration could sit down with members of the House and the Senate who are particularly interested in foreign policy, Republicans and Democrats, to try to structure some kind of a system,

some kind of an approach dealing with the hierarchy of actions that this country takes in the foreign policy arena.

I know it sounds a bit ambitious and perhaps even a bit naive, but if we are going to be the world leader that we like to think we are, and particularly given these times with the economic crises worldwide and where American leadership is being sought and in many respects not given, it is time for members of the House and Senate, Republicans and Democrats, to step up and be a little more statesmanlike and kind of do what is right for the country, knowing that there will be plenty of other opportunities for members of the House and Senate to pursue their own individual interests which may or may not include partisan politics. But on matters such as this, sanctions, foreign policy, and particularly at this time with the world economic crisis in such a state, I think it behooves us all to work better together.

Thank you.

The CHAIRMAN. Thank you, Senator Baucus.

[The prepared statement of Senator Baucus follows:]

**Senator Max Baucus
Sanctions Task Force Hearing
Opening Statement
September 8, 1998**

Thank you, Mr. Chairman. And thanks to our distinguished witnesses for joining us today.

Mr. Chairman, in its more than 200 years of history, the United States has repeatedly expressed its vital interests and ideals by imposing economic sanctions. Taxation without representation through the Stamp Act and Townshend Acts prompted the American colonies' boycott of English goods in the 1760s. The Northern states' blockade of the Confederacy contributed to the preservation of the Union. And more recently, the United States joined a multilateral effort to end apartheid in South Africa. There is no shortage of examples where the United States has used sanctions to contribute to what it perceives as the Greater Good.

But the ground rules governing global economics have changed in recent years. The exchange of goods and ideas worldwide has never been freer and it is now axiomatic to say that we live in a global economy. We need look no further than the Asian economic crisis and its effects on the Dow Jones industrial average for evidence of that.

It follows that as the rules governing economics have changed, so too should those related to economic sanctions. Unilateral economic action is less effective than it used to be, simply because in very few cases is it possible for one country or company to corner the market on a good or service.

Yet despite the sea changes affecting global trade, American sanctions policy has not changed with the times. The United States currently has sanctions in effect against roughly two dozen countries and over a third of the world's population.

Our witnesses will elaborate on the costs of sanctions to the United States. Some estimate that sanctions cost the U.S. \$20 billion per year in export income and 200,000 jobs. That's a high price to pay.

But many argue, I think rightly, that it's not too high a price if our ideals and interests are being extended, if sanctions are doing their job. If we are, in the words of Woodrow Wilson, "making the world safer for democracy," then it's not too much to ask the U.S. to foot a good part of the bill.

The problem is, it is increasingly evident that our unilateral sanctions are ineffective, even harmful. Take the recent case of sanctions against India and Pakistan. Because of legislation passed by a previous Congress, the United States imposed sanctions on India and Pakistan because of their nuclear tests.

We condemned these governments' actions in the strongest terms, and were right to do so. But because we were hamstrung by legislation passed two years prior, neither Congress nor the President were able to deliberate on the wisdom of imposing sanctions at that particular time.

India knew the repercussions they faced if it tested nuclear weapons, and went ahead anyway. Pakistan, more vulnerable economically than India, also knew what it faced when it tested its weapons.

In spite of massive economic sanctions against these countries, they deemed not testing as more painful and costly than not. Why is that, Mr. Chairman? The answer is simple. Both countries perceived a threat to their security as more dangerous than the effects of an economic embargo.

Moreover, although these countries have certainly suffered from our sanctions, the increasingly open world market has made our "boycott" less effective. The \$41 million in arms that India purchases from the U.S. can likely be supplied elsewhere.

And only expedited legislative action allowed us to bypass the sanctions against Pakistan and come to the aid of the beleaguered American wheat farmer, who stood to lose a great deal if the Pakistani wheat market were closed.

The end result of our sanctions policy towards India and Pakistan turned out to be a good dose of self-indignation. And a significant threat to American farmers and manufacturers.

Although I believe sanctions should remain as a weapon in the U.S. foreign policy arsenal, I frankly question the wisdom of conducting a policy at the expense of some sectors of our economy over others.

Mr. Chairman, colleagues and distinguished guests, I appreciate the efforts of the Senate leadership, the Administration, and the innovators in this field — Senators Lugar, Glenn and Dodd, among others, — for bringing this issue the attention it deserves.

I believe it's important to look carefully at our sanctions policy now, and I look forward to the continued debate.

The CHAIRMAN. Secretary Eizenstat, go right ahead.

STATEMENT OF STUART EIZENSTAT, UNDER SECRETARY OF STATE FOR ECONOMIC, BUSINESS AND AGRICULTURAL AFFAIRS, DEPARTMENT OF STATE

Mr. EIZENSTAT. Thank you very much, Mr. Chairman. I genuinely welcome this opportunity to share with you our views on the use of economic sanctions as a foreign policy tool. This Task Force can make a genuine, lasting contribution to developing a bipartisan consensus on an important area of our country's foreign policy where both the Congress and the executive branch have clear responsibilities.

I would like to extend my appreciation to Majority Leader Lott and Minority Leader Daschle for convening the panel, and to you, Mr. Chairman, and Senator Biden and Senator Baucus for co-chairing this Task Force. We stand ready to work with you in the days and weeks ahead to develop both an improved dialogue on this issue, but also to forge an actual agreement and enhance our effectiveness in advancing America's national interests.

Properly designed and implemented as part of a coherent multilateral strategy, sanctions, including economic sanctions, can be and are a valuable tool for advancing American interests and defending American values. As examples, without economic sanctions, Serbia would not have come to the negotiating table to end the war in Bosnia. Iraq would not be limited in its ability to sell oil and acquire weapons of mass destruction. Libya would not stand isolated for its failure to hand over the Lockerbie suspects. South Africa might not have ended apartheid. All of these have succeeded in whole or in part because they were part, however, of an integrated multilateral sanctions regime.

There is also a useful, though more limited role for unilateral sanctions. Those sanctions include such countries as Cuba and Iran, the Sudan, Nigeria and Burma, and they serve important U.S. interests. But in recent years, there has been an explosion in the frequency with which we turn to unilateral economic sanctions. More than half of all the sanctions, however defined, since the end of World War II have been employed since only 1993; 62, more than half, since 1993, compared to a total of 92 since the end of World War II.

The President's Export Council notes that more than 75 countries are now subject to some form of U.S. economic sanctions. Most of the sanctions imposed have been non-discretionary measures required by law by the Congress. In contrast, only 3 of the 62 unilateral economic sanctions regimes imposed since 1993 have been imposed by the executive branch as a discretionary matter under the President's authority under the International Emergency Economic Powers Act, or IEEPA, on Iran in 1995, and in 1997 on the Sudan and Burma.

If our sanctions are to be effective, if we are to bring needed discipline to this area, we all have to work together to see that our use of sanctions is appropriate, coherent and designed to ensure international support. We think there is a hierarchy of U.S. responses to actions by foreign governments which may adversely affect U.S. interests.

First, we should use all available diplomatic weapons, and we have a whole variety of them. Next, if those fail to achieve our objectives, multilateral sanctions should be tried, since they will be more effective than unilateral sanctions and will exact fewer costs to U.S. business and agriculture. And, oftentimes, we are not given the full opportunity, Mr. Chairman, to try to develop a multilateral sanctions regime, which takes time.

But if a multilateral regime cannot be successfully negotiated—and there will be times, indeed, when that is the case; Iran is an example—unilateral sanctions are an option. But, there, the key consideration should be whether they will be effective in promoting our foreign policy goals. Last, of course, on this hierarchy, but one that always has to be available, is the possible projection of military force.

Because reform of our sanctions policy should reflect a common vision by the administration and Congress, embodied in clear procedural and substantive guidelines for both branches of Government, we really welcome this opportunity to share with you our views. We sought to build on many of the concepts advanced by Senator Lugar, Congressmen Hamilton and Crane, Senator Dodd, Senator Glenn, Senator Roberts, Senators Robb and Brownback in actual legislation, and those discussed by Senators like Baucus and Hagel and others, to craft a proposal which we believe, if adopted, could make a real contribution to improving the way we use sanctions to further our foreign policy objectives.

The fundamental principle behind our proposals is one of symmetry between the branches. Congress, in short, Mr. Chairman and members of the Task Force, should be no more prescriptive of the executive branch than it is willing to be of itself. With this basic concept, permit me to share some additional thoughts on how this might be accomplished.

First, with respect to constraints that the Congress imposes on itself, we are obviously somewhat leery of trying to be prescriptive of what you should do with your body, but permit me to say this. The Lugar bill contains constraints on congressional consideration of future sanctions legislation. It prescribes certain congressional procedures for consideration of future sanctions bills. The administration would like to build on but modify those ideas.

We, for example, endorse the constructive idea that a member could raise a point of order if the procedural steps in the Lugar proposal are not met before a sanctions bill is moved to the floor. But the trigger for raising a point of order in the Lugar proposal is a mandatory Presidential report, and we think it is both unrealistic and highly burdensome to expect a detailed executive branch report each time any sanctions bill is voted out of a committee.

Thus, we suggest instead that sanctions reform legislation provide that a bill would not be in order to move to the floor unless there had been a report of the relevant committees explaining whether the bill meets the substantive criteria called for in the Lugar proposal. The legislation could also provide, we suggest, that future unilateral economic sanctions legislation be considered a so-called Federal private sector mandate which would require that a Congressional Budget Office report be prepared assessing the impacts of the bill on the U.S. economy, and that this could trigger

a point of order against a bill reported by a committee that did not include such a CBO report.

The Lugar bill would also impose certain substantive constraints on future sanctions legislation; for example, a statement of objectives, a sunset clause, contract sanctity, national interest waiver, that the sanction be narrowly targeted, that it not include restrictions on the provision of food and medicine, that it seek to minimize adverse humanitarian impact. We frankly would support the inclusion of such provisions in new sanctions regarding the Congress, with appropriate flexibility.

You raised the issue, and a very important one, Mr. Chairman, of the scope of constraints. What is an economic sanction? To what legislation would that apply? Here, we generally support the proposal in Lugar, the definitions contained therein, that constraints would apply to future unilateral economic sanctions broadly defined, as he has done so, to apply to bills imposing both discretionary and mandatory sanctions and to sanctions imposed for a wide range of reasons.

Some of the examples might include a denial of a normally available benefit; for example, the denial of access to the U.S. market on an MFN basis, the denial of other benefits which might be provided—for example, U.S. support in international financial institutions or USAID—or the imposition of other punitive or coercive economic measures in order to induce a foreign government to change its policies. We agree with the sponsors of the Lugar bill that this provision should not apply to trade legislation, but we also believe it shouldn't apply to labor-related or environmental legislation.

The Congress, of course, will always retain—and here is where the issue of symmetry comes into effect—always retains as a legislative body the flexibility to depart from whatever sanctions legislation it passes, including these kinds of guidelines, because a subsequent inconsistent sanctions law would always take precedence by simply including “notwithstanding any other bill” language, and because Congress can simply choose to disregard or to change any procedural rules applicable to it. Nonetheless, these provisions are an important baseline for congressional consideration.

Second, I would like to address the issue of a national interest waiver, and here I would like to address the notion of comity between the branches. Certain existing sanctions laws contain inadequate or, in at least one case, the Glenn amendment, no waiver authority at all. We believe that flexibility, accompanied by appropriate national interest waiver authority in all legislation, is the single most essential element to make sanctions work.

We believe that the President should be authorized to refrain from imposing or taking any action which results in the imposition of any unilateral economic sanction or to suspend or terminate such a sanction based on a national interest determination. Now, we don't expect *carte blanche*. Here again, we have genuinely tried to build in the concept of comity between the branches, and so we suggest, for example, that any such national interest waiver could include inclusion of expedited procedures by the Congress to allow Congress to pass legislation disapproving the President's exercise of that waiver authority within a prescribed number of days—30, 60, as you wish.

We would support applying this waiver authority to all existing and future legislation. And I would like to again emphasize that everything else we suggest, the legislation and the executive order I am about to mention, would apply only to future legislation. This we would like to see, if possible, apply to both existing and future legislation.

I want to stress why this national interest waiver is so important. Congress should, and does, lay out prescriptively foreign policy goals it would like to see accomplished, backed by economic sanctions. That is appropriate. It is also appropriate, however, as a matter of comity to say to the President, we realize that, as the President, responsible for the implementation of foreign policy and negotiation and dealing with foreign governments, that you alone have the opportunity to balance all the interests engaged.

Let me, if I may, give you three quick examples of how this flexibility can be used and, when it is not available, how it can hamstring the administration, and if I may say so, even the Congress. The Iran and Libya Sanctions Act, Helms-Burton, and the Glenn amendment—very quickly, let me just run through those, with your permission.

On the Iran and Libya Sanctions Act, the whole purpose of the legislation was to try to deny Iran the capability of acquiring weapons of mass destruction, something we obviously agree to. When the Total Gazprom deal in Iran came up, we were able to use the leverage of sanctions to get both the European Union and Russia to tighten their export control regimes to make it more difficult for Iran to acquire weapons of mass destruction. So we creatively used the waiver authority you gave us to accomplish the very purposes of the Act.

The same occurred with respect to Helms-Burton. We used the Title III lawsuit waiver authority, which we have now exercised about five times, to get the European Union to agree that they would not upgrade their relations with Cuba until and unless Castro changed his human rights conduct, and the promise of a potential waiver to amend Title IV just a few months ago when I negotiated with the European Union an agreement that would bar any European Union commercial assistance agency from providing government assistance to any investor in Cuba until they determine that it is not on expropriated property. So here again, using that waiver authority, we actually accomplished the goals of the statute.

On the other hand, with the Glenn amendment covering India and Pakistan, we had no such authority, no flexibility whatsoever, and this has impeded our ability, as the Senate has recognized in your own action to give us more flexibility, to accomplish the goal of getting India and Pakistan into a non-proliferation regime.

So here again, in the waiver authority we fully recognize your constitutional responsibilities, and what we are saying is Congress does and should speak in these areas, but give us the flexibility with the national interest waiver to waive sanctions when necessary, with your then having the right after the fact on an expedited basis to overturn that, subject to, of course, Chaddha requirements. You also, of course, have the power of the purse, you have the power of oversight, and all of these make an adequate tool for supervision.

Third is what restrictions should apply to the executive branch? The Lugar bill would also impose a number of specific procedural and substantive restrictions on the executive branch for new sanctions imposed under IEEPA and for all future unilateral economic sanctions. We would propose instead that the President would be willing to issue an executive order, and this would be done in a very transparent way sharing with you our thoughts and ideas, that would set out guidelines, and if I may say so, Senator Lugar, taken largely from your legislation, that would apply in two situations; first, all future sanctions regimes under IEEPA; second, the imposition of sanctions under future sanctions laws passed by Congress.

The Lugar bill would impose many inflexible restrictions on the President's imposition of sanctions requiring him, for example, to announce and publish his intent in advance in the Federal Register specifying all future sanctions that would be included, things that would be included like cost/benefit analysis and contract sanctity.

Now, we support the general idea behind these constraints and we would put many of them in our executive order. But flexibility is crucial. Permit me to give you some examples as to why it is very difficult to legislate in this area.

If we were required to telegraph in advance our intention to seize the assets of suspected terrorists or narcotics traffickers or major international criminals, or indeed in other foreign policy purposes, it would effectively rule out asset freezes and many other things. I can tell you as a personal fact that when I was negotiating with the European Union and Russia on the tightened export controls for dual-use products going to Iran, if we had had to publish in advance our intention to sanction, we would have cut off negotiations. We would not have been able to pursue that. They would have withdrawn from negotiations we had.

Likewise, sunset clauses, if they don't have sufficient flexibility, also can present a problem. Many of the purposes for which we impose sanctions—non-proliferation, to combat drug trafficking, to combat terrorism, to encourage greater respect for human rights—are long-term and time-bound. We shouldn't give the targets of such sanctions the ability to wait us out.

Even contract sanctity, which again, as I will describe, we will try to honor, has to have some flexibility because we are told by our law enforcement people with whom I have obviously talked before presenting this testimony that one of the ways they break into international criminal gangs is they go behind front organizations and break contracts. So there again, there has to be flexibility and that is the key. In these, as in all other cases, the President needs the flexibility to tailor our responses most appropriately to the specific situation with which we deal.

Having said that, we are not trying to escape our responsibility while we are asking you to restrain yourself. We would include many of the things that you are suggesting in your legislation in this executive order. Indeed, with the enhanced flexibility I have suggested and in the context of an overall package, the President would sign an executive order that would include the following guidelines according to which the President would have to follow to impose sanctions: a requirement to analyze costs and gains to

all relevant U.S. interests. We use the term “gains,” by the way, because “benefits” suggests that you can always quantify a sanction or a cost; you can’t with respect to protection of a human right or preventing missile delivery or whatever.

Contract sanctity should be generally preserved, and we would say so in the executive order unless the President determined that it would detract from the effectiveness of the sanction. Annual review of future executive branch sanctions under which the President would have to determine annually that sanctions—and here we would be willing to go back to existing sanctions as well—are meeting certain criteria in order for them to continue in existence. If he did not make that determination, the sanction would sunset. As the Lugar legislation suggests, narrow targeting, appropriate exemptions to minimize adverse humanitarian impact, and, wherever possible, prior consultations with Congress.

As a general principle, as the President has said on several occasions, we also think that, frankly, starvation is not a useful tool for foreign policy. Restrictions on the commercial export of food, medicines and other human essentials should be excluded from the economic sanctions regimes, absent compelling circumstances. The Senate frankly has recognized the same thing in the fiscal 1999 Agricultural Export Relief Act and this is a good model that we can use; that is, generally, sanctions on a unilateral basis should not apply to food, medicines or humanitarian goods.

But here, too, flexibility is needed. For example, with countries on the terrorist list like Iran, we would not want to feel that we have to ship food, that we have to ship medicine. Therefore, any legislation and our executive order would include authority to waive the exemption so that we could balance those interests out as well.

Mr. Chairman, there is much else to say, but I don’t want to preempt in any way your questions. Let me just conclude that by working together, respectful of each other’s duties and responsibilities in the foreign policy area, we believe we can develop a bipartisan consensus on economic sanctions as a foreign policy tool. This would make us more careful in our use of sanctions, ever mindful of the costs as well as the gains, and would make those sanctions we do employ more effective in accomplishing our national goals.

Again, I would like to thank you and thank so many of the Senators, Senator Lugar and others, for the excellent work they have done in helping—Senator Roberts—all of you have done your bit. We have tried to incorporate as much of your legislation as we could in our thoughts.

[The prepared statement of Secretary Eizenstat follows:]

TESTIMONY FOR UNDER SECRETARY EIZENSTAT
LOTT BIPARTISAN SENATE TASK FORCE ON SANCTIONS
WASHINGTON, D.C.
SEPTEMBER 8, 1998

Mr. Chairman, I welcome this opportunity to share with you the Administration's views on the use of economic sanctions as a foreign policy tool. This bipartisan Task Force is a welcome initiative and can make a lasting contribution in developing a consensus in this important area of policy where both the Executive Branch and the Congress have clear responsibilities. As a representative of the Executive Branch, which is charged with the conduct of our foreign policy, I want to extend my appreciation to Majority Leader Lott and to Minority Leader Daschle for convening this panel, and to Senator McConnell for chairing the Task Force, and for the leadership of the ranking Member of the Task Force, Senator Biden. The Administration stands ready to work with you in the days and weeks ahead to develop an improved dialogue between the Congress and the Executive Branch on sanctions, forge an agreement and enhance our effectiveness in advancing American national interests.

We believe that properly designed and implemented as part of a coherent strategy, sanctions, including economic sanctions, are a valuable tool for advancing American interests and defending U.S. values. Used in an appropriate way and under appropriate circumstances, sanctions can further important U.S. policy goals.

Mr. Chairman, as examples, without economic sanctions Serbia would not have come to the negotiating table to end the war in Bosnia; Iraq would not be limited in its ability to sell oil and acquire weapons of mass destruction; Libya would not stand isolated for its failure to hand over the Lockerbie suspects; and South Africa might not have ended Apartheid. These sanctions achieved some measure of success because they are or were part of an integrated multilateral sanctions regime.

There is also an important but more limited role for unilateral sanctions. Our unilateral sanctions against Cuba, Iran, Sudan, Nigeria and Burma serve vital U.S. interests. However, in recent years, there has been an explosion in the frequency with which we turn to unilateral economic sanctions. According to one count by the National Association of Manufacturers, the United States has imposed unilateral economic sanctions 92 times since the end of WWII; 62 -- well more than half -- have been imposed since 1993. The President's Export Council notes that more than 75 countries are now subject to some form of economic sanctions. Surely this must give us pause to question whether we are on the right track. Most of the sanctions imposed since 1993 have been non-discretionary measures

required by Congress in law. In contrast, only three of the 62 unilateral economic sanctions regimes imposed since 1993 have been imposed by the Executive Branch as a discretionary matter using the President's authority under the International Emergency Economic Powers Act (IEEPA) - the tightening of the U.S. embargo on Iran in 1995 and the imposition of a comprehensive embargo on the Sudan in November, 1997. In addition, after the President determined that certain factual predicates had been met concerning Burma, he used his authority, again under IEEPA, to impose a new investment ban on Burma in May, 1997, as required by law.

Mr. Chairman, I would like to begin today by focusing on two specific cases in which flexible sanctions have been effective because of the waiver authority Congress gave the President -- The Libertad Act (Helms-Burton) and The Iran and Libya Sanctions Act (ILSA). Each of these cases illustrates how we were able to use Presidential flexibility, such as the prospect of a waiver, to advance effectively the objectives of the statute. I will then outline the overarching principles that, in the view of the Administration, should govern U.S. sanctions policy. Finally, I will make some specific comments on pending legislation and present an outline of the Administration's ideas about what sort of legislation would best embody the Administration's principles on sanctions policy.

Helms-Burton and ILSA each engendered sharp opposition from our allies. In each case however, we found a way to reduce tensions and further the purposes of the Acts.

Let me begin with the Helms-Burton Amendment.

As you know, I have been a strong defender around the world of the Libertad Act. The exercise of Title III waiver authority helped lead the EU to adopt its Common Position in December of 1996 tying any improvement of its economic and political relations with Cuba to concrete changes in Cuba's human rights record. It further agreed to speak more forcefully in support of democracy. I am also pleased that we were able to use that Act and the possibility of a waiver of Title IV to bring other nations more fully in support of the objectives of the Act. The prospect of an amendment to Title IV to obtain a waiver led the EU on May 18 of this year to agree to new disciplines on limiting investment in illegally expropriated properties worldwide, including in Cuba.

The Understanding we reached with the EU on May 18 for the first time establishes multilateral disciplines among major capital exporting countries to inhibit and deter investment in properties which have been expropriated in violation of international law. These restrictions will discourage illegal expropriations, warning investors to keep "hands off." The Understanding will also send a clear and unequivocal message to any country which engages in repeated

illegal expropriations -- like Cuba -- that it will no longer enjoy normal economic relationship with other states.

That message has certainly landed hard in Havana. Castro understands the significance of our accomplishment and the serious threat it represents to his regime. He has condemned the Understanding "as an internationalization of the principles of the vile Helms-Burton Law." He decries it as "a pact . . . between the United States and the European Union with the purpose of strengthening the blockade of Cuba." This demonstrates the measure of what we accomplished by joining together with Europe against Castro. Castro understands only too well that this Understanding is an effective multilateral endorsement of some of the core principles underlying Helms-Burton which will have a profound effect on investment in Cuba.

But beyond their effect on Cuba, the tough measures will apply to all countries which, like Cuba, have an established record of repeated expropriations in contravention of international law. All requests for government diplomatic support or commercial advocacy, or for commercial assistance, such as risk insurance, loans or subsidies, will be reviewed to ensure that the transaction does not involve illegally expropriated property. If expropriated property is found to be involved, the support or assistance will be denied, and these properties will be added to a public list of properties with respect to which investment will be actively discouraged. No support or assistance should be provided unless and until this evaluation has been performed.

I would also like to emphasize that with specific respect to Cuba the European Union has now for the first time acknowledged in writing that one of the primary tools the Castro regime used in its mass expropriation of property from U.S. citizens "appears to be contrary to international law." This acknowledgment is an extraordinary achievement which represents the first collective acknowledgment by Europeans since the Cuban revolution that Cuba has engaged in illegal expropriations of U.S. property.

Mr. Chairman, this result would have been impossible had we not been able to hold out the possibility of a waiver from Title IV. We believe that our success in achieving this progress with the Europeans on property disciplines merits serious consideration, on the part of Congress, to grant targeted waiver authority for Title IV. Castro, of course, would be delighted if this Understanding never took effect. We must work together to ensure that this does not happen. Unless Title IV is amended to provide this targeted waiver authority, these important new restrictions on investment in Cuba will never go into effect.

In developing ILSA, Congress expressed its deep concern about Iran's programs to develop Weapons of Mass Destruction (WMD) and their means of delivery as well as Iran's sponsorship of terrorist activities. Congress asked the

Administration to develop a multilateral consensus to address these problems. Congress had the foresight to include provisions in ILSA both for imposing and for waiving sanctions. Those provisions were aimed at increasing multilateral cooperation and the flexibility inherent in ILSA enabled us to achieve that cooperation.

Since ILSA became law and in the negotiations which culminated at the recent U.S.-EU Summit, we used these tools to great advantage and success. We have achieved significant, enhanced cooperation on our Iran-related concerns with the European Union, with which cooperation was already at a high level. The EU has tightened its dual use control system with respect to Iran, and Russia has put into place for the first time the legal framework and detailed regulations for a "catch-all" export control system. Implementation has begun but we recognize that sustained and rigorous implementation will be crucial with the Russians. We will continue to closely monitor the implementation process.

Our concerns with Iran have not changed. Iran continues to develop WMD and their delivery systems, as evidenced by Iran's recent missile tests. Iran also continues to support terrorist groups. We will not support investments by Europeans or other foreign firms in Iran while Iran continues these activities. We will continue to bar our companies from such investments.

Until such time as Iran changes its own behavior, it is particularly crucial to work at the "supply end" of a problem such as Iranian WMD development --that is, to deny Iran's access to sensitive materials and technology by working closely with the countries which are potential sources for these items. ILSA recognizes this through its emphasis on building multilateral cooperation. We have done just what ILSA urged with the EU, with Russia, and with Malaysia, whose companies were involved in the South Pars investment in Iran.

The Secretary's recent decision in the South Pars case reflects an assessment that the national interest waiver which Congress wrote into Section 9(c) of the Act was by far the most effective way to serve overall U.S. interests, and to advance the fundamental objectives of ILSA --constraining Iran's ability to acquire WMD and delivery systems, and its ability to support terrorism.

The Administration at the highest levels tried unsuccessfully to persuade France, Russia and Malaysia to stop their companies from investing in the South Pars oil field. We also carefully examined ILSA's six sanctions and concluded that sanctions would not be effective in stopping the South Pars deal.

The Secretary's exercise of the waiver authority that the Congress so wisely provided has helped consolidate the gains that we have made with the EU and Russia on

strengthening international cooperation to oppose Iran's dangerous and objectionable behavior and laid the foundation for further progress in this vital area. It has helped us avoid a major dispute with allies and friends which could have led to trade retaliation and reduced cooperation on WMD and other efforts. The waiver has enhanced our ability to work with the Europeans, the Russians, and the Malaysians on a host of bilateral and multilateral concerns. For example:

Russian cooperation on nonproliferation, progress on internal economic reform, and ratification of START II.

Resolution of differences over Helms-Burton, including new disciplines to deter investment in illegally expropriated property worldwide to which I referred earlier.

Multilateral cooperation on Iraq to maintain isolation of Saddam Hussein and to bring about compliance with UNSCR obligations.

Progress on Kosovo and Bosnia, where cooperation of our NATO allies is essential, as well as on other European security issues.

In stark contrast, a decision to sanction would have undermined our efforts at multilateral and bilateral cooperation on limiting Iran's ability to acquire weapons of mass destruction and would not have stopped the South Pars deal.

I want to emphasize, Mr. Chairman, that we already have a very high level of cooperation with our European allies on nonproliferation issues. As reflected in the joint US-EU statement on nonproliferation announced at the Summit, the EU is taking additional steps, separately and in cooperation with us, to strengthen further their policies in this area. This includes an EU commitment to give high priority to proliferation concerns (including missile delivery systems) specifically regarding Iran, and a commitment to stepped-up efforts to prevent dual-use technology transfers where there is a risk of diversion to weapons of mass destruction programs.

I would like to turn now to the situation in India and Pakistan. As you know, we have begun in earnest a process of re-engagement with both India and Pakistan in an effort to secure genuine progress on our non-proliferation concerns.

Deputy Secretary of State Strobe Talbott, who has the lead in our contacts with the Indian and Pakistani governments, has had several productive sessions with the designated representatives of both governments. As a result of these diplomatic efforts, it appears we are making progress in defining the principles that will underpin U.S. relations with India and Pakistan in the post-test environment, in laying out our non-proliferation and other

objectives, and in discussing the steps and activities that will be necessary to get us there.

We are also implementing the Glenn Amendment sanctions firmly and correctly. Although it is too early to quantify the effect that these sanctions will have on economic growth or business activity in either country, it is clear that they will result in significant economic and political costs for both countries.

That said, the lack of flexible waiver authority under the Glenn Amendment has limited our ability to be creative in encouraging India and Pakistan to cooperate in avoiding an arms race on the sub-continent. Our purpose is not to punish for punishment's sake, but to influence the behavior of both governments. But our ability to influence requires greater flexibility. We do not wish for unnecessary harm to fall upon the civilian populations of either country -- particularly the poor and less fortunate -- or on U.S. businesses. For this reason, we are pleased that the Senate acted in July to correct an obvious unintended consequence of the sanctions law -- preventing the provision of credits for agricultural commodities.

As recent debates on the Senate floor demonstrate, the Administration and the Congress share a desire to inject a greater degree of consistency, flexibility and effectiveness into the sanctions regimes against India and Pakistan. It is absolutely vital that we build upon this very strong foundation to effect the requisite changes in our policy and in our laws.

For this reason we strongly supported the Senate's passage of the Brownback-Robb amendment to give the President greater flexibility on the India and Pakistan sanctions. Ideally, we would want to go even further and would prefer waiver authority for all of the sanctions currently in place. Of course, we will not use any waiver authority until such time as substantial progress has been made toward achieving our non-proliferation objectives, or in the event that there were a serious negative and unintended consequence to a specific sanction such as impending financial collapse leading to economic chaos and political instability. We also would like additional flexibility to guard against an overwhelmingly disproportionate effect of the sanctions on one country versus another; ideally, the sanctions should have roughly the same effect on India as they do on Pakistan, the latter being in more fragile economic condition and more dependent on IFI funding, which the Glenn Amendment requires us to oppose.

That said, we do not believe it would be advisable, nor could we support efforts, to codify or legislate the steps that India and Pakistan would need to take in order to gain relief from sanctions, or to match specific actions by India or Pakistan to the lifting of particular sanctions. Although there is substantial agreement between the

Administration and Congress on our nonproliferation objectives, it would greatly complicate our efforts to bring about change were a series of benchmarks established by law. Nor would India or Pakistan respond well to such an approach. Writing such steps into law would create the impression that India and Pakistan would be acting under pressure, to ensure the lifting of U.S. sanctions. This would greatly constrain our chances of achieving the outcomes we seek.

The history of our use of unilateral sanctions very clearly shows that in the majority of cases they fail to change the conduct of the targeted country or, at best, are a contributory but probably not a decisive factor in securing the changes of behavior or policy that we seek. Sanctions take time to work. They may exact significant costs on other U.S. interests. So sanctions are not a panacea, they are not a "quick fix," and they are not cost-free.

Sanctions Must be Effective

Indeed, the first and primary principle which must guide our sanctions policy is whether sanctions will be effective in achieving their desired result of changing the targeted conduct. Used at the wrong time and in the wrong ways, sanctions can actually impede the attainment of our objectives and undermine U.S. policy objectives. My first direct contact with economic sanctions occurred when I served in the Carter White House with the ill-fated grain embargo against the Soviet Union following its brutal invasion of Afghanistan. The intent was laudable but because we did not have a monopoly on grain and failed to secure international agreement, the embargo did not achieve its goals and had significant costs to U.S. farmers and other American interests. That is too often the case. Unilateral sanctions impose significant costs and hardships on our farmers and businesses, frequently without commensurate effect on achieving our foreign policy goals. More than that, sanctions that are ineffective, that impose substantially more costs on U.S. interests than on the sanctioned country, that are unable to garner broader support even among our closest allies, do not send a message of U.S. resolve, or U.S. commitment. Rather they send a message of U.S. irrelevance. Sanctions that are easy to evade or avoid, that are imposed merely to "make a statement," may not only be pointless in achieving our objectives, but in the longer run debase and undermine the overall value of sanctions as a foreign policy tool.

Importance of Comity to Effectiveness

Most importantly, Mr. Chairman, our foreign policy is most effective when it reflects cooperation and consultation between the Administration and the Congress. The decision to apply economic sanctions -- or to lift or waive potential measures or those already in place -- should reflect a relationship of comity between the Executive and Legislative

branches. We must respect the particular role that each branch plays in making foreign policy.

The Congress shares with the Executive Branch the responsibility for helping shape our foreign policy. In the realm of economic measures, Congress has a clear role which we respect. At the same time, the President is responsible for conducting the nation's foreign policy and for dealing with foreign governments. Thus, sanctions legislation needs to take into account these respective responsibilities. Sanctions legislation should set forth broad objectives but should allow the flexibility to respond to a constantly changing and evolving situation and give the President the necessary authority to tailor specific U.S. actions to meet our foreign policy objectives. As Secretary Albright has said, there can be no "cookie-cutter," no "one size fits all" approach to sanctions policy.

Comity between branches of government is expressed in sanctions legislation through the inclusion of appropriate Presidential flexibility, including broad waiver authority. Congress speaks, but ultimately only the President can weigh all the foreign policy issues at stake at any given moment and tailor our response to a specific situation. Congress's power of the purse and of oversight are more-than-adequate tools with which to shape our foreign policy; but those powers should not be used to hobble the President's authority to act with discretion and alacrity. As a matter of general principle, legislation that empowers the President to impose economic sanctions should also empower him not to act and to waive or suspend measures already in place if it is in the national interest.

If our policies are to be effective, we must work together to see that our use of sanctions is appropriate, coherent, and designed to gain international support. There must be more structured, systematic discussions between the Executive Branch and Congress when sanctions are an option. The efforts of this Task Force and this hearing itself are, Mr. Chairman, a good example of the way our two branches of government should work together to design an effective and principled sanctions policy that can be truly effective in advancing our broad national interests.

Economic Sanctions not a Tool of First Resort

The second principle that should guide our discussion is that economic sanctions should not be a first resort in defending our interests. Our first line of action against other countries should be to aggressively pursue all available diplomatic options. Thus, engagement is generally the preferred strategy to influence behavior. China is a good example. Tiananmen Square sanctions still exist, reflecting our concerns over China's human rights record and other practices but by a more general engagement we have seen China's conduct in a variety of areas become closer to accepted international norms. Available options can range from the symbolic, like withdrawing an Ambassador or

reducing Embassy staff, to denying visas to specific figures, to the more formal such as entering into concerted action with like-minded countries. Economic sanctions should be resorted to only after other available options have been aggressively pursued and have failed or have been judged inadequate or inappropriate. We must keep in mind that the power of positive inducement is often more productive in achieving our goals. Actions such as rewarding desired behavior, providing aid and assistance, for example, in human rights training, in establishing modern legal systems, or other measures designed to help countries in transition to democracy, can be effective instruments in achieving our objectives.

Multilateral Sanctions are more Effective

Third, if diplomatic initiatives and positive inducements have failed to change the conduct of a foreign country which we believe is contrary to U.S. interests, sanctions become an option. Sanctions with broad multilateral support will be most effective. Multilateral sanctions maximize international pressure on the offending state. They show unity of international purpose. Because they are multilateral, these sanctions regimes are more difficult to evade or undermine. They minimize the damage to U.S. competitiveness and distribute more equitably the cost of sanctions across countries. We should make a maximum effort to develop a multilateral sanctions regime whenever such measures are considered, and should allow a reasonable period of time to develop an international consensus for such sanctions.

In today's interdependent, global economy, the ability of the United States to unilaterally deny key economic benefits to a target country is sharply limited. There are few products or services for which the United States is the sole supplier. Perhaps equally important, the world is increasingly multipolar with respect to political and security concerns as well, ultimately decreasing U.S. leverage on individual states. We can do a lot alone, and there will be times when we must act alone, but we can do a lot more with support from others.

We also need to recognize that unilateral measures, especially those that others charge are "extraterritorial," complicate our efforts to build multilateral support. These target not only the country whose conduct we wish to change but other countries, including our allies, which do business with the target country. The U.S. has traditionally opposed such sanctions when others have imposed them -- for example, legislation in 1977 punishing U.S. companies who abided by the Arab Boycott of Israel.

Multilateral support is important if economic and trade sanctions are to be a truly effective means for influencing the policies and behavior of other countries. Bosnia, Kosovo, Cyprus, Ireland, and the Middle East have clearly demonstrated that U.S. leadership on conflict resolution is

essential. We have the responsibility to lead and we will do so with all the tools at our disposal. But in the post Cold War world, we must also recognize that, although we are an essential and indispensable force for peace and stability, we alone are not sufficient to resolve the world's pressing problems.

Consultative mechanisms with countries that share our goals can be helpful on issues of critical concern. While such mechanisms do not guarantee results, the absence of such mechanisms can almost certainly guarantee that we will fail to garner multilateral support.

We must be prepared to act unilaterally

Fourth, if we are unsuccessful in building a multilateral regime, and important national interests or core values are at issue, we must be prepared to act unilaterally. We cannot permit other countries to veto our use of sanctions by their failure to act.

That said, our primary considerations in any application of unilateral sanctions must be whether they are effective; part of a coherent strategy to change behavior; contribute to rather than detract from our efforts to gain multilateral support for our policy objectives; and are consistent with our international obligations and humanitarian principles. We must balance gains against costs of imposing particular sanctions. Analysis must, of course, not be limited to economic interests, but take into account the full range of political and security interests, which may not be immediately apparent or which cannot be quantified, like the advancement of human rights. At the same time, we also need to remember that trade-related measures are not the only form of sanctions. We have a broad variety of other, sometimes even more effective measures available. These may include things such as denial of visas, opposition to participation in international sporting events, and visits of CODELs to focus attention on the problem.

A key measure of sanctions' effectiveness is their impact on the target. We must have some expectation they can be effectively implemented and enforced, that they will not cause more collateral damage than the wrong they are trying to remedy. Due consideration must be given to the potential adverse impact on vulnerable foreign populations. We must try, whenever possible, in any sanctions regime to target the sanctions directly on the offending country itself, or even better on the offending entities or individuals in that country, rather than on businesses in third countries.

I would now like to touch on the issue of state and local sanctions. We understand the concerns and frustrations that give rise to local sanctions measures. A number of governments around the world engage in conduct - such as the abuse of human rights in Burma - that rightfully stirs public indignation. But when our country does address

this type of conduct, it is important that our country speak with one voice. Scattered or inconsistent actions can leave the impression of a United States divided and, more importantly, can interfere with the pursuit of our overall foreign policy objectives. That is why we think it important that the federal and state governments coordinate closely on these types of issues. We want to develop a partnership with the states to work cooperatively on these issues. We have been making efforts recently to create just such a productive and cooperative relationship.

Measures by state and local governments or by the federal government must be consistent with our international obligations. Sanctions that our trading partners criticize as inconsistent with our legal obligations -- whether in the World Trade Organization or in bilateral treaties -- or as "extraterritorial" too often undermine our efforts to secure multilateral support, impact adversely on other multilateral goals, and provide grounds for others to question the good faith of the U.S. in undertaking international commitments. Rather than working together with our friends and allies to exert pressure on offending states to change their behavior, we end up spending time and energy resolving these disputes.

In sum, Mr. Chairman, if our policies are to be effective, we must work together--Administration, Congress, at the state and local level, as well as the business community, including NGOs--to see that our use of sanctions is appropriate, coherent, and designed to attract international support.

Recent Legislative Initiatives

In the last few months, the Congress has debated several bills dealing with sanctions issues. These range from dealing with broad sanctions reform, such as the Lugar/Hamilton/Crane Sanctions Reform Act and the Dodd Sanctions Rationalization Act of 1998, as well as Senator Glenn's proposal, to those seeking to utilize sanctions as a tool for securing some specific policy objective, such as the Wolf-Specter or the Nickles bills dealing with the important issue of religious freedom, the Iran Missile Proliferation Sanctions Act, and various pieces of legislation dealing with the situation in India and Pakistan.

We have sought to build on the many concepts in the legislation advanced by Senator Lugar and Congressmen Hamilton and Crane, as well as Senators Glenn, Dodd, Robb, Brownback, and others to craft a proposal which we believe, if adopted, could make a real contribution. We are convinced that, working together, we can make a real contribution to improving the way we use sanctions to pursue our foreign policy objectives.

Many of the ideas contained in the proposals they have advanced provide good examples of the kinds of effort we need to make to improve the dialogue between the Congress

and the Administration on sanctions issues. Sanctions policy-making should be conducted in a deliberate and thoughtful manner, taking into consideration all factors relevant to the sanctions decision. We applaud the leadership these Senators and Congressmen have demonstrated.

While our views, in some respects, are close to those in the Lugar/Crane/Hamilton(LCH) bill, we do have important differences with specific provisions of that bill, which have prevented the Administration from endorsing it. We believe that a sanctions reform proposal should reflect a common Administration and Congressional vision on sanctions policy, embodied in clear procedural and substantive guidelines for both branches of government. As currently drafted, the LCH bill would impose many binding and onerous constraints on Executive Branch discretion to conduct foreign policy and provide only limited flexibility. Although, at first glance, the bill appears to impose comparable constraints on congressional consideration of sanctions legislation, Congress's ability to amend the legislation, change its rules, or to pass future legislation that takes precedence over it, e.g. through "notwithstanding any other law" language, makes it less likely the bill would serve as a practical constraint on Congress. In short, the bill would impose more inflexible restrictions on the Executive Branch than on the Legislative Branch -- even though the sanctions explosion of the last several years has come largely from the Congress, not the President. As I alluded to earlier, according to one source, 59 of the 62 sanctions in the last five years came from Congress.

We would welcome an opportunity to continue to work closely with the Congress to craft a sanctions reform proposal that would establish meaningful guidelines for both the Administration and the Congress, as well as provide the President with the flexibility necessary to make any sanctions legislation effective, including discretion not to impose sanctions. As Senator Lugar himself noted in his "Dear Colleague" letter concerning this legislation, inflexibility built into an otherwise meritorious effort can frustrate the very goals the legislation seeks to achieve.

Because efforts to reform our sanctions policy should reflect a common Administration and Congressional vision, embodied in clear procedural and substantive guidelines for both branches of government, we particularly welcome this opportunity to share our ideas on sanctions reform with you.

The fundamental principle underlying our approach is one of symmetry between the two branches -- Congress, in short, should be no more prescriptive of the Executive Branch than it is of itself.

With this basic concept, I would like to share with you some initial thoughts on how this might be accomplished. I want to address five areas: (1) constraints on Congress; (2) enhanced waiver authority; (3) constraints on the President;

(4) guidelines for humanitarian assistance and (5) a statement on multilateral sanctions.

Congressional Constraints

Let me begin with constraints on congressional consideration of future unilateral economic sanctions legislation.

The LCH bill constrains congressional consideration of future sanctions legislation in a number of ways. It prescribes certain congressional procedures for consideration of future sanctions bills. These procedures specify that the appropriate congressional committee must produce a report that includes a statement whether the bill meets certain content criteria. The bill also requires reports by the President and the Secretary of Agriculture on a covered bill that is reported by a committee. Additionally, it provides that a motion to consider a bill on the floor shall not be in order unless the Congress has previously received those Executive Branch reports.

The Administration would like to build on but modify these ideas. We endorse the constructive idea that a Member could raise a point of order if certain procedural steps are not met before a sanctions bill is moved to the floor. But the trigger for raising a point of order in LCH is a mandatory Presidential report, and we think it is unrealistic and highly burdensome to expect a detailed Executive Branch report each time any sanctions bill is voted out of a committee. Thus, we suggest instead that sanctions reform legislation provide that a bill would not be in order to move to the floor unless there has been a report of the relevant committees explaining whether the bill meets the substantive criteria called for in LCH. The legislation could also provide that future unilateral economic sanctions legislation be considered a "federal private sector mandate," which would require that the Congressional Budget Office prepare a report assessing the impact of the bill on the U.S. economy and would trigger a point of order against a bill reported by Committee without the CBO report.

LCH would also impose certain substantive constraints on passage of future sanctions laws, including providing that future unilateral economic sanctions legislation should include a statement of objectives, a "sunset" clause (termination after two years), contract sanctity, a national interest waiver, be narrowly targeted, not include restrictions on the provision of food and medicine, and seek to minimize adverse humanitarian impact. We would support the inclusion of these kinds of provisions in new sanctions bills, with appropriate flexibility.

A key question is the scope of these constraints, that is, to what future legislation they would apply. We support the proposal in LCH that constraints on Congress would apply to future "unilateral economic sanctions" legislation. The

term is appropriately broadly defined, to apply to bills imposing both discretionary and mandatory sanctions, and to sanctions imposed for a wide range of reasons. We agree with the sponsors of the LCH bill that these provisions should not apply to trade legislation - but also believe they should not apply to labor-related or environmental legislation either.

The Congress, of course, will always retain the flexibility to depart from the LCH guidelines, because a subsequent, inconsistent sanctions law would take precedence -- through "notwithstanding any other law" language -- and because Congress can choose to change or disregard the procedural rules applicable to it. Nonetheless, we see these provisions as an important baseline for congressional consideration of sanctions legislation.

A national interest waiver applicable to existing and future sanctions laws

Certain existing sanctions laws contain inadequate or, in at least one case -- the Glenn Amendment -- no waiver authority. We believe that flexibility accompanied by appropriate national interest waiver authority in all legislation is the single most essential element if we want to make sanctions work.

We believe that the President should be authorized to refrain from imposing, or taking any action that would result in the imposition of, any unilateral economic sanction, and be authorized to suspend or terminate the application of such a sanction based on a national interest determination. Congress should have a role here. Thus, we could consider the inclusion of expedited procedures to allow Congress to pass legislation disapproving the President's decision within a certain number of days. We would support applying this waiver authority to all existing and future legislation.

A number of recent cases underscore the importance of providing the President with this type of flexibility so that he can decide how best to achieve U.S. objectives. But I think that the contrasting examples of the Glenn Amendment and the use or promise of waiver authority in the cases of ILSA and Helms-Burton underscore this point. Using the waiver authority in ILSA, we were able to achieve significant, enhanced cooperation on our Iran-related concerns with the European Union. Even though cooperation was already at a high level, the EU has further tightened its dual use control system with respect to Iran and other countries. We also made significant progress with Russia, which put into place for the first time the legal framework and detailed regulations for a "catch-all" export control system. We used Title III waiver authority in Helms-Burton to encourage the EU in late 1996 to condition any improvements in relations with Cuba on concrete changes in Cuba's human rights policies. Also, the prospect of an amendment to Title IV helped the EU to agree on May 18th of

this year to new disciplines on limiting investment in illegally expropriated properties worldwide, including in Cuba. This Understanding with the EU establishes for the first time multilateral disciplines among major capital exporting countries to inhibit and deter investment in properties which have been expropriated in violation of international law. In contrast, under Glenn, we have no discretion, no waiver authority, and no ability to lift sanctions absent legislation. This clearly complicates our ability to negotiate acceptable solutions with the Indians and Pakistanis - as the Senate has itself suggested with its recent actions.

These achievements in ILSA and Helms-Burton would not have been possible without appropriate waiver authority. We use waiver authority not as an excuse to avoid sanctions, but as an effective means of leverage to advance the purposes of the law.

During our informal consultations with staff, the question arose as to whether we should not consider a dual waiver standard. For example, legislation dealing with non-proliferation issues might be subject to a national security waiver, other legislation to a national interest waiver. This is an idea worthy of further consideration. I want to emphasize, however, that our very strongly held belief is that a broad national interest waiver applied to all sanctions legislation, is the most effective way to advance our foreign policy goals.

As I said earlier, Congress and the Executive Branch share responsibility for helping shape our foreign policy. Comity between branches of government is expressed in sanctions legislation through an indication of Congressional interest along with the inclusion of appropriate Presidential flexibility, including broad waiver authority. Congress speaks, but ultimately only the President can weigh all the foreign policy issues at stake at any given moment and tailor our response to a specific situation. Congress's power of the purse and of oversight are more-than-adequate tools with which to help shape our foreign policy.

Restrictions on Executive Branch imposition of future IEEPA sanctions and implementation of future sanctions legislation.

The LCH bill would also impose a number of specific procedural and substantive restrictions on Executive Branch imposition of new sanctions imposed under IEEPA and all future unilateral economic sanctions laws. We would propose instead that the President would be willing to issue an Executive Order that would set guidelines -- many of which are taken from the LCH proposal -- which would apply in two situations. First, they would apply to all future sanctions regimes under IEEPA. Second, they would apply to imposition of sanctions under future sanctions laws passed by Congress, where appropriate.

LCH would impose many inflexible restrictions on the President's imposition of sanctions, e.g., requiring him to announce and publish his intent to do so forty-five days in advance, and specifying that all future sanctions shall include, among other things, a cost benefit analysis, a contract sanctity provision, and a two year sunset clause. We support the general idea behind some constraints, but the simple fact of life is that there are instances when such requirements would prove unworkable and destroy the value of the sanctions as a foreign policy tool. For example, telegraphing in advance our intention to seize the assets of suspected terrorists, narcotics traffickers, major international criminals, or indeed for any foreign policy purpose would effectively rule out asset freezes as sanctions tool. Contract sanctity provisions may be similarly unworkable and counterproductive - for example, in dealing with front companies in the narcotics area - particularly when combined with the requirement for advance notice of intent to impose sanctions. They would encourage businesses to negotiate quick deals to get in under the wire and avoid the effect of sanctions. Sunset clauses tied to time rather than performance may also often not be appropriate. Many of the purposes for which we may impose sanctions - non-proliferation, to combat drug trafficking, to combat terrorism, to encourage greater respect for human rights -- are long term; they are simply not time bound. We should not give the targets of such sanctions the ability to wait us out.

What is the lesson? Flexibility is an absolute necessity. In these as in all cases, the President needs the flexibility to tailor our response most appropriately to the specific situation. LCH contains differing waiver standards for these restrictions, ranging from a national interest standard to a national emergency standard to an armed conflict standard, and specifies that some provisions would never be waivable. We need to modify such requirements to protect the President's flexibility.

With such enhanced flexibility, the President would be willing to sign an Executive Order that would include the following particular guidelines according to which the President should impose sanctions: a requirement to analyze costs and gains to all relevant U.S. interests; contract sanctity unless the President determines that it would detract from the effectiveness of the sanctions; a provision calling for an annual review of future Executive Branch sanctions under which the President must determine that the sanctions are meeting certain criteria in order for the sanctions to continue in effect; narrow targeting; appropriate exemptions to minimize adverse humanitarian impact; and prior consultations with Congress, wherever possible.

Exceptions for Food and Other Human Necessities

As a general principle, as the President has said on several occasions, the threat of starvation should not be a

tool of foreign policy, and restrictions on the commercial export of food, medicines and other human essentials should be excluded from economic sanctions regimes absent compelling circumstances. We were pleased to note the recent Senate action in the FY 99 Agriculture Export Relief Act of 1988 adopting such provisions. In many cases, such sanctions hit innocent civilian populations, who frequently have no say in the policies of their governments. To the extent possible, our sanctions should target the decision makers responsible for the objectionable behavior who will likely be unaffected by restrictions on the provision of food or medicine. In signing the Agricultural Relief Act which enabled U.S. farmers to sell 300,000 tons of wheat to Pakistan, the President urged the Congress to go further and provide waiver authority to exempt food from sanctions, whenever appropriate.

Of course, there will be cases where this general principle may not apply and unilateral restrictions on the commercial export of food and other human necessities may be necessary - e.g., with countries on the terrorism list. Legislation should include authority for the President to both impose or to waive or not impose such restrictions, based on his assessment of the national interest, to permit a balanced approach to sanctions on food and other human necessities.

At present, we have unilaterally prohibited the export of food and medicine to only five countries: North Korea, Iran, Libya, Sudan and Cuba. Given the situation in those countries and the threat they pose to U.S. interests and values, we do not at this time support lifting or modifying sanctions on any of them. Easing unilateral sanctions on food and other human essentials, however, could be an appropriate first step at the right time and done in the right way.

Multilateral Sanctions

Finally, we would propose that any sanctions reform legislation and an executive order include a clear statement that such guidelines apply only to unilateral economic sanctions. Such a statement would note our strong preference for multilateral sanctions and our view that sanctions imposed by the United Nations Security Council reflect a collective judgment that a situation is especially grave, warranting imposition of global sanctions that are not time limited and do not permit contract sanctity. By contrast, unilateral sanctions necessarily require a different structure, taking into account, for example, that the costs of implementing unilateral sanctions tend to fall disproportionately on U.S. interests. The statement could note that, for those reasons, our approach to unilateral economic sanctions does not bear on the imposition of multilateral sanctions. This is important because multilateral sanctions, for example, should not have some of the features, like sunset provisions, which may be applicable to our domestic, unilateral sanctions measures.

Opposition to Pending Bills

I would like to turn now to three pieces of legislation of particular concern: the Iran Missile Proliferation Act of 1997, the Wolf-Specter Freedom from Religious Persecution Act of 1998, and the Nickles Bill. As you know, the President vetoed the Iran Missile Proliferation Act, even though it passed both houses of Congress by a wide margin, because the bill's indiscriminate and inflexible provisions would undermine the credibility of U.S. nonproliferation policy without furthering U.S. nonproliferation objectives. Taken together, its flaws -- including in particular its unworkably low standard of evidence and disproportionate sanctions -- risk a proliferation of indiscriminate sanctioning worldwide. Although of global scope, the bill would have a particularly negative effect on our ability to work with Russia on issues of proliferation concern. Russia now has in place a catch-all export control regime, and its recent actions against a number of Russian exporters underscores its increasing willingness to enforce its new regime. These laws have been followed by legal action against entities which we believe have been exporting products which can be used in WMD programs of countries on the terrorism list.

Similarly although we strongly support the goals of the Wolf-Specter Bill, the President's senior advisors have also said that they would recommend a veto if it were passed in its current form, because it would require automatic imposition of sanctions, create a confusing bureaucratic structure, and establish an inappropriate hierarchy of human rights violations in U.S. law. We believe that enactment of the bill would undermine many of our important foreign policy interests, including ultimately the bill's own goal of helping those who face religious persecution.

The Senate is currently considering another bill dealing with religious persecution -- the Nickles Bill. In his testimony before the Committee on May 12, 1998, Assistant Secretary Shattuck laid out our principle concerns with that bill. As currently drafted the bill would require the President publicly to single out certain individual countries which are then subject to automatic sanctions. Although public condemnation may be appropriate and useful in some cases, in many other cases it may be counterproductive and actually impede the attainment of our common goal. In many cases, it would also make it more difficult for us to work together with other like-minded countries to support religious freedom.

We believe that the same focus on religious freedom, which is already a high priority for this Administration, could be achieved through submission of a single annual report covering all those countries covered in the current annual human rights report. Such a report would provide the Congress with information on the status of religious freedom in every country of concern and provide a detailed listing

of the steps the Administration has taken to advance religious freedom. This would give Congress the opportunity to suggest alternatives or criticize where appropriate. We do not believe that it is useful or productive, however, to be forced to publicly stigmatize countries worldwide on an annual basis.

We are also concerned, Mr. Chairman, with the bill's narrow waiver authority - advancing the purposes of the act or national security interest of the United States. We believe that such a standard would unduly limit the President's ability to weigh a wide range of other important national interests in addition to our security concerns and decide in each specific case how best to proceed. As a general principle, we believe that all sanctions legislation should contain national interest waiver authority to give the President the flexibility to tailor our response to specific situations, taking into account all our national interests.

The bill also requires a massive increase in our reporting requirements on religious freedom issues without providing additional resources. These reports are staff intensive and could obligate the Secretary to cut back on or eliminate other human rights efforts to provide for these unfunded mandates. The ultimate effect could be a reduction of the staff available to work on other important human rights initiatives, including those that promote religious freedom.

Conclusion

By working together, respectful of each other's duties and responsibilities in the foreign policy area, we believe we can develop a bipartisan consensus on economic sanctions as a foreign policy tool. This will make us more careful in our use of sanctions, ever mindful of the costs as well as the gains, and will make those sanctions we do employ more effective in accomplishing our national goals.

The CHAIRMAN. Thank you, Secretary Eizenstat. Do you consider conditions on foreign assistance programs sanctions?

Mr. EIZENSTAT. Yes, sir, in general, we do. We think that the kind of broad definition that is in the Lugar bill is most appropriate and that the denial of benefits such as U.S. support in international financial institutions or USAID does constitute a sanction.

The CHAIRMAN. Does it necessarily follow, then, that it is your view that foreign aid is an entitlement that can't be conditioned?

Mr. EIZENSTAT. No, we don't suggest that a sanction has to be something other than—or that it has to be an entitlement at all.

The CHAIRMAN. No, no, that foreign aid is an entitlement.

Mr. EIZENSTAT. No. I understand. Of course, it is not; neither, in a sense, is access to our market. But we think that sanctions are best defined as the application of economic pressure to achieve foreign policy objectives. And if economic pressure is used by saying that we can't vote in an international financial institution for aid or that our foreign aid is to be withdrawn or that market access is to be withdrawn, or whatever, that that is, in fact, a sanction. Again, we certainly would be willing to work with you on the definitions.

The CHAIRMAN. You indicated you were recommending statutory changes for congressional procedures regarding sanctions, but that the administration's procedures would be carried out by Presidential directives or executive orders. Are you open to discussion that we proceed in tandem on both of those, with both these branches?

Mr. EIZENSTAT. Yes, sir, we are. One of the concerns we had was the mandatory language in some of the proposals that are out there now, the "shall" language, "the President shall do certain things." And here again, we get to the issue of symmetry. We know that as a legislative body, Congress can only do so much to limit itself. It can prescribe rules, it can prescribe points of order, but it can always in the next bill avoid those by a "notwithstanding any other measure in law" provision.

If that is the case with respect to the Congress, the President also needs to have some flexibility and he can't be more bound in the executive branch. But the short answer to your question is yes, we are willing to proceed in tandem and to make these as symmetrical as humanly possible.

The CHAIRMAN. You indicated in your statement you favored excluding current labor or environmental regulations or law from the sanctions review process. This would mean that the rules that have kept, for example, OPIC out of Korea until recently or the Ex-Im Bank out of major projects in China would remain fixed in place as we engage in a comprehensive overhaul of all the other sanctions?

Mr. EIZENSTAT. Our general feeling is that issues like tuna-dolphin, shrimp-sea turtle, GS pre-treatment, are not what we would consider national security or directly foreign policy issues. They have clearly a foreign policy impact. We also think that in terms of passing a piece of legislation that the practical burdens that including this might impose on the Congress and executive branch might outweigh the benefit of doing so.

The CHAIRMAN. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Secretary, I assume—you didn't state it in your remarks—that you would be opposed to state and local sanctions.

Mr. EIZENSTAT. Senator, this legislation doesn't include—that is, the Lugar legislation doesn't include it. Our proposal did not as well. We think that, again, in some respects, Chairman McConnell, this is similar to the question you asked. If we start to get into the issue of State and local sanctions, we are dealing with a whole different kettle of fish.

It is a problem. We have worked very assiduously with state and local governments to try to avoid conflicts with Federal policy. We have a situation right now with the Massachusetts sanctions on Burma. We had threatened sanctions on Switzerland, and so forth. We think that that is best worked out cooperatively in our Federal system rather than to try to legislate it. It would be very difficult, Senator Baucus, to try to legislate state and local sanctions.

Senator BAUCUS. Next, you mentioned potential congressional constraints; for example, points of order and potential points of order; for example, whether the bill meets certain criteria, and also whether the Congressional Budget Office has issued a report on the bill's impact on the economy. And there are some provisions, I think, in Senator Lugar's bill.

What kinds of points of order do you think make sense and which do not, that is among those that have been discussed, and why?

Mr. EIZENSTAT. Well, again, here we are little leery of trying to be overly prescriptive for the legislative branch in the same way we hope you will not be overly prescriptive of the executive. But our feeling was that the current proposals dealing with points of order did not really provide the kind of assurance that legislation which failed to follow, for example, the Lugar criteria would be kept off the floor.

And so our suggestion was that committees would have to include the requirements that the Lugar legislation has—for example, contract sanctity, sunset provisions, cost/gain analyses and the like—and that if they did not, they would be subject to a point of order with—you know your rules far better than I do—with what is necessary to overturn a point of order.

Likewise, and we think even more effective, would be requiring the Congressional Budget Office to prepare a report on the impacts under the concept of the private sector mandate. That way, when Congress was preparing something for the floor, the members of the Senate and the House would have before them a CBO analysis of what impact the proposed sanction would have, whether it was likely to be effective, what costs it would impose, are other countries likely to join, is this simply going to mean the loss of business, and the like. And that CBO report, if it was not included, would also make the legislation subject to a point of order.

Senator BAUCUS. One other area, if I have the time, is national interest, say, versus national security, and you have spent a lot of time talking about national interest and the reasons why that gives the administration appropriate flexibility because, obviously, you know, no one can predict the future with a clear crystal ball.

Could you give us some examples of what the national interest—what are the standards, what are the criteria for national interest, and I assume by not mentioning why national security would not be the appropriate standard for flexibility?

Mr. EIZENSTAT. Thank you. We had the opportunity, Senator Baucus and Senator McConnell and other Senators, of meeting with your staff a few weeks ago in preparation for this hearing and we went through this question. And one of the staff asked—Robin Cleveland—the question of whether we would be willing to consider a different waiver standard, like national security, for certain types of sanction legislation like non-proliferation legislation.

What we said was that our general view is that the national interest—and I am going to answer your question very specifically in a second—that national interest is a broader standard. It is a more flexible standard. It is, if I may say so, Senator Lugar, the standard that you have used as your guideline. However, with respect to non-proliferation sanctions legislation, we are willing to consider a potentially different standard, like national security.

Now, what do we mean by national interest? It will depend on the particular circumstance. Permit me to give you a concrete example of the national interest standard that we used in the 9(c) waiver under the Iran and Libya Sanctions Act on the Total investment in Iran. We took into account, and we enumerated to the Congress so you knew transparently what we considered, the following factors: that if we had sanctions, it would be contrary to the national interest; that it would have been more difficult to get the cooperation of the European Union and Russia in negotiating export controls on dual-use products to Iran; that it would have complicated Russia's ratification of the START II treaty; that it would have made it more difficult for us to continue cooperation with the European Union and with Europe in a number of other areas like Bosnia, Kosovo, and the like; that it would have invited more Russian vetoes in the Security Council in areas that were critical to us. A Malaysian company was also part of this. It would have complicated Malaysia's economic situation during this financial crisis if we are perceived as sanctioning one of their major companies.

Now, what we are suggesting is that—and, again, we have tried to be as accommodating as we can to the notion that both branches have a genuine say-so. And, Senator Glenn, this is something that we discussed with you as well, that there should be some enhanced role for the Congress if the President has this kind of national interest waiver authority. For example, there would be an expedited procedure to disapprove that within a prescribed period of time so you know you are going to vote on it. It does hold our feet to the fire.

There does have to be, we think, under Chaddha, a Presidential veto. But nevertheless it would give you the opportunity of acting promptly, and we would know that you had the opportunity of acting promptly before we issued any waiver.

The CHAIRMAN. Senator Kyl?

**STATEMENT OF HON. JON KYL, U.S. SENATOR FROM THE
STATE OF ARIZONA**

Senator KYL. Thank you, Mr. Chairman. First, let me thank you for holding this hearing and say that I subscribe to virtually everything you said in your excellent opening statement.

Mr. Secretary, let me ask a related question to Senator Baucus' last question. Do you include under a definition of sanctions a listing of covered exports or countries on munitions lists or similar limits on arms or dual-use technology exports?

Mr. EIZENSTAT. We would, yes.

Senator KYL. As you know, on August 20th President Clinton signed an executive order freezing any U.S. assets owned by Usama Bin Laden, two of his senior lieutenants, and the Islamic organization. It also prohibits U.S. firms and individuals from doing business with them.

According to proponents of the Sanctions Policy Reform Act, the executive order issued by the President on August 20th would be considered a sanction, and certainly under the definition to which you subscribe. As such, the President would have to, one, provide a 45-day notice before implementing the executive order; two, terminate the executive order within two years automatically; three, provide for contract sanctity in the event Bin Laden, his lieutenants or the Islamic organization had any contracts in the United States; four, submit reports to Congress prior to implementing the order; and, five, await reports from the Secretary of Agriculture before allowing the order to take effect.

Although the President would have limited authority to waive some of these requirements, that authority would expire within 60 days. Does it make sense to you that the President should have to undertake any of these steps prior to imposing a sanction?

Mr. EIZENSTAT. The answer is no, and that is precisely—Senator Kyl, you have said it, frankly, better than I could have said it in three times as many words. This is exactly the kind of situation in which you need to have Presidential flexibility. You don't want to be bound to give advance notice, nor do you want to have to go through hoops of saying, well, this is one of those where there would be a national security exemption and you wouldn't have to do it. That is, again, exactly the kind of situation where you don't want the advance notice and where the kind of flexibility we are proposing would be most appropriate.

Senator KYL. Thank you. As you know, some organizations representing the business community, such as USA Engage and the National Association of Manufacturers, have published papers listing the instances in which the United States has imposed sanctions over the years. This is the catalog from NAM, for example.

One often quoted statistic is that during President Clinton's first term in office, from 1993 to 1996, the United States imposed sanctions 61 times. Of these 61 measures defined as sanctions, two-thirds were imposed through executive orders issued by the President. In your view, has the administration used sanctions too frequently or abused the broad powers given to the President under IEEPA to issue executive orders?

Mr. EIZENSTAT. No, sir. Our count, it might surprise you to know, is a very different one. We believe that in only 3 of the 62 unilat-

eral economic sanctions regimes imposed since 1993 has the President acted on his own using his own discretion. The others have been done pursuant to mandatory statutes. Those three under IEEPA were tightening the U.S. embargo on Iran in 1995, comprehensive embargo sanctions on Sudan in November of 1997, and then sanctions authority on Burma, particularly investments in certain oil and gas, in May of 1997.

Senator KYL. Mr. Chairman, I would ask unanimous consent that the National Association of Manufacturers Catalog of New U.S. Unilateral Economic Sanctions for Foreign Policy Purposes be included in the record, a catalog which does, in fact, if you count them up, demonstrate that over two-thirds of the sanctions imposed were imposed by the administration, not by the Congress.

The CHAIRMAN. It will be included in the record.

[The information referred to follows:]

**Annex: Unilateral Economic Sanctions Bills Before the 105th Congress
and Executive Actions**

Bill or Executive Action	Target Country	Description	Status
H.R. 87. Unnamed. January 7, 1997.	China	Instructs U.S. directors of international financial institutions to vote against loans to China unless the President certifies that China respects internationally recognized human rights, among other sanctions.	Referred to the House Committee on Banking and Financial Services on 01/07/97. Referred to the Subcommittee on Domestic and International Monetary Policy on 02/14/97.
H.R. 320. Chinese Slave Labor Act. January 7, 1997.	China	Prohibits importation from China of articles made with forced labor.	Referred to the House Committee on Ways and Means on 01/07/97. Referred to the Subcommittee on Trade on 01/14/97.
H.R. 331. Freedom and Self-Determination for the Former Soviet Union Act. January 7, 1997.	Russia	Prohibits foreign assistance to Russia, and instructs U.S. directors of international financial institutions to vote against loans, unless Russia satisfies certain requirements relating to Russia's relations with its neighbors, arms control and economic reform.	Referred to the Committee on International Relations on 01/07/97. Referred to the Subcommittee on Domestic and International Monetary Policy on 02/14/97.
S. 141. Foreign Aid Reform Act of 1997. January 21, 1997.	Any country that did not cast its United Nations vote in agreement with the U.S. at least 50 percent of the time.	Prohibits economic assistance and bars Export-Import Bank and Overseas Private Investment Corporation (OPIC) support.	Referred to the Committee on Foreign Relations on 01/21/97.
H.R. 748. Prohibition On Financial Transactions With Countries Supporting Terrorism Act of 1997. February 13, 1997.	Syria	Effectively adds Syria to list of countries with which all U.S. financial transactions are prohibited by removing exceptions provided in regulations issued by the Secretary of Treasury.	Measure passed House on 07/08/97. Placed on calendar in Senate on 07/23/97.
H.R. 958. Unnamed. March 5, 1997.	Mexico	Prohibits United States assistance to Mexico unless Mexico meets certain narcotics control requirements. Instructs U.S. directors of multilateral development banks to vote against loans to Mexico.	Referred to the Committee on International Relations on 03/05/97. Referred to the Subcommittee on Domestic and International Monetary Policy on 03/14/97.
H.R. 1328. Child Labor Deterrence Act of 1997. April 13, 1997.	Any country that exports goods to the U.S. produced by child labor.	Prohibits the importation of goods produced abroad with "child labor," defined as an individual less than either 14 or 15 years of age, depending on the national laws of the target country.	Referred to the Committee on International Relations, and in addition to the Committee on Ways and Means, on 04/15/97. Referred to the Subcommittee on International Economic Policy and Trade on 04/29/97.
H.R. 1685. Freedom From Religious Persecution of 1997. May 20, 1997.	General applicability (Cuba, Laos, China, North Korea, Sudan, and Vietnam explicitly mentioned); Sudan	Establishes an Office of Religious Persecution Monitoring in the State Department, provides for the imposition of sanctions, including a ban on Export-Import bank financing and instructions to vote against loans in international financial institutions, against countries engaged in a pattern of religious persecution as determined by the director of the office; prohibits financial transactions with Sudan, bars imports from Sudan and prohibits U.S. computer exports and new investment.	Referred to the Committee on International Relations, and in addition to the Committees on Ways and Means, the Judiciary, Banking and Financial Services, and Rules, on 05/20/97. Referred to the Subcommittee on Domestic and International Monetary Policy on 06/17/97.

Bill or Executive Action	Target Country	Description	Status
S. 804. War Crimes Prosecution Facilitation Act of 1997. May 23, 1997.	Croatia, Yugoslavia	Restricts economic assistance, including instructions to vote against loans in the international financial institutions, for countries providing sanctuary to indicted war criminals or countries that exercise "effective control" (i.e. Croatia and Yugoslavia) of areas in Bosnia-Herzegovina where alleged war criminals are still at large.	Referred to the Committee on Foreign Relations on 05/23/97.
S. 810. China Sanctions and Human Rights Advancement Act. May 23, 1997.	China	Denies U.S. entry to certain government officials; instructs U.S. directors of international financial institutions to vote against loans and to oppose modification of the single country loan limit; requires an annual report on human rights practices; requires publication of a list of companies owned by the People's Liberation Army; provides training for immigration officers regarding religious persecution and provides aid for democracy promotion.	Referred to the Committee on Foreign Relations on 05/23/97.
H.R. 1786. Nigeria Democracy Act. June 4, 1997.	Nigeria	Bars U.S. assistance; instructs U.S. director of international financial institutions to vote against any loan; prohibits air transportation; bars the sale or financing of defense articles; bars Export-Import Bank or Overseas Private Investment Corporation (OPIC) support; bars new investment and freezes Nigerian assets in U.S.	Referred to the Committee on International Relations, and in addition to the Committees on Banking and Financial Services, Transportation and Infrastructure, and the Judiciary, on 06/04/97. Referred to the Subcommittee on Domestic and International Monetary Policy on 06/27/97.
S. 873. Prohibition On Financial Transactions With Countries Supporting Terrorism Act of 1997. June 10, 1997.	Syria	Effectively adds Syria to countries with which all U.S. financial transactions are prohibited by removing exceptions provided in regulations issued by the Secretary of Treasury	Referred to the Committee on Judiciary on 06/10/97.
H.R. 2011. China Sanctions and Human Rights Advancement Act. June 23, 1997.	China	Denies entry into U.S. of certain government officials; imposes restrictions on multilateral development bank assistance; and bars imports of products made by Poly or Norinco.	Referred to the Committee on International Relations, and in addition to the Committees on Banking and Financial Services, Ways and Means, and the Judiciary in House on 06/23/97. Referred to the Subcommittee on Domestic and International Monetary Policy in House on 07/14/97.
H.R. 2085. Unnamed. June 26, 1997.	China	Export-Import Bank financing for exports to China conditioned on adherence to a corporate code of conduct.	Referred to the House Committee on Banking and Financial Services on 06/26/97. Referred to the Subcommittee on Domestic and International Monetary Policy in House on 07/14/97.
H.R. 2121. War Crimes Prosecution Facilitation Act of 1997. July 9, 1997.	Croatia, Yugoslavia	Restricts economic assistance; instructions to vote against loans in the international financial institutions, for countries providing sanctuary to indicted war criminals or that exercise "effective control" (i.e. Croatia and Yugoslavia) of areas in Bosnia-Herzegovina where alleged war criminals are still at large.	Referred to the Committee on International Relations, and in addition to the Committee on Banking and Financial Services in House on 07/09/97. Referred to the Subcommittee on Domestic and International Monetary Policy in House on 07/30/97.

Bill or Executive Action	Target Country	Description	Status
H.R. 2188. Unnamed. July 17, 1997.	China	Prohibits most-favored-nation (MFN) treatment to goods that are produced, manufactured or exported by the People's Liberation Army or a Communist Chinese military company.	Referred to the Committee on Ways and Means, and in addition to the Committees on International Relations, National Security, and Banking and Financial Services in House on 07/17/97. Referred to the Subcommittee on Domestic and International Monetary Policy in House on 07/30/97.
H.R. 2196. Communist China Subsidy Reduction Act of 1997. July 17, 1997.	China	The Secretary of the Treasury is required to reduce the amount that would otherwise be paid by the United States to an international financial institution by an amount equal the United States portion of any "subsidy" (whether direct or indirect, or in the form of loans, cash, or in-kind assistance) provided by the institution.	Referred to the House Committee on Banking and Financial Services in House on 07/17/97. Referred to the Subcommittee on Domestic and International Monetary Policy on 07/30/97.
S. 1083. United States-People's Republic of China National Security and Freedom Protection Act of 1997. July 29, 1997.	China	Bans the importation of any product made by the People's Liberation Army, and prohibits the sale of any debt on the U.S. bond market which benefits the People's Liberation Army or a Communist Chinese military company; renegotiation of the Memorandum of Understanding on the use of forced labor.	Referred to the Committee on Foreign Relations in House on 07/29/97.
H.R. 2296. Unnamed. July 30, 1997.	Costa Rica, El Salvador, Guatemala, Nicaragua, Panama and 18 island nations of the Caribbean	Withholds assistance to any CBI country that uses its voice or vote in CARICOM or CACM to support membership for Cuba and prohibits provision of tariff treatment equivalent to a NAFTA country.	Referred to the Committee on International Relations, and in addition to the Committee on Ways and Means in House on 07/30/97.
H.R. 2345. Latin America Security Promotion Act. July 31, 1997.	General applicability (43 Latin American countries listed).	Prohibits the sale, lease, or other transfer of attack, bomber, or fighter aircraft to Latin American countries.	Referred to the House Committee on International Relations.
H.R. 2431 Freedom From Religious persecution Act of 1997. September 8, 1997.	General applicability (China, Iran, Turkey explicitly mentioned); Sudan	Requires the Director to report to specified congressional committees on countries and entities engaged in religious persecution, identifying the category of persecution and listing persecution facilitating products. Prohibits: (1) Federal agencies and U.S. persons from exporting goods, including religious persecution facilitating products, to countries and responsible entities engaged in religious persecution; and (2) U.S. assistance to such countries. Requires the U.S. Executive Director of each multilateral development bank and of the International Monetary Fund to oppose multilateral assistance to such countries.	Passed by the House. 05/14/98.

Bill or Executive Action	Target Country	Description	Status
S. 1164. China Policy Act of 1997. September 11, 1997.	China	Prohibits the Secretary of State (except in the case of a presidential waiver in the U.S. national interest) from issuing any visa to, and the Attorney General from admitting to the United States, certain high-ranking officials of the Chinese Government who have been involved in limiting the free exercise of religion and other human rights in China. Requires votes by the appropriate U.S. Executive Directors to deny multilateral assistance by international development banks. Directs the President to: (1) prohibit the importation into the United States of products (with specified exceptions) produced by any affiliate of the People's Liberation Army (PLA), the China Poly Group (also known as Polytechnologies Incorporated or BAOJLI), and the China North Industries Group (Norinco); (2) direct the Secretary of State and the Attorney General to deny or impose restrictions on the entry into the United States of foreign nationals employed by such entities; (3) prohibit the issuance of licenses for U.S. Munitions List exports to such nationals or entities; (4) prohibit the export of controlled goods or technology to them; (5) direct the Export-Import Bank of the United States not to approve the issuance of credit to them; (6) prohibit U.S. nationals from issuing guarantees for loans or investments, or extending credit, to them; and (7) prohibit U.S. agencies and U.S. nationals from entering into any contract with such nationals or entities for the procurement of goods or services.	Committee on Foreign Relations Hearings held on 09/19/97.
S. 1200. International Anti-Corruption Act of 1997. September 19, 1998.	General applicability	Instructs the U.S. to vote against loans from international financial institutions to countries certified as not conducive or "hostile" to U.S. business.	Referred to the Committee on Foreign Relations. 09/19/97.
H.R. 2605. Communist China Subsidy Reduction Act of 1997. October 2, 1997.	China	Requires the U.S. to oppose the making of concessional loans by international financial institutions to any entity in China.	Passed the House of Representatives. 11/06/97.
H.R. 2677/2678. International Child Labor Elimination Act of 1997. October 21, 1997.	General applicability (countries that employ child labor)	Requires the Treasury Department to prohibit the entry of any manufactured article from countries and industries that use child labor; shuts down the Export-Import Bank, OPIC, and instructs the U.S. to vote against loans from international financial institutions; imposes criminal and civil penalties.	Referred to the Committee on International Relations, and in addition to the Committees on Ways and Means, and Banking and Financial Services. 10/21/97.
S. 1311 Iran Missile Proliferation Sanctions Act of 1997. October 23, 1997.	Entities in Russia	Bans Ex-Im and OPIC financing in any transaction involving an entity that has transferred items contributing to Iran's efforts to develop ballistic missiles.	Referred to Committee on Foreign Relations on October 23, 1997.
H.R. 2709. Iran Missile Sanctions Proliferation Act of 1997. October 23, 1997.	Foreign persons who transfer items contributing to Iran's to production of ballistic missiles (Russia)	Requires imposition on such persons of minimum two-year sanctions prohibiting: (1) sales to such persons of items on the United States Munitions List (and terminating sales of any controlled U.S. arms); (2) the export to such persons of dual use goods and technology; and (3) the provision of U.S. financial assistance, including Ex-Im and OPIC.	Passed the House of Representatives. 11/12/97. Passed the Senate. 5/22/98.
Executive Order 13067. November 3, 1997	Sudan	Comprehensive trade embargo.	Awaiting implementing rules and regulations.
H.R. 2930. Iran Missile Proliferation Sanctions Act of 1997. November 8, 1997.	Foreign persons who transfer items contributing to Iran's to produce ballistic missiles (Russia)	Requires imposition on such persons of minimum two-year sanctions prohibiting: (1) sales to such persons of items on the United States Munitions List (and terminating sales of any controlled U.S. arms); (2) the export to such persons of dual use goods and technology; and (3) the provision of U.S. financial assistance, including Ex-Im and OPIC.	Referred to the House Committee on International Relations. 11/08/97.

Bill or Executive Action	Target Country	Description	Status
H.R. 2983. Caucasus Peace and Stability Act of 1997. November 9, 1997.	Azerbaijan	Bars U.S. from operating, investing or trading in goods or services from Azerbaijan; bars issuance of licenses for any dual use goods or services; requires the U.S. to vote against loans from international financial institutions.	Referred to the Committee on International Relations, and in addition to the Committee on Banking and Financial Services. 11/09/97.
H.R. 3023. Unnamed. November 9, 1997.	Generic applicability (any entity transferring items or technologies contributing to weapons proliferation)	Bars Ex-Im and OPIC participation in any transaction involving cited entities; bars issuance of export licenses to cited entities.	Referred to the Committee on Intelligence (Permanent Select), and in addition to the Committees on Banking and Financial Services, and International Relations. 11/09/97.
H.R. 3105. Unnamed. January 27, 1998.	Vietnam	Bars the President from waiving the prohibition on Ex-Im and OPIC financing in Vietnam.	Referred the Committee on International Relations and the Committee on Banking and Financial Services. 01/27/98.
H.R. 3158/3159. Unnamed. February 4, 1998.	Vietnam	Prohibits the President from waiving non-discriminatory trade treatment and lifting Ex-Im and OPIC financing for Vietnam.	Referred to the Committee on International Relations and the Committee on Banking and Financial Services and the Committee on Ways and Means. 02/04/98.
S. 1868. International Religious Freedom Act of 1998. March 26, 1998.	General applicability (governments engaged in a consistent pattern of gross violations of religious freedom, or tolerating religious persecution)	Requires the President to impose one or more of a menu of 16 possible sanctions against offending governments, including a ban on the issuance of specific licenses to export any goods or technology, a ban on loans, and shutting down Ex-Im, OPIC and TDA.	Referred to the Committee on Foreign Relations. 03/26/98.
H.R. 3616 National Defense Authorization Act FY 1999. April 1, 1998.	China	Approval of an amendment to place U.S. satellites on the U.S. Munitions List and make their export subject to licensing requirements established by the Arms Export Control Act.	Bill and amendment approved by the House. 05/21/98.
H.R. 3806. Freedom From Religious Persecution Act of 998. May 7, 1998.	General applicability (China, Iran, Turkey and Sudan explicitly mentioned)	Requires the Director of the Office of Religious Persecution Monitoring to report to specified congressional committees on countries and entities engaged in religious persecution, identifying the category of persecution and listing persecution facilitating products. Prohibits: (1) Federal agencies and U.S. persons from exporting goods, including religious persecution facilitating products, to countries and responsible entities engaged in religious persecution; and (2) U.S. assistance to such countries. Requires the U.S. Executive Director of each multilateral development bank and of the International Monetary Fund to oppose multilateral assistance to such countries.	Referred to the Committee on International Relations, and in addition to the Committees on the Judiciary, Banking and Financial Services. 05/07/98.
Presidential Determination No. 98-22. Sanctions Against India for Detonation of a Nuclear Device. May 13, 1998.	India	Shuts down Ex-Im, OPIC and TDA; terminates sales of defense articles, services or design and construction services; prohibits U.S. banks from making loans to the government of India; prohibits export of specific goods and technology.	Awaiting implementing regulations.
H.R. 3886. Unnamed. May 14, 1998.	China	Prohibits the export of missile equipment and technology to China until China satisfies certain conditions.	Referred to the Committee on International Relations on May 14, 1998.
Presidential Determination No. 98-25. Sanctions Against Pakistan for Detonation of a Nuclear Device. May 30, 1998.	Pakistan	Shuts down Ex-Im, OPIC and TDA; terminates sales of defense articles, services or design and construction services; prohibits U.S. banks from making loans to the government of Pakistan; prohibits export of specific goods and technology.	Awaiting implementing regulations.

Mr. EIZENSTAT. May I also say, Senator Kyl, that some have been multilateral, for example, against UNITA, and then done by executive order. So, in other words, if you actually look at the number of executive orders, there will be a number of executive orders, including those done multilaterally.

And may I also suggest we really don't want to get into an arithmetical argument. I didn't come up here to point the finger at the Congress; I genuinely did not.

Senator KYL. I appreciate that, Mr. Secretary. In your opening statement, however, you catalogued a much different definition.

Mr. EIZENSTAT. I understand.

Senator KYL. And I felt it important to put on the record a definition, which incidentally does relate to unilateral sanctions, not multilateral sanctions.

Mr. EIZENSTAT. But, again, permit me to say that what I am proposing is that we also bind ourselves in ways similar to what we would suggest you bind yourself to do.

Senator KYL. Mr. Chairman, since my time is just about expired, let me make the point—it is reflected in the first question that I asked you—that I agree with you that we have got to be flexible in both congressional and executive branch sanctions, which is one of the reasons that I differed somewhat with my colleague, Senator Lugar, in the listing of requirements that would not be very flexible under his legislation.

And I also agree with you that it is important not to get into some arithmetical debate about how many were imposed by the administration and how many were imposed by Congress. But I did want to make it clear that the statement in your record, at least in the view of some, would leave an inaccurate impression that it is always the Congress and very rarely the administration that imposes sanctions. To me, it doesn't matter. There are appropriate circumstances where both need to impose sanctions, and we also need to invoke some reforms.

The CHAIRMAN. Thank you, Senator Kyl.

Senator Lieberman?

**STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR
FROM THE STATE OF CONNECTICUT**

Senator LIEBERMAN. Thanks, Mr. Chairman. Thanks for convening the hearing.

Mr. Secretary, thanks for being here and for giving this complicated subject all the thought you have. I appreciate very much one of the first paragraphs in the statement that you submitted for the record today, and I will just read it briefly. "We believe that, properly designed and implemented as part of a coherent strategy, sanctions, including economic sanctions, are a valuable tool for advancing American interest and defending U.S. values. Used in an appropriate way and under appropriate circumstances, sanctions can further important U.S. policy goals."

I appreciate that statement very much on behalf of the administration because though Senator Lugar's legislation certainly does not end sanctions, but creates a thoughtful process for their application and implementation, there are some who speak in entirely critical terms about sanctions. In fact, your own diplomatic and ne-

gotiating skills have shown us in at least two cases, ILSA and Helms-Burton, the way in which a tough statement of policy by Congress, linked with sanctions, have created, for want of a better term, what law enforcement people here at home call a good cop-bad cop strategy. We essentially gave you a club and you used it to negotiate to achieve the outcomes that I don't think would have occurred had you not had the club.

Mr. EIZENSTAT. Also, if I may say so, Senator Lieberman, would not have occurred if you hadn't given us the waiver authority as well.

Senator LIEBERMAN. Absolutely. Without a waiver, there would have been a club, but it would have been one that you would have had to swing because you would not have been able to lower it after you held it up in the air. So I appreciate that.

You in your opening statement correctly say that the fear is in recent years that we have turned with too much frequency to unilateral economic sanctions which were essentially non-discretionary. And I think that is the spirit in which this Task Force has gone forward and I appreciate the administration coming to the table with that in mind as well. We may be using sanctions too often; probably, we are, particularly if they are non-discretionary. But there are a whole host of circumstances in which they have worked, not always, but they have worked in a lot of cases to advance American values and protect our interests, and I appreciate the extent to which you have indicated that in your statement.

We hear a lot of talk about the costs of sanctions, and again I thank you for talking about not costs and benefits, but costs and gains. How do we, as we go forward as a matter of policy, administration and legislative, try to quantify even the costs, which may be easier to quantify than gains are? Does the Department, for instance, or the administration have figures that quantify the potential costs of some of the sanctions that have been passed by Congress?

Mr. EIZENSTAT. I would say—and here I am being quite self-critical—I think that we are not in any sense perfect in this area and that we need to do a better job ourselves of quantifying costs and gains. We do try to make some assessment of effectiveness, but I think we can do more. We have created a new sanctions team under my direction at State and our effort is, in fact, to try to do a better job of analyzing both costs and gains because at the end of the road the real question is are sanctions effective? Effectiveness is the litmus test.

Senator LIEBERMAN. Right.

Mr. EIZENSTAT. If they are not going to be effective, they make us look weak, not strong. We end up using a pop gun against a country, which then ignores it and walks away. And instead of making the United States appear to be a leader, it makes us appear to be weak and ineffectual. So we need to do more. Our sanctions team will hopefully do that. This executive order which I am suggesting, which would require us to lay out for you when we do a sanction what the costs are, will hopefully enhance our ability to do this kind of measurement.

Senator LIEBERMAN. Well, you are absolutely right about that. This is another case where if you use a tool or a weapon too often,

you dilute its impact. I look forward to the testimony of some of those before this Task Force who are more broadly opposed to sanctions to see if they have any numbers to help us quantify this and to acknowledge, as you have, that this can never be a mathematical formula that is balancing costs and gains, because how does one put a dollar figure on human rights or fairness to workers, for instance?

My time is up. Thanks, Mr. Secretary.

The CHAIRMAN. Thank you, Senator Lieberman.
Senator Hutchinson?

**STATEMENT OF HON. TIM HUTCHINSON, U.S. SENATOR FROM
THE STATE OF ARKANSAS**

Senator HUTCHINSON. Thank you, Mr. Chairman, and I would just add to what Senator Lieberman said that I think you can't put a price tag on those kinds of things. And to quantify it or try to put it simply in terms of dollars and cents and profits would really be counterproductive to our national goals because there has always been, as I know you are aware of, a moral dimension to our foreign policy. There have been certain principles and the American people, I believe, expect policymakers to include those kinds of values upon which our Nation has been based as part of our foreign policy.

When words don't work and when recriminations and harsh rhetoric does not have the desired effect upon an abusing nation, whether it is in human rights or in other areas, we have to have some recourse short of military action. And hence while there has been—and I am certainly willing to join in the chorus—an acknowledgement of the misuse of sanctions, the over-use of sanctions, the abuse and ineffectiveness of the way Congress has applied sanctions, I am fearful that in our goal to reform and our goal to put constraints that we, in effect, eliminate that tool in foreign policy.

I appreciate very much your testimony. In your definition of sanctions, it seems to me that you and the administration are taking a very broad scope, a very broad approach on what should be included as sanctions. You said denial of benefits in USAID would be a sanction. Denial of visas would be a sanction—or let me ask you, would denial of visas be considered a sanction?

Mr. EIZENSTAT. No. We would see that as a diplomatic tool.

Senator HUTCHINSON. So, that would not be included as a sanction. Nonetheless, it is a pretty broad scope, I think. The munitions list—I think Senator Kyl asked about that. You have proposed a broad national interest waiver. When you spoke of symmetry and comity, it seems to me that we have a broad national interest waiver for the President. You have urged maximum flexibility and that the legislative check on this would be only an expedited disapproval of waiver. Am I correct in my understanding?

Mr. EIZENSTAT. Yes, sir. Our concern—and I know that there had been some, Senator Glenn and others, who had suggested that there be a prior requirement of actual passage of legislation. We think that that would be so complicated and difficult that it just would be unworkable, and so we have suggested an expedited disapproval process on a national interest waiver.

Senator HUTCHINSON. Now, if I understand correctly, you have also proposed that the constraints on the executive branch be included in an executive order and that you would bind yourself in such a way. Why would—I guess two things. How is that compatible with maximum flexibility if it is truly binding, and why would an executive order be preferable to congressional legislation?

Mr. EIZENSTAT. Thank you. I will answer that directly. You raised another couple of questions. If I may just quickly deal with those, I fully agree with you on the issue of U.S. values, human rights, et cetera, and that is precisely why we suggest costs and gains rather than costs and benefits because you can't quantify it. At the same time, one shouldn't simply say, because this is an important value to the United States, you don't have an obligation to also measure the costs and the question of whether it will be effective.

Second, we have taken a generally broad definition, and we here agree almost completely with the definition in the Lugar proposal.

Third, on the executive order, this really gets to the heart of the issue of comity. Congress can, as I have explained, with the stroke of another piece of legislation, decide to ignore any restrictions that would be imposed in reform legislation through "notwithstanding" legislation. Likewise, the executive order, although it would be binding on the executive, would itself be flexible; that is to say, it would say that contract sanctity, for example, should generally be promoted, except where it undercuts the effectiveness of the Act, so that if you were going against a narcotics gang that had a front company that had a contract, the President would be proscribed from going forward and allowing the FBI to break that contract.

So the executive order itself would have the same kind of flexibility we would expect—and I think Senator Kyl and yourself are suggesting this—that you would want to have in your own legislative restrictions. I really see that—you know, Senator McConnell said, well, are we willing to proceed in a parallel fashion? Absolutely.

I think as you put things in place that give you flexibility, we would try to do as close to the identical thing for ourselves as possible. But by not having you prescribe it—it has got to be 45 days' notice, you have got to publish it in the Federal Register—it gives us the same kind of flexibility we think that you will end up wanting for yourselves.

Senator HUTCHINSON. Thank you.

The CHAIRMAN. Thank you, Senator Hutchinson.

Senator Glenn?

STATEMENT OF HON. JOHN GLENN, U.S. SENATOR FROM THE STATE OF OHIO

Senator GLENN. Thank you, Mr. Chairman. Our sanctions program in the past, I think, has been more effective than most people would like to remember. We think of Argentina and Brazil when they had budding programs back then with South Africa; South Korea and Taiwan that both had active programs going, and Pakistan, of course, that we are very familiar with.

So there were some good things that happened under sanctions, and it was against that kind of a backdrop that we passed my legislation that made it very, very tough, with no waiver, thinking

that with the success we had had, if we just were a little bit tougher on this, maybe it really would work. And you and I have discussed this at some length.

Now, because of Hindu fundamentalism or nationalism, or whatever it is, India broke over and Pakistan broke over, and so we are faced with a new day. And I do think it is a new day in that we are into more of a multi-polar world now where nations can get anything they want anywhere in the world, and our sanctions imposed unilaterally are far, far less likely to have an impact than they were back even, say, 10 years ago. So we are into a new day and I think this is very appropriate that we are here talking about this now.

Now, your basic points starting out are that it has to be effective. There has to be comity between the executive and congressional branches of Government. There is no one solution, no cookie-cutter solution to the whole thing; that unilateral action is not likely to be effective, but we must be able to act unilaterally if it is necessary. Those were basically the points you made, I think, in your opening statement.

What I had proposed in my bill, S. 2258, was that we work hand in glove, back and forth, with the executive and legislative branches, and had proposed that where a sanction by law is to be imposed, the administration have 45 legislative days to try and generate international support for whatever the sanction is, and during that period propose changes to Congress that might be made so it would not be a cookie-cutter approach, so it would be tailored to that specific situation so it would be more likely to be effective.

Then Congress would have to act within 15 legislative days, with expedited procedures, and that keeps us in hand-in-glove operation here which I think is necessary because I don't think the administration can go off imposing these things and having congressional opposition. Nor do I think Congress should be imposing these without administration agreement. So my bill provided for us to work together, as I saw it, and then each one of these sanctions would be reviewed within two years and every year thereafter, and a recommendation made back to Congress and we would have to consider those on an expedited basis every time they are made.

It just seems to me still that that keeps us working together more than anything I have heard suggested and gives maximum flexibility. If the administration thinks something should not go into effect, then they come to Congress and say we believe this would not work in this case and we can't get multilateral support and it isn't going to work, and we don't want to penalize our own people more than the sanctionee out there that we are after and so we recommend that we have full waiver, and Congress would be party to that.

Now, it would appear to me that what you are trying to do here—and maybe I am reading this wrong completely—is to go a little bit the other way and say that we are giving the administration far more authority to just say, we don't like this, we will waive it in the national interest. And we have no recourse, except to start all over again and pass some new legislation that would deal with this.

This is a rather long statement, I guess. It is more of a statement than a question, but would you comment on that because what I had tried to do was make this where we really work together on this?

Mr. EIZENSTAT. Well, thank you. First, we agree with many of the sentiments that you have expressed and what we would like to do in the weeks ahead is to work with the Task Force to find out the best ways in which we can work cooperatively because, clearly, you have responsibilities and constitutional roles, and we do as well.

Let me say first with respect to the waiver, Congress in almost every instance—the Glenn amendments on nuclear tests are an exception—in almost every instance, whether it is proliferation or other economic sanctions, has always put some waiver provision in. The problem is that the waiver provisions are all over the board—national emergency, national security, national interest. There are about five or six different ways in which Congress has imposed it.

So what we are suggesting is let's use national interest. We are willing again in the proliferation area because of its national security importance to consider perhaps a national security standard, but let's try to systematize what the waivers are so we don't have this incredibly conflicting number of standards to try to meet and to try to dance on the head of a pin.

Second, you said it again as well as it can be said. The world has changed. There are very few target countries that don't have the opportunity of obtaining whatever we are trying to prevent them from getting them from somebody else who is all too willing to provide it. We have not come up here to suggest a way of gutting sanctions, absolutely not. We are implementing a whole host of sanctions that, as I mentioned, whether it is Nigeria, whether it is Cuba, whether it is Iran, whether it is Iraq, are all very important to our national security. What we are saying is let's do it in a more considered and careful way so that when we do use sanctions, they are actually effective because, again, it debases sanctions if we don't.

Last, on the notion of advance notice, I go back again to the point that Senator Kyl made. If one had to provide advance notice to the Cali cartel, as an example, that we are about to impose a sanction on you, and we did that as a way of providing Congress a way of getting engaged in this, it would send a signal that would undercut the very effectiveness of what we are trying to do. So that in that instance, advance notice would not work well.

Again, I cited a second situation that actually is very much the case in the Wolf-Specter legislation, but I found it in the Iran and Libya Sanctions Act. We were in the midst of negotiating with the European Union, on the one hand, and Russia on the other to tighten their export controls—Russia, frankly, had almost none—to develop a whole export control regime, and for the European Union to tighten theirs. And, in return, we were considering a waiver.

Well, we looked at the way the Iran and Libya Sanctions Act was worded, Senator, and it said that we had to make a finding of sanctionability, an advance finding of sanctionability. And one of the options in there, also, was make the finding of sanctionability

and then wait 60 days and try to negotiate with them. Well, what we found was had we listed them as, quote, unquote, "sanctionable," they absolutely would have pulled out of negotiations. We would have never gotten to that last 60 days.

So what we ended up doing is making the sanctionability finding coterminous at the end of the road with the actual waiver when we got what we wanted from them in terms of tightened controls. So the point I am making is that making advance notice of the target itself oftentimes has the negative consequence of informing the target of what you are doing and therefore undermining the capacity of changing their conduct.

The CHAIRMAN. The Senator from Kansas.

STATEMENT OF HON. PAT ROBERTS, U.S. SENATOR FROM THE STATE OF KANSAS

Senator ROBERTS. Thank you, Mr. Chairman. I want to thank you and Senator Baucus for your leadership in this regard. I don't know what I can add at this point, but I want to hear Senator Lugar, so I am going to stay here a while.

Are we going to be able to submit questions to the Secretary for further response? I have got an ag question, but I have got a national security question and I know when I get wound up, I am going to run out of time.

The CHAIRMAN. We will be glad to submit questions if you can't stay for another round, whatever accommodates the Senator.

Senator ROBERTS. So there will be another round with the Secretary?

The CHAIRMAN. If he can stay and if we have others who want a second round.

Senator ROBERTS. I know the timing is important. I think we have made a little progress. We have got the GSM and the Pakistan situation worked out to some degree. We have the unilateral sanctions in regard to food and medicine. We have got the executive waiver business. We have the Lugar bill. That was tabled not because of the content, but because we had a good debate for about six hours on sanctions, in general.

You have had a very fine statement here and I thank you for it. I especially like your reference on page 7 when we went into the Carter embargo and all of the downside that that prompted, and so we are sort of soulmates in that regard.

Mr. EIZENSTAT. I lived through that.

Senator ROBERTS. We are soulmates in that regard.

On page 1, you refer to Iraq, and I will get to the question. Here, we have a situation which I think is a paradox of enormous irony. We have sanctions in place with Iraq. The Secretary of State indicates that Saddam Hussein is in a box and that in terms of continuing their production of the weapons of mass destruction that the sanctions are effective.

And yet we have an exemption on the oil-for-food business and the revenues from that led, in part, to the construction and the production of some things we didn't like in regard to the chemical plant in Sudan and so we launched a missile strike. And so here we have sanctions, but we exempt the oil-for-food, and the revenues

from that go to another country and we, in response to the terrorism attacks, have destroyed that plant.

I might add that we have been doing the backstroke in regard to the justification for that, and I still have real concerns in that regard and I don't see how that adds up in regard to sanctions. And it gets back, I think, to your statement that if you are going to have a sanction under the banner of national security, it better be all-inclusive or you have a leakage. And in this particular instance, it led to the construction and the production of VX in a chemical plant that we then had to take out. How do we explain that?

Mr. EIZENSTAT. Well, first, the sanctions against Iraq, although we have our own, are multilateral and imposed under the UN, so we have that advantage. Second, with respect to the oil for food, it gets to the basic prospect of trying to avoid wherever possible using food as a direct weapon of foreign policy.

And, third, there is a provision in the oil-for-food program that revenue goes to a UN-controlled account and can be only expended for approved contracts, so that it would not be able to be used to finance a chemical—

Senator ROBERTS. But the approved contracts, and pardon me for interrupting, were for pesticides and were for the element of food production. That was the idea, to give to Iraq the self-sufficiency situation so you are not in the business of sanctioning people in regard to malnutrition and hunger. Obviously, they used it for something else and then we had to launch the missile attack.

If we can't determine the cost and gain—and that is pretty much how I am interpreting what has gone on here in regard to your comments—if costs and gains can't be clearly identified, are the costs of sanctions basically irrelevant? And the reason I am asking that is I can document from the USDA the lost sales in regard to exports, and I am for an embargo protection act that will pay the farmer and rancher the difference because I think if that is in our viable national, what, foreign policy interest, they shouldn't have to pay for it. That cost should be spread over all taxpayers. Is there any way that we can solve that problem?

Mr. EIZENSTAT. Well, we certainly are willing to look at that. One of the points we are certainly making in the agricultural area is that, in general, food and agricultural products should not—and the Senate has spoken on this recently—should not be a matter of sanction. However, even in that instance—oil for food is a good example—you wouldn't want a blanket requirement that in every instance of a sanction you were permitted, without restriction, to provide food to any country, even if it is on the terrorist list.

Oil for food is limited; there is a limited amount of revenue that can be obtained. There are limited uses. Perhaps those need to be tightened, but there is a UN-controlled account. So I think that the way to do it, again, is to state a general principle, and at the same time to give the President and the Congress some flexibility so that you are not required to provide food to Iran or to Iraq in a circumstance where they were acting in ways that were highly contrary to us.

Now, the question of whether the farmer should then be compensated is another issue with budget implications and we would

like to think about that, but I certainly appreciate the sentiment that goes to it because, again, I lived through this Afghanistan issue. I dealt with the farm groups there. We spent \$2 billion—this was in 1977 when that actually meant something—we spent \$2 billion buying up contracts and offsetting the impact—Senator Lugar was there and we worked with him at that time—to offset the impact on the farmer in that situation, \$2 billion in one fiscal year.

The CHAIRMAN. I need to interrupt you, Secretary Eizenstat. We have a vote and I understand you have to leave shortly, so we probably won't have time for a second round. What I would like to do is go on to Senator Lugar and Senator Mack. I am going to leave, go vote and come back so we don't have to interrupt the hearing, if that is okay with you, Senator Roberts.

Senator ROBERTS. Mr. Chairman, I have a statement for the record.

The CHAIRMAN. It will be included in the record.

[The prepared statement of Senator Roberts follows:]

Statement for Senator Pat Roberts
on
Mandatory Unilateral Sanctions

Let me start by thanking the co-Chairmen of the Sanctions Task Force, Senators McConnell and Biden, and their staff for working tirelessly to make this a successful endeavor. I appreciate their leadership and look forward to the testimony of our excellent witnesses. I hope the discussion of the next two days will address the many complex juxtapositions created when sanctions - and particularly unilateral sanctions - are imposed by the United States.

U.S. influence, prestige and resolve in foreign affairs currently rests at a cross-roads. The United States, which has prided itself on providing international leadership through strength and by example, has increasingly turned away from that legacy by embracing ambivalence and sanctions instead of engagement and mutual respect.

The United States in recent years has developed a seemingly uncontrollable desire to show our displeasure over a specific action, behavior or belief in a foreign country by attempting to punish that

country through the imposition of unilateral sanctions. In fact, of the 115 unilateral sanctions imposed by the United States since the First World War, over half have been initiated in the past four years. All in all, over 70 foreign states representing nearly 75% of the world's population are currently subjected to some form of unilateral sanction by the United States government.

Unfortunately, with few exceptions, sanctions very rarely work. In order for sanctions to be successful, the United States must - absolutely must - convince the entire rest of the world to join our boycott. Unless this occurs, the sanctioned country simply gets what it needs - food, financing, etc. - from the countries that chose not to join the Sanctions Circle.

There are three serious repercussions when this happens. First, the sanctions hurt us instead of their intended target. When U.S. businesses lose access to markets for their products, U.S. workers lose job opportunities. So instead of joining us in professing outrage about some particularly repugnant act, foreign governments simply feign indignation while they quietly slip in to steal away markets from American farmers

and businessmen. And if you don't think that's true, just ask a foreign businessman or government official whether they support or oppose the American penchant for unilateral sanctions. They love it and they hope it continues.

So if the first repercussion is that unilateral sanctions only hurt ourselves, the second is that unilateral sanctions help our competitors. Foreign governments - even our allies - have figured out that by refusing to join the United States in imposing sanctions, their countries will actually benefit. What a bonus! If the United States doesn't want these oil rights, we'll take them. If they don't want to sell their farm products here anymore, we'll be happy to sell ours instead. Our competitors have figured out that they can stick it to the United States and create new markets for their businesses at the same time. This revelation throughout the world has made it nearly impossible for the United States to build a unanimous case for sanctions against anyone.

Just look at Iraq. If ever a case could be made for sanctions, Saddam Hussein is the poster child. After all, armed aggression against a peaceful neighbor and use of weapons of mass destruction on one's own

citizens are truly reprehensible offenses. Surely Iraq deserves even tougher sanctions since Saddam continues to deny U.N. weapons inspectors unfettered access to possible biological and chemical weapons sites, right? Quite the contrary. The vast majority of the world flatly refuses to support further sanctions despite Saddam's absolute defiance and truly dangerous behavior. If we can't build a case for sanctions with Saddam Hussein as our target given the utter disregard he has shown for the entire world, when will we ever be able to? I wonder.

This is the third and most important repercussion of our new-found penchant for sanctions. If the United States imposes unilateral sanctions, but the sanctions fail to achieve their goal, what then? Worse yet, what if the United States continues to impose scores of new sanctions all over the world for all sorts of behavior, but the sanctions don't work? At some point, the United States runs the risk of sanctioning itself into obscurity. We impose sanctions so regularly and so arbitrarily today that the world doesn't even take us seriously anymore. As someone who considers himself a strong advocate of an aggressive foreign policy and national defense, that is a very troubling revelation to accept. I recognize

that the fine line between condemning untoward behavior and armed military conflict is often subjective, even arbitrary. For that reason, I wholeheartedly agree that sanctions must remain a viable policy alternative for U.S. foreign policymakers. However, as a general rule, I would maintain that the tremendous downside risks involved in imposing sanctions that are often doomed to failure far outweigh any possible diplomatic, military or political benefit.

Cuba perfectly represents the futility of unilateral sanctions.

Despite the fact that Cuba is only a few miles from our shores, instead of driving Fidel Castro from power (which was the explicit, stated purpose for imposing the economic embargo on Cuba), 35 years of sanctions have made him stronger and more popular than ever. He has reached legendary status overseas, particularly among developing countries, as the man who stuck it - and continues to stick it - to the United States. And we did this to ourselves. In a futile attempt to make a pariah out of Fidel Castro, we gave away all hope of encouraging democratic and free-market reforms in Cuba through diplomacy and engagement. Not only have sanctions failed to take down Castro, they continue to prevent

U.S. businesses from selling their products - even food and medicine in most cases - to the Cuban people despite growing demand there for everything American from baseball mitts to beef. And of course, our embargo of Cuba continues much to the delight of our Canadian and European competitors.

Let me make one last comment regarding the perception of the United States abroad. Foreign countries and their citizens do not distinguish between U.S. military/diplomatic policy and U.S. trade policy. To them, they are the same thing. To them, it's just plain, old-fashioned U.S. foreign policy. I really think this is an important and often overlooked point. When the United States imposes unilateral economic sanctions, when we fail to pass fast track negotiating authority, when we fail to renew IMF funding and when we annually threaten to withhold regular trading status with various countries, the prestige and authority of the United States in foreign affairs is greatly and permanently diminished in the eyes of both our friends and our enemies around the world.

As a result, I hope this task force will recommend legislation that,

at a minimum, provides a broad exclusion for all agricultural and medical products from existing and future unilateral sanctions. Unless the United States is literally at war with another country, there is no positive benefit in denying the most meager necessities of life - food and medicine - to the people of this world. It certainly does not benefit the sick and the hungry people of Africa, of Asia and yes, of Cuba. The world must know that the United States government and the American people care about what goes on outside our borders. The world must also know that the United States stands ready to provide food and medicine - on commercial terms - to anyone, anytime and in any place. This modest proposal represents the very least this task force should do.

I appreciate my colleagues' attention to this long and winding prose. I look forward to the presenters' testimony and thank the Chairmen for their indulgence.

Senator McCONNELL. Senator Lugar?

**STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR
FROM THE STATE OF INDIANA**

Senator LUGAR. Thank you very much, Mr. Chairman.

Secretary Eizenstat, I appreciate all the negotiations you and your group have done with many who have been supporting our legislation. You pointed out in your testimony that whereas your views in some respect are close to those of the Lugar-Crane-Hamilton bill, you have important differences. Your views boil down, as I have outlined them, to these: the Lugar-Crane-Hamilton bill would impose many binding and onerous constraints on executive branch discretion to conduct foreign policy and only limited flexibility, whereas the Congress has the ability, as you have pointed out, to change the rules. Our intent in drafting the bill was to provide parallel and comparable jurisdiction, yet you felt throughout the negotiations that this is unfair.

The second thing on which we have been unable to come to closure is on a national interest waiver applicable to existing and future sanctions. Our bill takes care of future sanctions; it does not pertain to existing sanctions. Let me just say that on both of these issues, I am not certain how to propose to make headway.

It could be that the Majority Leader has appointed this Task Force because sanctions legislation has not come forward through any committee. There has not been a single markup, a single bill reported. The bill that I brought to the floor came as an amendment to the agriculture appropriations bill. It was non-germane in the sense that it really was not an appropriations measure, but it was the only way that we had to debate the issue this year. It lost 53 to 46, in part, because some Senators disagreed with the bill. Others felt that it was going to tie up an appropriations bill, and Senator Stevens argued strongly that that was the problem.

It also failed because the administration was not behind it, but I am not certain how we work this out. In other words, this Task Force might come forward with a burst of enthusiasm and then the administration reconciles itself in one way or another. But we are not at that point. I would say respectfully we need to know what the administration is prepared to support because it seems to me otherwise that we are not going to have legislation and we are looking at another Congress.

Now, this is very disappointing to people in farm country, as Senator Roberts has reflected, and to American manufacturers and others who believe that there are substantial changes that need to be made in our policies. I am among them, and I feel sad that we have come to this point, checkmating each other. Even now, I really do not know, given the testimony you have, how we would come to this degree of equity.

From the standpoint of the administration, you are arguing on behalf of the President for enormous flexibility. I understand that, but part of the problem of all of this has been the lack of constraint on the executive on the Congress. We have simply imposed far too many sanctions unilaterally and at great cost to our country.

Secondly, if we revisit past sanctions, we run smack into the Cuban business and into Iran. Politically, these are mine fields.

You can argue that we ought to tackle both. I have deliberately tried to tackle neither in our bill, in the hope that somehow we would have a constructive piece of legislation. So I must say even though I appreciate the things you have said about the legislation today, essentially the administration has pretty well frustrated our purposes and I am not certain I see a way out of the box at this point.

Can you give us some guidance?

Mr. EIZENSTAT. Yes, sir, I think there is a way out of the box. Believe me, I share your frustration because I know that in negotiating with you, we were dealing with somebody who was trying to come to the same end point.

First of all, your point about future versus existing legislation. Let me point out that we are suggesting that both the reform legislation and our executive order would only apply to future legislation.

Second, with respect to the waiver, where we have expressed a desire, this is an expression of preference. I think we would be able to work something out, notwithstanding that preference, that we would find mutually acceptable in terms of applying the waiver to existing legislation. We are trying to tell you what we would hope in the best possible world to get. We know we don't live in the best possible world, so we would be realistic.

And, third, with respect to an executive order, we are basically taking your whole legislative piece for what you would want the executive branch to do and suggesting putting it into an executive order, but doing so just with a little more flexibility because you have given yourselves in the Congress that same flexibility. You can't bind yourselves, and we are suggesting that we would be bound to the same extent.

Once the President signs an executive order—and I assure you we would do this very transparently. We would sit down with you and tell you exactly word for word what would be in it and let you comment on it. You will find that it is prescriptive. You will find that it is a real filter, but it gives us the same kind of flexibility that you are trying to give yourselves.

Senator LUGAR. Thank you very much.

STATEMENT OF HON. CONNIE MACK, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator MACK. I have neither a statement nor questions.

Senator BAUCUS [presiding]. Thank you.

Mr. EIZENSTAT. Can I just say again, I think you suggested a new burst of energy. I think that this Task Force will give us a new burst of energy and that we are really prepared to try to develop something that is mutually acceptable.

Senator BAUCUS. Thank you very much, Mr. Secretary. I see our panel has departed and the vote has about six, seven minutes left. We will stand in recess until the chairman returns.

Mr. EIZENSTAT. I do have a plane that I need to catch at some point.

Senator BAUCUS. Right. There will be no more further questions of you.

Mr. EIZENSTAT. Thank you.

Senator BAUCUS. Thank you, Mr. Secretary.

The Task Force stands in recess until the call of the Chair, which will be about 10 minutes.

[Recess.]

The CHAIRMAN. We need to move along here. We are late, for which I apologize. I would like to ask the next three guests to come as a panel—Ken Roth, Executive Director of Human Rights Watch; Thea Lee, AFL–CIO Assistant Director of International Economics; and Elliott Abrams, President of the Ethics and Public Policy Center. I would like to ask each of you to limit your remarks to five minutes, and we will be happy to put full statements in the record.

I will just take them in order listed here. Mr. Roth, you first; Ms. Lee, you second; and, Mr. Abrams, you third.

STATEMENTS OF A PANEL CONSISTING OF KENNETH ROTH, EXECUTIVE DIRECTOR, HUMAN RIGHTS WATCH; THEA M. LEE, ASSISTANT DIRECTOR FOR INTERNATIONAL ECONOMICS, PUBLIC POLICY DEPARTMENT, AFL–CIO; AND ELLIOTT ABRAMS, PRESIDENT, ETHICS AND PUBLIC POLICY CENTER

STATEMENT OF KENNETH ROTH

Mr. ROTH. Thank you very much, Mr. Chairman, for holding these hearings and for inviting me today. In light of the time limitations, I was going to highlight a number of the aspects of Senator Lugar's bill with which I agree, but I think it may be wiser simply to highlight a few points where I differ, with the hope that I might be able to assist the committee in its deliberations.

First, in response, Mr. Chairman, to your original question, I think it is wrong to include economic assistance in a sanctions bill of this sort. I don't believe that a conditional grant of economic assistance should be considered a sanction. Senator Lugar's bill already does exclude military aid, military equipment and the like, but it includes economic assistance. The result is that it would deprive the United States Government of one of the most important tools available to it to secure change and to avoid complicity in serious human rights abuse or other forms of governmental misconduct.

The effect, if it were applied retroactively—and frankly it is not clear to me from the legislation whether the future orientation of the legislation would mean that an aid cut-off under Section 502(b) of the Foreign Assistance Act would be included or not. But it has the potential of rewriting one of the benchmarks, really the cornerstones of U.S. economic assistance policy and would have the odd result of making the U.S. much more likely to be complicit in serious human rights abuse by, in a sense, forcing it either to jump through a series of difficult procedural hoops or to continue providing the means with which a government might be repressing its citizenry.

The only argue for this is that an aid cut-off would in some sense affect the atmosphere of trade relations or that it might lead to retaliation. But these seem, in my view, to be peripheral concerns in comparison to the importance of avoiding direct U.S. complicity in the most severe forms of human rights abuse, as outlined in Section 502(b).

Similarly, the Lugar bill, I believe, inappropriately makes it tougher to convey conditional trade benefits. Again, I don't believe that statutory schemes which grant trade benefits on the condition, for example, that the recipient respect labor rights should be considered a sanction.

It is most likely that American support for the global economy will come if trade is seen to be occurring on a level playing field, not necessarily wage equality, but rather equal respect for basic labor rights, including the right to form labor unions and to bargain for wage increases. That is the statutory accord that was reflected, for example, in the Generalized System of Preferences legislation, in OPIC, and there is similar human rights language with respect to Ex-Im Bank loans.

The Lugar legislation would, in effect, rewrite that legislation if it were applied retroactively, or it at least would preclude the enactment of similar legislation in the future by forcing the U.S. Government to convey trade benefits in an all-or-nothing manner. The kind of conditional grant, condition on respect for labor rights, would not be permitted because that would be defined as a unilateral economic sanction if those trade benefits were withheld because the recipient didn't live up to the bargain by violating basic labor rights.

Similarly, I believe that the bill inappropriately elevates so-called contract sanctity to paramount value, as if there is a God-given duty to complete commercial deals regardless of the human consequences. There is only, of course, a very narrow Presidential waiver provision allowed to override this concern with contract sanctity.

Now, obviously, it is important that American businessmen live up to their contractual obligations and that they not be prevented by the Government from doing that. But this logic can lead to the kind of embarrassing results that we saw several years ago when, following the Nigerian government's execution of Ken Saro-Wiwa and eight of his colleagues, several European governments continued nonetheless to sell the Nigerian government arms on the rationale that the contract had already been signed.

We believe that if there is any sanctity, the sanctity should be one of human life and that that should be given higher priority over the sanctity of contract and that the legislation should make that more appropriate balance between so-called contract sanctity and this other higher human sanctity.

Similarly, I believe that the bill perversely includes votes in international financial institutions as a unilateral sanction. And, again, I would argue that that should not be considered a sanction at all. First of all, it is perverse because the international financial institutions are precisely the fora in which multilateral action can best be secured.

The only apparent rationale, again, for treating these as unilateral economic sanctions in forcing the various hoops to be jumped through before they can be imposed is that it might somehow tarnish the atmosphere in which commerce is conducted. I believe it is far better for the U.S. to be able to firmly commit itself to a negative vote, say, at the World Bank rather than have to enter negotiations to secure multilateral support for a position with a vague

commitment that perhaps they will vote against a loan in the future, if only others will join us. Far better to commit to a negative vote from the outset, which this bill would make much more difficult.

Sometimes, leadership does require unilateral action. One can look no further than the U.S. stand on corruption where 20 years ago we were acting by ourselves through the Foreign Corrupt Practices Act, and we now have an OECD accord outlawing corruption because we were willing to act on our own. We were willing to act unilaterally and we saw that other governments ultimately joined us.

I see that my time is up, so let me just quickly note that the 45-day delay would, I believe, severely handicap the effective use of sanctions because even the opponents of sanctions recognize that prompt action is likely to be much more effective than delayed action. We saw that with respect to Milosevic in Kosovo. We saw that in U.S. efforts to reverse the Guatemalan coup of 1993. Similarly, the two-year sunset clause would severely weaken sanctions by simply letting dictators know how long they have to wait before U.S. pressure is likely to be eased.

Finally, I believe that the bill inappropriately elevates U.S. trade interests above all others, first of all, by excluding trade sanctions from its ambit, and, second, in terms of listing the cost of sanctions by looking for the most part only at commercial costs and not considering, for example, the costs to the U.S. commitment to support human rights and the U.S. desire not to become complicit in severe abuse by continuing to trade or give aid to the world's most heinous dictators.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Roth.

[The prepared statement of Mr. Roth follows:]

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The Role of U.S. Sanctions Policies in Promoting Human Rights

Testimony of Kenneth Roth, Executive Director, Human Rights Watch before the Senate Task Force on Economic Sanctions

September 8, 1998

Thank you, Chairman McConnell, for your invitation to Human Rights Watch to address the Task Force on the issue of U.S. sanctions policies and the promotion and protection of human rights. I appreciate the opportunity to contribute to the discussion of how sanctions can best be tailored and implemented. At the same time, Human Rights Watch is concerned that, under the guise of fine-tuning the use of sanctions, certain elements of the business community are proposing to eliminate a key tool for the promotion of human rights and other US foreign policy interests.

While we agree that the commercial impact of sanctions should be considered, so too the U.S. must consider the human rights impact of imposing - or not imposing - these measures. Just to cite a few examples of their usefulness, the multilateral imposition of sanctions contributed to the end of the apartheid regime in South Africa, while unilateral U.S. sanctions helped build pressure on and hasten the downfall of the Argentine military junta, Jean-Claude Duvalier and Idi Amin. And only this summer, in a different context, we saw the threat of sanctions help to resolve the negotiations involving Holocaust-era assets held in Switzerland.

I would like to begin today with a brief discussion of sanctions policies generally, followed by a number of comments relating to approaches currently under consideration.

I. Sanctions as an important tool of U.S. foreign policy

Human Rights Watch believes that, as set out in the Foreign Assistance Act, a principal goal of United States foreign policy should be to promote the increased observance of human rights by all countries. To this end, the United States government should, on the one hand, seek sustainable long-term improvements through assistance programs which promote human rights, the rule

of law and democratic development, and, on the other hand, use active diplomacy - including frank exchanges with the government concerned, and unilateral and multilateral public criticism - to address human rights violations. When diplomatic pressure fails to curb egregious abuses, however, the U.S. and other nations claiming to uphold human rights must retain the ability to employ limited and targeted sanctions to express their condemnation of violations, press for a change in abusive government policies, and avoid complicity in abuses.

Sometimes even the threat of sanctions, if consistently and credibly applied, can avoid the need for their imposition. At times, however, the actual application of sanctions is necessary. Their prompt imposition in such cases can serve the interests of the U.S. and the international community by promoting an environment of respect for human rights, and by helping to prevent a worsening of repression and resulting disorder which can create destabilizing refugee flows or in which military or other extreme measures may become necessary.

Multilateral sanctions are generally more effective than unilateral sanctions, so efforts should always be made to join forces with like-minded nations to address human rights abuses. The European Union has officially linked its aid programs to human rights practices, as have most other western donors. We have regularly faulted the U.S. government for making insufficient efforts to enlist multilateral support for sanctions. At the same time, the U.S. government should be able to resort to unilateral sanctions when multilateral sanctions are not possible or urgent action is required -- as it did this spring in response to events in Kosovo when the Contact Group and Security Council were deadlocked.

Foreign policies that promote human rights, good governance, income security and the rule of law, including through the use of conditionality and sanctions, are also consistent with U.S. trade interests, because they can help foster truly stable societies that, in the long run, offer greater opportunities for economic growth and development. They also help create the level playing field in terms of respect for basic labor rights on which Americans are more likely to support enhanced global trade.

II. Considerations for effective sanctions policies

The term "sanctions" covers a multitude of penalties that can be imposed on an abusive regime, including conditions on aid or trade benefits and restrictions on trade. Our experience has taught us that certain types of sanctions, under certain conditions, offer the greatest promise of success in countering abusive human rights practices. A number of policy prescriptions flow from this experience:

Sanctions supported by domestic constituency in targeted country. When human rights activists seeking freedoms in their own countries ask the international community to impose sanctions, the choice is clearest. The United States must listen to Burmese voices today, as it listened to South African voices in 1986 and Polish voices in 1981. Sanctions imposed in response to their pleas reinforce and legitimize their efforts. Domestic support also undermines any effort by the targeted regime to blame the U.S. or the international community for the negative economic impact of sanctions. However, we must

recognize that severe repression can prevent a population from expressing its approval for sanctions, and in those cases it may be necessary to act without a manifestation of local support.

Targeted sanctions. We advocate sanctions that are targeted, and designed to have the greatest impact on an abusive regime by depriving it of the tools and means of repression, while avoiding or minimizing any negative impact on the general civilian population.

First in the hierarchy of sanctions are **arms embargoes** and restrictions on **military assistance** that a brutal regime would likely use to perpetrate further abuses. In the case of systematically abusive governments, these sanctions are mandated under section 502B of the Foreign Assistance Act, which also requires that security assistance be administered in a manner which promotes human rights and avoids identifying the U.S. with repressive foreign governments. Unfortunately, the U.S. government routinely ignores section 502B, and thus contributes to the suffering of the victims of abuses perpetrated with U.S. military equipment and aid. In addition, the U.S., together with the wider international community, has not provided the means and the resources to effectively implement existing arms embargoes which are often thus reduced to mere pronouncements.

Turkey provides an example of the power of potential arms sanctions. Objections were raised to the sale of attack helicopters to Turkey in 1996, when it was shown that the Turkish military was using these in its highly abusive counterinsurgency campaign against Kurdish rebels; facing this criticism, Turkey withdrew its tender for the U.S. equipment. This year, as once again Turkey seeks to purchase U.S.-manufactured helicopters, Prime Minister Yilmaz and members of the Turkish military have promised President Clinton and senior administration officials concrete human rights improvements in exchange for marketing licenses. It remains to be seen, of course, whether Turkey will live up to its commitments and get the U.S. equipment.

We particularly urge the use of "smart sanctions" which narrowly target decision-makers, and which do not permit them to shift the burden to the general population. These include **freezing the assets** of abusive leaders or governments and **denying visas** and residency permits to such officials. Another "smart" targeted sanction is active support for the **criminal prosecution** of abusive officials. An example of this tool in action was the announcement this March of the chief prosecutor for the International Criminal Tribunal for the Former Yugoslavia that she would commence an investigation into killings by Serbian forces in Kosovo, and the U.S. government's quick provision of \$1 million to support this effort—steps that directly imperiled Yugoslav President Slobodan Milosevic. Unfortunately, while the U.S. government has been a strong supporter of the two international tribunals for Rwanda and the former Yugoslavia, it opposed the creation of an effective International Criminal Court to prosecute those responsible for genocide, war crimes and crimes against humanity wherever their crimes occur. Another targeted sanction is the restriction on **trade benefits** that are most likely to benefit an abusive ruling elite, such as sanctions against an industry that is dominated by an abusive central government or from which the government derives substantial resources.

When these targeted sanctions are not sufficient, we support certain restrictions on **economic assistance** to systematically abusive regimes. Again, some such sanctions, such as the cutoff of

assistance to governments that systematically commit gross abuses of human rights, unless that assistance will directly benefit needy people, is mandated by section 116 of the Foreign Assistance Act. A concrete example of this type of sanction is conditionality on U.S. aid to Bosnia which denies benefits to those who shelter indicted war criminals and has contributed to substantial pressure on local authorities to cooperate in the surrender of war crimes suspects. Similarly, a cutoff in all bilateral and multilateral assistance to the government in the wake of the coup in Cambodia last July was used to express severe U.S. disapproval of the coup and the accompanying murder of civilian opponents of the coup government. In the early 1990s, the threat of aid suspension led Presidents Moi of Kenya and Banda of Malawi reluctantly to free prisoners and hold multi-party elections. A related sanction is the denial of World Bank loans to systematically abusive governments—another tool for denying these governments the means to maintain their machinery of repression. Section 701 of the International Financial Institutions Act requires a negative vote by the U.S. executive director to the World Bank in such cases. International financial institutions are, of course, an ideal forum in which to rally multilateral support for sanctions.

When we seek restrictions on economic assistance to abusive governments, we always encourage the delivery of aid, particularly aid aimed at meeting basic human needs or promoting economic development in the most impoverished sectors of society, to be channeled through nongovernmental organizations. For example, while we called for restrictions on bilateral and multilateral assistance to the central government of the Democratic Republic of Congo because of its continuing suppression of political activity and lack of cooperation with the United Nations investigation into the slaughter of thousands of Rwandan refugees in Congo in 1997, we urged the international community to reinforce the flow of aid to the Congolese people through organizations of Congolese civil society, international NGOs, and United Nations agencies. Last summer, the U.S. government successfully used this strategy to funnel aid to the Cambodian people after cutting off assistance to the government.

Sanctions consistent with human rights. We oppose sanctions that themselves violate norms of international human rights or humanitarian law. Therefore, we oppose restrictions of aid or trade that is essential to meet basic human needs for food, shelter, clothing, sanitation or medical care, particularly when such measures would violate fundamental economic rights or prohibitions against the use of starvation and related deprivation as a method of warfare. As President Clinton recently reiterated, "food should not be used as a weapon to influence other nations." Generalized sanctions are a notoriously blunt instrument susceptible of causing severe adverse humanitarian consequences. If they are ever imposed, their implementation must be carefully monitored for these consequences and provisions must always be made to meet the basic needs of the civilian population, as is being attempted in the case of the "oil-for-food" sales in Iraq.

We also oppose sanctions that would restrict the provision of aid, sales or exchanges for the purpose of disseminating information and ideas. Nor do we in general favor sanctions that would, in violation of international norms, restrict the right of ordinary citizens to travel or to speak to or to have contact with citizens of any other country. We do, however, support restrictions on visas for military or civilian officials of abusive regimes, because of the implicit legitimization of their conduct that would be conferred by receiving them outside their country. Such measures have been an effective

means of censuring conduct in Nigeria, Liberia, Burma and Zaire (now the Democratic Republic of Congo).

Sanctions tied to clear benchmarks. We have found that sanctions that are tied to clearly defined benchmarks are most effective. The sanctions should be inspired by principle, not political expedience, and this should be reflected in benchmarks rooted in international norms and standards, which, if reached, would trigger a lifting of sanctions. The often-cited example of such graduated sanctions was the Reagan Administration's response to martial law in Poland; tough sanctions were gradually lifted in return for various positive steps by the Polish government, from the release of political prisoners to the formal lifting of martial law. In 1991, Congress put a temporary hold on \$95 million in aid to Peru on human rights grounds and within a month disappearances dropped dramatically. This year, the benchmarked conditions placed by the World Bank Consultative Group, with the tacit support of the South African Development Community, on aid to Zambia is credited with improvements there including the release of Kenneth Kaunda, the establishment of a national human rights commission, and greater freedoms for political parties and the media.

By contrast, we have objected to the form of sanctions currently imposed on Cuba because they reflect an all-or-nothing approach, with no promise of loosening until the government changes, rather than rewarding concrete steps toward democratization and respect for human rights. In the case of Burma, we have linked our opposition to private foreign investment to a specific human rights abuse: the egregious use of forced labor by Burma's military government on a wide scale, including for infrastructure development and to attract tourism and investment. We do not believe that U.S. or other foreign companies should directly or indirectly contribute to or benefit from forced labor.

When thus tied to clear, realistic, and principled criteria, sanctions serve as a carrot as well as a stick and are more likely to achieve the desired results. For this approach to work, all institutions and agencies of the U.S. and other sanctioning governments must consistently press for implementation of the stated conditions for removal of sanctions. Mixed signals or waffling greatly dilute the effectiveness of sanctions.

Multilateral versus unilateral sanctions. We prefer the use of multilateral sanctions because they are more effective and have greater international legitimacy. Frankly, however, the problem with some U.S. sanctions is not so much that they are imposed unilaterally, but rather that they are imposed in situations and in ways which are actively rejected by the rest of the international community. At the same time, when a multilateral effort is not possible, unilateral sanctions can be useful to stigmatize a government's abusive actions, as leverage to induce change, or to avoid U.S. complicity in abuses. As an example, we support unilateral sanctions imposed on Sudan, including the recent trade ban. Because U.S. trade with Sudan was limited, the trade sanctions have had little impact on the Sudanese population, but, at the same time, they have sent a clear message to a government that, despite its rhetoric, values its ties with the U.S. At times, even a small symbolic message, or the mere credible threat of unilateral sanctions, can be a source of meaningful leverage when the U.S. is a key financial or political supporter of a government. In the 1980's, the threat of the withdrawal of U.S. aid to El Salvador, for example, was often bandished to produce specific positive actions by the

government. In 1993, in response to a petition filed by Human Rights Watch, the U.S. Trade Representative (U.S.T.R.) called on Indonesia to improve its labor rights policies or face a cut-off of tariff benefits under the Generalized System of Preferences. In January 1994, the Indonesian government responded by announcing some limited legal reforms that included revoking a decree that allowed military intervention in labor disputes; allowing workers to negotiate collective bargaining agreements at the workplace level; and restructuring the single government-recognized union. Unfortunately, the U.S.T.R. then prematurely suspended its review of Indonesian labor practices, and, with the pressure off, the promised reforms were not fully implemented and the government stopped short of making greater progress on the key issue of freedom of association.

The threat or imposition of unilateral U.S. sanctions can also induce other countries to follow with sanctions or other diplomatic and economic forms of pressure, leading to an ad hoc multilateral effort. Burma is one such case.

III. Enhancement of Trade, Security, and Human Rights through Sanctions Reform Act

With these comments in mind, I would like to turn to the Enhancement of Trade, Security, and Human Rights through Sanctions Reform Act (S.1413) introduced by Senator Lugar and others, as recently amended by its sponsors. The Lugar bill would create a procedural nightmare for the imposition of new unilateral economic sanctions, and require that the sanctions terminate two years after they are imposed, unless they are specifically reauthorized. The Senate narrowly tabled this measure when it was offered as an amendment to the agriculture appropriations bill for fiscal 1999, but its sponsors have announced their intention to re-introduce it.

The bill excludes from its definition of affected sanctions restrictions imposed on U.S. bilateral military assistance and on exports of military equipment. This is important because, as I have noted, such restrictions often represent the most effective means of penalizing abusive regimes and depriving them of the weapons and means to sustain their machinery of repression, without causing substantial hardship to the general population of the targeted government. Congress and the executive must remain free to wield these important foreign policy tools without the kind of procedural red-tape envisioned by the law. We would strongly oppose any amendment to the bill that would widen its scope to apply to such sanctions.

The proposed law would apply to "unilateral economic sanctions," defined to include not only restrictions on trade and trade benefits but also conditions on economic assistance as well as any requirement that the U.S. government exercise its vote in international financial institutions against multilateral assistance to the targeted country.

We are in agreement with certain provisions of the bill: the principle that sanctions should be targeted "as narrowly as possible on foreign governments, entities, and officials that are responsible for the conduct being targeted"; the bar on restrictions on the provision of medicine, medical equipment

or food; and the requirement that any adverse impact on U.S. and foreign humanitarian aid be minimized. We believe, however, that the key elements of the bill would unduly restrict Congressional and executive discretion required to impose effective unilateral sanctions when necessary.

The bill creates an artificial distinction between trade and other U.S. interests. The bill excludes sanctions imposed to enforce U.S. trade rights, as if it were more important to stop the theft of intellectual property or expropriation than it is to halt mass murder or other atrocities. Indeed, the bill divides sanctions into two categories: those that serve U.S. commercial interests, which have priority, and those that serve all other goals, which are seen as ancillary to and at odds with U.S. commercial interests. In fact, the picture is much more complicated. Human rights and business interests often coincide. Unilateral sanctions imposed for human rights and many other purposes often promise not only to stigmatize and curb abusive behavior, but also to establish a level regulatory playing field and a stable investment climate in the targeted country, both of which further U.S. interests. And in many cases in which human rights concerns and business interests really do appear to conflict, experience teaches us that the human rights concerns ought to loom larger as a factor of long-term U.S. foreign policy.

To illustrate, one need look no further than Iraq. This year marks the tenth anniversary of Saddam Hussein's chemical attack on the Kurdish town of Halabja. Members of Congress reacted to that attack with proposed unilateral sanctions to halt agricultural credits to Iraq, but the measure died on the floor after the Reagan Administration called it "terribly premature." The signal to Saddam was catastrophic. The genocide against the Kurds of northern Iraq did not stop until some 100,000 people were slaughtered and chemical weapons were used at least 40 times. Ten years and a war later, Iraq's chemical arsenal remains the top item on the U.S. foreign policy agenda, and there is no hope of economic trade or investment with Iraq in the foreseeable future.

The United States' approach to unilateral sanctions ought to be consistent, with all U.S. foreign policy interests weighed in considering the utility of any sanctions. The bill's procedural restrictions are no more appropriate for human rights-related sanctions than they would be for trade-related sanctions. In both cases, Congress and the executive need the flexibility to act effectively through sanctions when needed.

The bill inappropriately ties the hands of the U.S. government in conveying conditional trade benefits. There are times when U.S. interests are better served by a conditional rather than an overt grant of trade benefits. But the bill, by adding procedural complexities to the enforcement of these conditions, seems to favor an all-or-nothing approach. That would unduly restrict the policy options available to the United States. For example, trade benefits under the Generalized System of Preferences and risk insurance offered by the Overseas Private Investment Corporation (OPIC) are conditioned on respect for labor rights in the country in question. These statutory schemes reflect the sensible view that international trade and investment should be encouraged only on a level playing field of basic respect for labor rights.

The defeat this spring of the Clinton Administration's request for "fast-track authority" to negotiate free-trade agreements highlights the cost of pursuing trade and investment without a parallel effort to create a level playing field by ensuring trading partners' respect for basic labor rights. The defeat shows that a significant cross-section of Americans fears a "race to the bottom" if labor rights guarantees are not made an integral part of free trade. Unfortunately, S. 1413 would work in the opposite direction, by making it more difficult to enforce conditions on trade benefits that require respect for labor rights.

Forty-five day delay. The law provides that before imposing sanctions, the President must announce his intention to do so and then wait 45 days (down from 60 in the original version) before implementation. The 45-day delay could be waived in cases of national emergency, defined narrowly as "any unusual or extraordinary threat . . . to the national security, foreign policy, or economy of the United States." In the case of Congressional action, the bill would require reports by the President and the Secretary of Agriculture, which would also likely entail considerable delay. These procedural requirements are intended to provide time for consultation and analysis of the effects of the proposed measure and to pursue alternative measures.

As I mentioned earlier in discussing the threatened sanctions on Indonesia, such delays can in some cases be effective in allowing the targeted government a chance to respond to a credible threat of sanctions. The administration may wisely choose to use this strategy in some cases, but requiring it to do so in all cases would significantly impede swift executive action in the face of serious human rights abuses. Such a delay might have precluded, for example, the decisive U.S. action to retract some minor but symbolic concessions to the Federal Republic of Yugoslavia over its abuses in Kosovo. By imposing these sanctions quickly, the U.S. sent a clear message to Belgrade and the international community that such abuses would not be tolerated. Another good example of the importance of prompt unilateral sanctions came in 1993 when then-Guatemalan President Jorge Serrano Elías shut down the Congress, Supreme Court and Attorney General's office and suspended constitutional rights. The Clinton Administration succeeded in reversing this coup by immediately cutting off aid and threatening Serrano with a suspension of trade benefits under the Generalized System of Preferences and U.S. opposition to loans by international financial institutions.

The 1990 study of the Institute of International Economics -- often cited by opponents of unilateral sanctions -- concluded that sanctions are most effective when imposed quickly and decisively. This legislation purports to promote the more effective use of sanctions, but the provisions delaying action may in some cases have the opposite effect.

Contract sanctity over the sanctity of human life. S. 1413 provides that unilateral economic sanctions, whether imposed by legislation or executive action, must preserve "contract sanctity," meaning that the sanctions may not impede performance under contracts entered into prior to the imposition of the sanctions. In the case of sanctions imposed by executive action, the President could waive the "contract sanctity" requirements only in limited circumstances. The notion of contract sanctity seriously undercuts the strength of sanctions as a foreign policy tool. For example, notwithstanding a

European Union arms embargo imposed on Nigeria in the wake of the 1995 execution of Ken Saro-Wiwa and eight other activists, several European governments continued to allow military equipment to be shipped to Nigeria in fulfillment of pre-existing contracts, because the embargo did not apply to arms transfers under contracts agreed to before the embargo came into effect. Contract sanctity may be important to the reputation of U.S. business as reliable trade and investment partners. But the proposed legislation would, perversely, allow this business interest in contract sanctity to override the moral interest in the sanctity of human life.

Confusing restrictions on aid with limitations on trade. The bill displays similarly misplaced priorities when it proposes to limit not only trade-related sanctions but also restrictions on economic aid. The apparent reason for this rewriting of long-established U.S. law curtailing economic aid to abusive governments is that an aid cutoff could lead to retaliation against U.S. businesses or affect the “atmosphere” in which commerce is conducted. Be that as it may, we believe it is wrong to continue to pump U.S. government funds into the coffers of regimes that commit systematic abuses like summary executions, torture and prolonged arbitrary imprisonment. Existing U.S. law requiring the cessation of most U.S. aid in such circumstances is designed to avoid making the United States complicitious in the most severe forms of human rights abuse through the funding of an abusive regime’s machinery of repression. We would object to any compromise of this principle. It would be a disgrace to bloody the hands of the American people in the name of not sullying the atmosphere for commerce with the world’s worst tyrants.

Insufficient consideration of the human rights impact of sanctions policies. The law would require considerable analysis and reporting by the President, the Secretary of Agriculture and the U.S. International Trade Commission. These reports must analyze the extent to which proposed sanctions would achieve their stated foreign policy goals. The legislation emphasizes, however, reporting on any detrimental impact that the proposed sanctions will have on U.S. commercial interests. We support efforts to develop targeted, effective sanctions policy, but to do so, all relevant interests must be weighed appropriately. If this kind of analysis of sanctions is to be required—and, as noted, we object to it as a precondition to the imposition of sanctions for reasons of timeliness—it should include a report of the Secretary of State addressing such matters as: (1) the likely impact on the U.S. government’s commitment to uphold human rights; (2) the extent to which sanctions are required by U.S. human rights law; (3) the extent to which failure to impose sanctions would make the United States complicit in human rights abuses, such as by providing direct or indirect benefits to an abusive regime; (4) the extent to which human rights abuses targeted by the proposed sanctions are related to corruption that also preys on business interests; (5) the extent to which human rights abuses contribute to an unstable investment climate in the targeted country; and (6) the extent to which the enforcement of sanctions is integral to the legislative scheme that originally conferred the benefits being revoked. Only with the addition of such analysis could we hope that the legislation would produce the well-informed policy-making that is its stated purpose.

Impact on efforts in multilateral fora. The legislation includes among unilateral economic sanctions subject to its procedural requirements and other limitations any requirement that the U.S. representative to an international financial institution vote against loans or assistance to a targeted

government. This provision belies the sponsors' stated preference for utilizing multilateral sanctions in pursuit of U.S. foreign policy objectives and suggests that the real preference is for no economic sanctions at all.

Under Section 701 of the International Financial Institutions Act, U.S. representatives to international financial institutions are instructed to oppose assistance to countries whose governments engage in a pattern of gross violations of internationally recognized human rights. Such action by U.S. representatives often sends an important symbolic message to abusive regimes, sometimes mobilizes effective multilateral action, and is a first step toward ensuring that American tax dollars are not used to finance a repressive regime.

To illustrate the impact of the proposed legislation, the bill's procedural requirements would apply to provisions such as language included in the 1998 appropriations act that directs the U.S. to vote against multilateral assistance to communities in Bosnia and Hercegovina that have failed to turn over indicted war criminals. Thanks to this provision, in December, the U.S., under considerable pressure from non-governmental organizations including Human Rights Watch, persuaded the World Bank to remove a town known to be harboring seven indicted war criminals from the list of those slated to receive aid. This is precisely the type of effective leadership that the U.S. ought to be taking in multilateral fora. Anything in this legislation that would curtail such efforts should be abandoned.

The sunset clause - Finally, the bill's sunset clause would require that the sanctions terminate two years after they are imposed, unless they are specifically reauthorized. We believe that the lifting of sanctions should be tied to concrete improvements in the conditions for which the measures were imposed. The effect of tying the lifting of sanctions instead to an arbitrary date will be to let tyrants know how long they must wait before sanctions will be removed, and thereby diminish the effectiveness of the measures.

IV. Sanctions Rationalization Act

I would also like to comment briefly on the **Sanctions Rationalization Act** (S.2224) introduced by Senator Dodd and others. While the Lugar bill is forward-looking, that is it generally seeks to restrict certain new sanctions, S. 2224 is retrospective, in the sense that it authorizes the President to delay, suspend, or terminate existing economic sanctions if the President believes it is in the national security or foreign policy interest of the United States to do so. Congress would have 30 days to review each Presidential exercise of such authority, and to enact a resolution of disapproval to maintain a particular sanction.

The bill's sponsors agree that Congress should give the President the power to calibrate sanctions once imposed. However, the across-the-board bill would represent a wholesale shift of authority to the President, allowing him enormous discretion and authority to override Congressional action. As Professor Louis Henkin has said,

"the existence of [sections 116 and 502(b) of the Foreign Assistance Act], the constitutional

posture of Congress and the President, establish a political context and generate a process that have important human rights consequences. Sometimes, they deter Presidents from asking for aid for blatant violators... Sometimes they compel the President to press would-be beneficiary governments to act to improve the human rights conditions in these countries so that the President could certify to Congress at least significant improvement. By a kind of *pas de deux* of President and Congress, by a combination of promise and threat, United States human rights policy has achieved a spectrum of influence on the condition on human rights around the world."

[Henkin, *The Age of Rights*, 1990] This bill would upset that combination and we would oppose it.

In closing, Mr. Chairman, let me reiterate that we support efforts to develop sanctions policies that are targeted and effective. We urge an approach that will foster balanced consideration of U.S. interests affected by sanctions policies and that will leave Congress and the executive sufficient discretion to impose effective unilateral sanctions when necessary.

The CHAIRMAN. Ms. Lee?

STATEMENT OF THEA M. LEE

Ms. LEE. Thank you. I appreciate this opportunity to present the views of the AFL-CIO on the effectiveness and appropriate use of economic sanctions.

I think we all agree that unilateral economic sanctions are an essential policy tool that should be applied judiciously, consistently and effectively. I think we would also all agree that multilateral sanctions are better than unilateral economic sanctions. But we can't always get the consensus in a timely fashion, of course, for multilateral action.

Therefore, our challenge is two-fold. How can we be more effective in gaining support for concerted multilateral action and how can we design sanctions to achieve maximum impact at minimum cost? We should not allow our discussion to be sidetracked into an ultimately unproductive debate or whether or not to use unilateral sanctions. We should rather keep the focus on improving the use of sanctions.

There has been much discussion recently about the need to discipline economic sanctions because, it is argued, they have simultaneously proliferated and become less effective and more costly. And, of course, the Hamilton-Lugar bill is one of the legislative solutions that has been proposed for this sanctions problem. The AFL-CIO supports the portions of the Hamilton-Lugar bill that require sanctions to be narrowly targeted and to minimize the adverse impact of sanctions on humanitarian activities.

However, I would agree with Ken Roth that the built-in delay, 45-day delay, and the necessary advance announcement for sanctions would be counterproductive, would dilute the effectiveness of the sanctions when actually applied. And we would, in general, oppose the imposition of new obstacles or delaying tactics that would simply weaken the effectiveness of the sanctions that we use.

We are also concerned that the definition of sanctions contained in the bill is overly broad, and this addresses a question that you raised, Senator McConnell, at the beginning of what is a sanction. And I think the question that we are all grappling with is not so much what is a sanction, but what is a sanction that needs to be disciplined, that needs legislation to limit its effectiveness, because I guess I would agree with Secretary Eizenstat's general, very broad definition that a sanction is something which applies economic pressure to another country, and yet certainly would not agree that all of the sanctions that are referenced in the Hamilton-Lugar bill are things that need to be restricted and delayed and have new reporting requirements imposed upon them.

We believe it is appropriate and desirable to attach conditions to certain kinds of aid and trade preferences. International labor rights very often fall into that middle ground of areas where we are unlikely to take military action against a country for repeatedly violating internationally recognized labor rights. And yet diplomatic actions are often not effective in ending abuses of labor rights.

This is an economic problem; it is a trade-related problem and it is one which in many cases has been effectively addressed by

trade-related measures, and we would not want to see these trade-linked labor rights that we have currently in U.S. law weakened in any way.

The Hamilton-Lugar bill includes the imposition of increased tariffs on, or other restrictions on imports of products of a foreign country or entity as economic sanctions when they are used for foreign policy reasons. This does include, or has been construed to include the withdrawal of trade benefits under the Generalized System of Preferences, the special trade advantages we grant to developing countries, because withdrawing a trade benefit, in effect, raises the tariffs on that country. We would vehemently object to any weakening of the GSP labor rights provisions. In fact, we would like to see these provisions strengthened and implemented more aggressively in the future.

The debate that has arisen in the last year or so purports to be about the effectiveness of unilateral economic sanctions as a policy tool, not about the justness of the causes to which they are applied. And yet the criticism of sanctions and the legislative vehicles that have been under discussion have focused exclusively on the problems involved with sanctions imposed for foreign policy reasons, while excluding sanctions imposed to attain trade or commercial objectives, such as remedying unfair trade practices.

This distinction does not make sense. If unilateral economic sanctions are ineffective when used to achieve foreign policy goals, then they must also be ineffective when used to achieve trade objectives. And yet the business community and the U.S. Government routinely threaten and occasionally impose unilateral economic sanctions to achieve commercial objectives or to protest unfair trade practices, such as violations of intellectual property rights or market access restrictions.

Let me just conclude by saying that successful grass-roots action on trade policy can be a valuable and empowering force, as well as a legitimate expression of citizen concern. Our task should be to make these initiatives more successful and effective, not to choke them.

I look forward to your questions and comments. Thank you for your time and attention.

The CHAIRMAN. Thank you, Ms. Lee.

[The prepared statement of Ms. Lee follows:]

**Testimony of Thea M. Lee,
Assistant Director for International Economics,
Public Policy Department, AFL-CIO
before the
Sanctions Task Force
United States Senate
on the Costs and Benefits of Economic Sanctions**

September 8, 1998

Mr. Chairman, members of the Task Force, I appreciate this opportunity to present the views of the AFL-CIO on the effectiveness and appropriate use of economic sanctions. This is a vast and complex topic, and I will use my testimony today to touch on some important principles from the point of view of the U.S. labor movement.

First of all, let me briefly review the areas where there seems to be broad consensus. No one disputes that unilateral economic sanctions are an essential policy tool, that should be applied judiciously, consistently, and effectively. All would similarly agree that, given a choice, multilateral sanctions are preferable to unilateral sanctions.

The differences arise over what to do when it is not possible to achieve cooperation from our partners to impose multilateral sanctions in an appropriate time frame. In this case, the choice is between various types of unilateral sanctions, diplomatic action, and inaction.

It is worth noting that the line between multilateral and unilateral sanctions is not clear. Many multilateral sanctions, like those against the apartheid government of South Africa, began as sub-national and even private shareholder sanctions in response to grassroots activism and gradually garnered first national, then multilateral support.

Our challenge is twofold: How can we be more effective in gaining support for concerted multilateral action, and how can we design sanctions to achieve maximum impact at minimum cost? We should not allow this discussion to be sidetracked into an ultimately unproductive debate over *whether or not* to use unilateral sanctions.

Gaining multilateral support is crucial to the effective use of sanctions. We should use every means at our disposal and every forum, including the World Trade Organization as well as the United Nations, to convince other countries to support sanctions in the cases where we have determined that it is in the national interest to apply them.

There has been much discussion recently about the need to discipline economic sanctions because, it is argued, they have simultaneously proliferated and become less effective and more costly. The Institute for International Economics (IIE) released a working paper last year highlighting the economic costs of sanctions (measured in terms of lost exports) and has testified

this year about their limited effectiveness.¹

Unfortunately, the IIE study asks the wrong questions and answers them in somewhat misleading ways. For instance, the study makes two simplifying assumptions. First, it assumes that no exports cut off due to sanctions will be replaced by exports to other countries, and that therefore the maximum number of jobs will be lost. While unlikely to be replaced dollar for dollar by increased exports to other countries, some of the lost exports will certainly be redirected to other markets. The report mentions the possibility that there are permanent displacement effects that linger after sanctions have been lifted, but finds little evidence to support this assertion. Second, the report assumes there are no employment effects due to sanctioned imports. Both of these assumptions would lead to overstating the job and wage impact of economic sanctions.

Some legislative solutions to the sanctions "problem" have been proposed. The Hamilton-Lugar bill, for example (H.R. 2708, S. 1413), imposes new reporting requirements and a 60-day waiting period before unilateral economic sanctions can be imposed. The President's Export Council and the State Department's Advisory Committee on International Economic Policy similarly released reports last year calling for measures to slow the process of imposing economic sanctions and to enforce a more consistent framework for their application.²

The AFL-CIO has no objection to the portions of the Hamilton-Lugar bill (sections 5(5)A and 5(5)B) that require sanctions to be narrowly targeted to the entity or individual responsible for the offending behavior and seek to minimize the adverse impact of sanctions on humanitarian activities. However, section 7(A), which requires the President to announce sanctions 60 days in advance of implementing them, may be counter-productive in some cases, allowing targeted countries to develop alternative markets or suppliers. This simply dilutes the effectiveness of the sanctions when applied.

We are also concerned that the definition of sanctions contained in the bill is overly broad, as it includes "the imposition of increased tariffs on, or other restrictions on imports of, products of a foreign country or entity." This has been construed to include the withdrawal of trade benefits under the generalized system of preferences (GSP), the special trade advantages we grant to developing countries (as such a withdrawal in effect raises tariffs). As this is one of the key places in U.S. trade law where violation of internationally recognized worker rights is grounds for withdrawal of trade benefits, the AFL-CIO would vehemently object to any weakening of these provisions. In fact, we would like to see these provisions strengthened and implemented more aggressively.

Before we take any steps to limit our ability to impose economic sanctions in a timely and effective way, we need to be much more precise in our definitions and clear about our goals.

¹Gary Clyde Hufbauer, Kimberly Ann Elliott, Tess Cyrus, and Elizabeth Winston. *U.S. Economic Sanctions: Their Impact on Trade, Jobs, and Wages*. Washington, D.C.: Institute for International Economics, 1997. Testimony of Kimberly Elliott, May 14, 1998.

²President's Export Council. *Unilateral Economic Sanctions: A Review of Existing Sanctions and Their Impacts on U.S. Economic Interests with Recommendations for Policy and Process Improvement*. June 10, 1997; "U.S. Unilateral Economic Sanctions: A Strategic Framework." Report of the State Department Advisory Committee on International Economic Policy. September 1997.

Unilateral economic sanctions include trade measures (restrictions of exports or imports); financial measures, such as blocking assets or withholding loans or development aid; and government procurement restrictions. Lumping these disparate measures together confuses the discussion of economic sanctions, particularly with respect to their efficacy and their costs.

Certainly, the domestic economic impact of restraining exports and limiting imports will differ, particularly with respect to the impact on jobs, wages, and prices, yet recent studies (such as the IIE report) do not distinguish between these two forms of sanction. Similarly, withholding aid or opposing loans from the international financial institutions may reduce overall trade indirectly, but will have a much smaller and less focused impact on one country's trade volume than other forms of sanctions. It should also be pointed out that withholding foreign aid will have an offsetting impact at home, in the sense that those dollars will be freed up to be spent on aid to some other country or domestic programs or tax cuts.

Taking a careful look at the list of sanctions compiled by the National Association of Manufacturers (NAM) in 1997 and publicized by USA-Engage makes it clear that the perception that the government has gone "sanctions-happy" is overstated. Of the 61 sanctions catalogued by NAM (and in effect between 1993 and 1996), 26 are financial and involve the withholding of some type of aid or financing (or a vote against loans from the international financial institutions). Of the non-financial sanctions, 13 are defense-related, banning the export or sale of weapons of mass destructions to unstable regimes. Eight of the sanctions are narrowly targeted measures, such as a ban on imports from a particular Chinese factory that uses prison labor or the freezing of the assets of an individual engaged in narcotics trafficking. These targeted sanctions have very minimal national economic impact. Three of the sanctions listed by NAM involve the denial of GSP privileges to countries (or industries within countries) not "taking steps to afford internationally recognized workers rights." Two of the sanctions restructure laws without imposing new sanctions. Eight involve comprehensive trade sanctions or embargos: these include Iran, Iraq, Libya, Sudan, Syria, North Korea, and Cuba. Thus, of the 61 sanctions listed by NAM, only 8 are likely to involve significant economic costs to the United States.

My point here is simply that future research should not try to draw broad conclusions about the effectiveness or cost of sanctions in general, but should rather rank policy options so we can make more informed choices.

The debate that has arisen in the last year or so purports to be about the effectiveness of unilateral economic sanctions as a policy tool, not the justness of the causes to which they are applied. Yet the criticism of sanctions has focused exclusively on the problems involved with sanctions imposed for "foreign policy" reasons, while excluding sanctions imposed to attain "trade or commercial objectives," such as remedying unfair trade practices. This distinction does not make sense.

Any criticism of "unilateral economic sanctions" as ineffective must apply equally to sanctions applied for trade objectives as to those applied for foreign policy objectives. Yet we seldom hear an outcry from the business community that the U.S. Trade Representative should refrain from imposing retaliatory tariffs or withdrawing trade preferences when one of our trading partners has engaged in illegal dumping or has violated intellectual property rights agreements.

In fact, unilateral economic sanctions are routinely threatened and occasionally imposed to achieve commercial objectives or to protest unfair trade practices. A few months ago, the United States withdrew generalized system of preferences (GSP) trade benefits from Honduras over egregious copyright violations. Last week, the Clinton administration indicated that it may retaliate (i.e. impose import restrictions) against France over France's move to block U.S. corn exports containing genetically modified organisms to Europe.

These trade actions are routine and are generally supported by the business community, even by many of the same companies that question the usefulness of sanctions as a policy tool to achieve foreign policy objectives. In the end, objections to "unilateral economic sanctions" in general are not to the efficacy of the policy tool, but rather to the unworthiness of the cause when there is no direct economic interest of U.S. businesses at stake.

The U.S. Congress has on numerous occasions recognized the importance of using economic and political clout of the United States to stand for values other than short-term cash flow: to prevent the spread of weapons of mass destruction, to prevent the abrogation of democracy, to punish egregious abuse of human and worker rights, and to stop terrorist activities.

It is true that we do not use our available tools consistently or as effectively as we could, and the labor movement supports efforts to improve the implementation of sanctions. But we would caution against taking legislative steps to erect obstacles or delay the imposition of sanctions across the board. As earlier research by IIE has concluded, speed and resolve are crucial to the effectiveness of economic sanctions: "Sanctions imposed slowly or incrementally may simply strengthen the target government at home as it marshals the forces of nationalism. Moreover, such measures are likely to be undercut over time either by the sender's own firms or by foreign competitors. The average successful case lasted just under three years, while failures typically dragged on for eight years."³

Decisiveness is also important. While some flexibility is necessary, waivers applied indiscriminately signal that the sanctions policy need not be taken seriously. This undermines the credibility of future policy.

Let me conclude by saying that successful grassroots action on trade policy can be a valuable and empowering force, as well as a legitimate expression of citizen concern. Our task should be to make these initiatives more successful and effective, not to choke them. I look forward to your questions and comments. Thank you for your time and attention.

Disclosure Statement: Neither the AFL-CIO nor Thea M. Lee received grants from any government agency pertaining to the issue of this testimony.

³ Gary Clyde Rinfbauer, Jeffrey J. Schott, and Kimberly Ann Elliott. *Economic Sanctions Reconsidered*. Washington, D.C.: Institute for International Economics, 1990 (executive summary updated January 1998).

The CHAIRMAN. Mr. Abrams?

STATEMENT OF ELLIOTT ABRAMS

Mr. ABRAMS. Thank you, Mr. Chairman, and thank you for the invitation here today. First, let me say in listening to the two previous witnesses to see if they would say anything I disagreed with, I am afraid neither has. So I would first say I think they made very persuasive arguments.

I think the challenge that we all face is that there is a wide range of tools available to policymakers and we need to figure out which tools are best, are most appropriate, in a particular situation where our freedom or our security or our prosperity may be at stake. At one end of the spectrum come words, words of thanks, words of denunciation, diplomatic protests, and, of course, at the other end of the spectrum, lies and war, a military strike of some kind. And in the middle there are the economic and trade and financial measures, which I believe Senator Lugar would really make it almost impossible to use effectively.

It has become fashionable in the last year to say that we over-use sanctions; particularly, we over-use economic sanctions. There is a very large business lobbying effort now to persuade the Congress of that, arguing that sanctions are usually ineffective, that they hurt our interests, and that the real thing we need to do is we need to engage economically in these countries. That is likely to produce democracy, human rights. I think those are serious arguments, but I really think they are wrong.

If sanctions were really so ineffective, if unilateral sanctions were really having no impact on the target countries, why would so many people, so many dictators, in particular, devote so much time and treasure to try to get those sanctions lifted? Obviously, they do have an impact. They have an economic impact and I think they have a political impact in the target countries.

And how are they ineffective? One thing they are certainly effective at doing in the human rights cases is showing the outrage, the horror of the American people, at those vicious human rights abuses. And they are very often effective in restricting the access of the target regime to this economic superpower and this, the world's largest market.

I think we are obviously the leader of the democracies, and our refusal to treat, for example, despicable dictatorship as if it were a fine trading partner, to treat a proliferator of nuclear weapons or missiles as if it were a fine trading partner, is not foolish or ineffective. It is admirable, even if we do it unilaterally.

There was one line of Secretary Eizenstat's that is in his written testimony that I thought was very well-said, and that is we cannot permit other countries to veto our use of sanctions by their failure to act. I think we need to take a real careful look at this notion that we are hearing in a lot of the business propaganda that trade is a form of engagement that produces democracy in some sort of magical fashion. Clearly, I would think—economic development in Korea is a good case that, over time, does create a middle class, can lead to a more democratic society and government.

But when we import goods from companies that are owned by the People's Liberation Army, we are adding to the PLA's re-

sources; we are not promoting democracy in China. If we were to allow business deals with the Cuban government, then we are enriching the government of Cuba; we are not helping the people it oppresses.

What I think Mr. Lugar's bill does is to put an endless array of roadblocks in the way of economic sanctions, making it more likely that they will not be used. And, of course, that leaves you with those two options. Either you use words, which are far more likely to be ineffective, or you end up in a corner where what else do you have left but some kind of military response. I would think it is far better to undertake a case-by-case analysis whenever sanctions are proposed, using what standards you think are sensible, without the great burdens imposed by the legislation.

I think, for reasons that have been stated, the required delays are not sensible. I think the definitions of sanctions are far too broad. I think the bill—and this has been said before—has a very odd hierarchy of values. Unilateral sanctions can be imposed, and quickly, when one company has been hurt by some country's unfair trade practice to enforce a countervailing duty or dumping case, for example. But if a country is massacring Christians or selling nuclear-tipped missiles, then you have to jump through all those hurdles to impose sanctions. I don't see the logic of it.

So I would argue that it is just not sensible to impose all of these hurdles. It is far more sensible to try, for sure, to target sanctions where they will have the greatest impact. We should try to do that, but we should not allow the interests of a small number of companies to outweigh the interests of our country in using our economic might to promote peace and freedom and to protect our national security.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me ask each of you, if you were in my seat and you had been asked by the Republican Leader to evaluate our policies and come up with a recommendation, beginning with you, Mr. Abrams, would your recommendation be that this is not something we ought to address at all, that this business is, of necessity, an ad hoc determination and that this is an impossible task?

Mr. ABRAMS. I think it is, of necessity, ad hoc. I think that it is reasonable for the Congress to say, look, we want to be targeting sanctions as carefully as we can in each case, and we want to think carefully, using some of the standards that have been discussed in the Lugar bill and have been discussed here today, to judge whether this particular application of sanctions really is effective.

The CHAIRMAN. If I may interject, Congress demonstrated recently that when the wrong result was occurring, we could act pretty fast, and we passed legislation which lessened the Glenn amendment's impact on the U.S. Agriculture Sector. Clearly, that was a situation where existing law was, in the view of everyone, counterproductive and we changed it.

Go ahead.

Mr. ABRAMS. Well, I think that is a very good example, and that is why I think it is a mistake to adopt this kind of bunch of hoops and hurdles and obstacles in the abstract. I would rather see something like a Task Force report that sets forth a common-sensical approach to evaluating any proposal to adopt sanctions in a par-

ticular case, and then when the proposal is made by the administration or by a Senator, you compare it in your debate in the committee, or in evaluating what the administration has done you compare it to the standards that you have. But I think that to adopt the Lugar approach here would be to eliminate the tremendous advantage that you have to quickly react to a real-world situation.

The CHAIRMAN. In your view, are restrictions on foreign aid a sanction?

Mr. ABRAMS. Absolutely not. I heard Secretary Eizenstat, but the more he explained it, the less I understood it. It is an act of generosity on the part of the American people, acting through their Government, to give a gift to another people. I don't see how the decision not to give that gift constitutes an economic sanction. I don't punish you if I don't give you a birthday present.

The CHAIRMAN. Ms. Lee, would you address both these questions I asked Mr. Abrams?

Ms. LEE. Yes. I guess I think that the issue can be addressed by guidelines or by a Task Force report that can lay out both what the criteria should be for when sanctions need to be applied and for a ranking of the possible tools available, the different kinds of sanctions, of which some are, I think, much more costly than others. For example, restrictions on American exports of goods that are easily available, like agricultural products or commercial products, does seem to me somewhat counterproductive.

You restrict the American export of something which is easily available at similar prices from other countries. That could be one of the more costly and least effective kinds of sanctions that we do apply, as opposed to some other things, for example, withholding foreign aid or freezing assets or other kinds of sanctions which have both a smaller economic cost to the United States and a larger impact on the targeted audience.

The CHAIRMAN. Then you agree with Mr. Abrams that restrictions on foreign aid are not a sanction?

Ms. LEE. I guess I would agree that it is not a sanction that needs to be disciplined. I think it is a very good use of how we give foreign aid that we should be rewarding countries that have good human rights and labor rights records and democracy, and so on. And we should take that into account as we figure out what our foreign aid guidelines are, and so on.

But, yes, I guess I think that we need more flexibility and less rigidity in terms of the sanctions applications. What the Congress doesn't need is more limitations on itself or necessarily on the President in terms of delaying, slowing, blocking the use of sanctions, but possibly more intelligence about which sanctions work best.

The CHAIRMAN. Mr. Roth, would you address both those questions, too?

Mr. ROTH. Yes. I actually thought, Mr. Chairman, that your opening statement was excellent in this regard. If I understand what you were driving at, you seemed to be aiming toward treating different kinds of economic pressure differently. I don't agree with Secretary Eizenstat that every form of economic pressure is the kind of sanction that needs this sort of strict regulation that Sen-

ator Lugar's bill would impose, and so I think that we really need to look at them case-by-case.

In the case of economic assistance, I don't believe that aid is an entitlement. I believe the U.S. Government has every right to grant aid conditionally and to unilaterally revoke that, and there is no need for anything extra.

The CHAIRMAN. In the foreign aid bill, you are talking about?

Mr. ROTH. In the foreign aid bill, exactly.

The CHAIRMAN. Yes.

Mr. ROTH. And, frankly, it is not even clear to me—in the current version of the Lugar bill, it says that a new unilateral economic sanction would be defined as something imposed pursuant to any law enacted after the enactment of this bill. Does that mean that the invocation of 502(b) of the Foreign Assistance Act cutting off economic support funds—

The CHAIRMAN. I assume so. We pass a foreign aid bill every year, so we would be doing that in the future.

Mr. ROTH. Okay, because I mean I could see the opposite interpretation as well, which is to say that 502(b) is there already and that the cut-off of the aid would be preexisting legislation. But I mean I think that is an important thing to clarify either way. I think it would be a mistake if you needed to jump through all those hoops to cut off aid to some government that starts systematically massacring people.

In terms of conditional trade benefits, similarly I don't think there is any need for this kind of strict regulation. If you take something like the Generalized System of Preferences, there already is lots of procedure governing that. The U.S. Trade Representative takes petitions, holds hearings. Everybody gets heard as to whether there are serious enough labor rights violations to warrant a cut-off of the trade benefits, and there is a conditional grant. You get the trade benefits so long as you are operating on a fair, level playing field by allowing workers in your country to organize and bargain collectively. It makes no sense to add additional procedures onto the quite extensive ones that exist in current legislation. You could say the same thing about OPIC, you could say the same thing about Ex-Im Bank loans.

When it comes to the international financial institutions, as I indicated in my testimony, I just don't understand that. Yes, there may be some atmospheric effect, but it would seem to be precisely in places like the World Bank or the IMF that you want to allow the U.S. to take a lead to say we are going to vote no and then to try to rally support for that rather than to sort of go in and say, well, if you all will join us, maybe we will go back and convince our government to vote no. That is not the way you lead. And, again, I think that the Lugar procedures are too much for those circumstances.

What I think we really should be focusing on here is commercial activity and what kinds of restrictions on commercial activity or investment should be permitted. I, for one, would completely exempt food from the realm of sanction. I don't see the justification, even in the five cases that the U.S. currently restricts food sales, for that to take place. And a lot of the impetus for this bill comes from the

agricultural community that says, you know, why are you stopping us from selling food to people?

The CHAIRMAN. Right.

Mr. ROTH. I think that since one of the basic principles of sanctions is that they should be respectful of human rights, and since I think it very quickly borders on a violation of human rights to deprive people of food—you know, we are not selling food to North Korea while people are starving. That is crazy, and so I would exempt agricultural goods altogether.

With the remaining commercial goods, I think you really have to look—military equipment, arms and the like, are exempted from the Lugar bill, but Eizenstat would include it. I think that should not be treated the same as, you know, trading with just a private business in a regular country. So I do think that the kind of nuanced approach that you suggested in your opening remarks is what is required. To try to develop one rule to fit every situation is bound to fail and I think will straightjacket us and make U.S. policy much less effective in this area.

The CHAIRMAN. Thank you, Mr. Roth.

Senator Lieberman, I think you are the last act here.

Senator LIEBERMAN. I can't say that I am prepared to finish with a flurry here, but I thank you.

The CHAIRMAN. Next to the last.

Senator LIEBERMAN. Oh, okay, good. I will just be the warm-up act for Senator Hutchinson.

Let me thank the witnesses. I regret that I was on the floor a little longer than I thought I would be coming back, but I have seen your statements and I am in sympathy with them.

Let me ask you a question I asked Secretary Eizenstat, which is, you know, we assume that economic sanctions that affect American businesses cost American businesses. Obviously, we have talked here and there were questions about how does one quantify the gains that we achieve, particularly in something like human rights. And as you have said in one way or another, it says a lot that is good about our country that we are willing to sacrifice economically for principles, let alone interests of ours.

But I am wondering in your work on this subject whether the three of you have ever seen any true quantifications of the costs of various sanctions for American business or whether this is largely anecdotal.

Mr. Roth?

Mr. ROTH. Well, let me begin with the initial part of your comments because I think this is part of what you are driving at. I mean, my answer to the last part of your question is no, I don't know the actual costs to business. But I think what you noted at the outset, which I fully agree with, is that there are gains for business to have from strong U.S. support for human rights.

It is in the business community's interest to have the rule of law worldwide. It is in the business community's interest to have the stability that comes from democratically elected governments rather than dictatorships. And so I think it is a mistake to view the support of human rights and the support of business as antithetical.

It is in the interest of business that there be broad American support for engagement in the global economy, support that will only come if we have strong support for labor rights as an essential aspect of our embrace of the global economy. So I think there is a false dichotomy that tends to emerge here where, in fact, there is much more in common.

Senator LIEBERMAN. That is a nice twist, actually. I hadn't been thinking of that. But, you know, in the Chinese case, as you know, in the PRC, a lot of the work that is going on on the rule of law, work that the U.S. is doing, is being encouraged and really in some senses appealed for by our business community because of a desire for predictability in relationships, contract law if you will. But there is also a broad feeling that that will help because of human rights because it will create a procedure, a society of due process. But you are absolutely right; it works the other way, too.

Ms. Lee, do you have any evidence of cost, quantification of—

Ms. LEE. Well, I would first of all agree with Mr. Roth's statement that human rights and labor rights can be something which create stability and create the kind of sustainable political democracy that is good for business. It is a good business environment for investment, and so on.

I would say just briefly in terms of the quantification of costs that the IIE study, the Institute for International Economics, which attempts to measure the cost of economic sanctions for U.S. businesses and in terms of jobs, in my view, very grossly overstates those costs partly because it takes what might be costs to individual businesses and assumes those are net national costs; that if we lose one export market, some of those exports will be replaced by exports to other places.

And the same thing with foreign aid, that foreign aid could be withdrawn from one country and then given to another country, or the money could be used differently within the budget, and so on. And so the actual cost of economic sanctions on the net national level to businesses or to jobs, I would say, is much smaller. The marginal difference between two different activities, between investing in one country and investing in another country, for example, in Burma or in Thailand, is much smaller than the gross that is often put forth. So on both levels, one that human rights are good for business, and on the other that many of those costs are fungible.

Senator LIEBERMAN. Thanks.

Mr. Abrams, good to see you. Thanks for being here.

Mr. ABRAMS. Nice to see you, Senator. I don't think there has ever been a really reliable study of the costs. In fact, maybe that is something the Task Force could call for from, I don't know, GAO or the Statistical Assessment Service or somebody.

Senator LIEBERMAN. Let me ask a final question, maybe a hard one to answer, but, Mr. Roth, you indicated you are opposed to sanctions that deprive people of food, for instance. Are there any sanctions here that are preferred? Let me just deal with the cause of human rights for a moment. Any of you really, are there any that you think are more appropriate or, from experience, more effective sanctions to apply in the interest of protecting human rights of citizens around the world?

Mr. Roth?

Mr. ROTH. I mean, I think that there actually is pretty broad agreement as to what works better than other things. The real controversy comes down to, you know, what happens if the preferred sanctions are unavailable. Can you go on to the less preferred sanctions?

Senator LIEBERMAN. Right.

Mr. ROTH. But I think it is broadly agreed that multilateral sanctions are better than unilateral sanctions. I would simply argue that it is important to retain the right to impose unilateral sanctions if that is all that there is, say, in the case of Milosevic in Kosovo.

I think it is clear that sanctions work better if they are tied to clear benchmarks so it is clear to the target what needs to be done to get the sanctions lifted. It is best if sanctions are imposed quickly, which is one of the problems with the Lugar bill because it would impose a delay that would undermine the effectiveness of the sanctions.

Senator LIEBERMAN. Quickly after enactment, you mean?

Mr. ROTH. No, no, after the offending event.

Senator LIEBERMAN. Yes.

Mr. ROTH. In other words, you know, Milosevic cracks down on Kosovo. It is best to act within a day or two rather than 45 days later.

Senator LIEBERMAN. Right.

Mr. ROTH. Sanctions work better if they are targeted at the leadership of the government. Prosecution is the best one, if you want to consider that as a form of sanction. Certainly, seizing assets, denying visas, trade sanctions imposed on industries with government controls, cutting off economic assistance to the government—those are all very targeted sanctions which are better than broad-based trade sanctions.

It is obviously better if a sanction is supported by key constituencies within the country, particularly if they are able to speak out. And it is also important that the sanctions themselves respect human rights. That is one of the reasons why I am opposed to using food as a sanction. So those are, I think, broad principles. But, you know, sometimes you have to breach those if the only thing left is something that falls outside of those principles, if you think it will be effective.

Senator LIEBERMAN. My time is up. Thank you.

Senator HUTCHINSON [presiding]. Senator Lieberman, I believe you can take all the time you want.

Senator LIEBERMAN. That is okay.

Senator HUTCHINSON. Thank you, Senator.

Mr. Roth, you said that targeted sanctions were better rather than comprehensive trade-based sanctions, which I think I would certainly agree with that. When we had a package dealing with human rights abuses in China that we attached to the State Department authorization on, I think, one of the appropriations bills, one of the criticisms was that it would be impossible to monitor or enforce. Could you respond to that concern on those kinds of targets? For instance, government-operated industries where there were human rights abuses, labor abuses, child labor, those kinds

of things going on—how would we be able to monitor and enforce such sanctions?

Mr. ROTH. Well, I recall that debate and what was proposed, as I recall, was that rather than cut off MFN across the board, say, that there be some kind of tariff increase for businesses that were owned or operated by the PLA. And even if you were to accept the argument that was made at the time that it is impossible to know which companies are run by the PLA because there are all sorts of shell companies and intermediaries, it is possible, I believe, to identify industries which tend to be dominated by the PLA.

And that may be a rough cut. It is not quite as tailored as actually picking out the PLA-controlled businesses, but it would be one way which would be monitorable to say, okay, you know, the PLA tends to dominate “x” industry, therefore we are going to increase tariffs on that industry. And it is not ideal, but it would be a way of taking a step forward without simply throwing one’s hands up and saying you can’t monitor anything.

Senator HUTCHINSON. This next question probably has already been asked and answered, so I apologize, and I really apologize for missing the testimony. I was here earlier and left and came back, and I regret that I was not able to be here.

I think Senator Lieberman was touching upon this. On those kinds of sanctions where they are targeted, like what we were just talking about on PLA on industries in China, what kind of economic impact—how does that affect business? Is that as big as what opponents of even narrowly targeted sanctions would argue that it is? How big a factor is that?

Mr. ABRAMS. It is very hard to measure and there is no reliable study of that question. If you think of the PLA, which I guess is a favorite thing to think about because it is for many Americans evident that that is a good place to make a cut—don’t do business with the People’s Liberation Army when it is engaged in repressive activities. It is probably the case that some American companies are going to lose out on an opportunity to sell arms or materials that go into arms, or uniforms or boots to the PLA.

But this is an old question. You know, once upon a time in the 1970’s, the question was tear gas, selling tear gas and cattle prods to security forces in different countries around the world. And, you know, the first answer, I guess, is to say there are some things you don’t want to sell at all. In other cases, there are things you don’t want to sell to that person at all, regardless of the potential profitability to some American manufacturer.

I would say in the case of the PLA we really don’t know because no one has ever totaled up the impact of all of the potential lost sales to companies that are PLA-dominated, and we don’t know—in the case of importers, I suppose there are importers who are losing money because they cannot import products made with slave labor. There, again, I mean the real answer is, well, we don’t want to do that even if it does make some profits for somebody. But one of the things we were talking about just before your arrival was the need for somebody, in the Government or out, to do a reliable assessment of what those numbers really are. How much is it hurting?

Ms. LEE. I would just add to that what is maybe obvious, but that the import and the export impact is very different for American jobs. For example, if you lose an export, then you are going to lose jobs, if you are losing the export of cattle prods, for example, and that is something that we would—you know, I think the labor movement recognizes there are times when there will be jobs lost if we take a principled stand on the basis of human rights and labor rights.

But on the other hand, not accepting imports as slave labor, imports from the People's Liberation Army, means that American workers are not forced to compete with egregiously bad conditions in other countries. And that is something which is good for not just the number of jobs, but the quality of jobs here in the United States, and that is why, you know, our belief that it is good for the U.S. economy as well as good for the developing world to have a principled stand on worker rights in trade legislation is something that is good for American workers and is also good for the quality of the labor market and the middle class and development, and so on, in developing countries and our trading partners.

Senator HUTCHINSON. Did you want to add anything, Mr. Roth?

Mr. ROTH. No.

Senator HUTCHINSON. Okay. Is the idea of requiring an economic impact statement or some kind of a quantification of impact—is that really a practical solution or a practical requirement in imposition of sanctions?

Mr. ABRAMS. I think it is sensible to think about it; that is, I suppose one can envision some case where you would look at the impact in the foreign country and say it is probably going to be marginal, it is not going to have much impact. But you can see a real impact on American jobs and say, wait a minute, surely there has got to be a more targeted sanction that we could use in this one.

So I think it is sensible to ask precisely that question, but I don't think it is possible to quantify it. And so I don't see why it is sensible to put it in legislation and make everybody jump through hoops and do 12 reports of it, rather than simply maybe put it in the Task Force report and have it in your minds so that you know that when anybody proposes sanctions, you and other Senators are going to say, well, tell me why this is the most sensible sanction and why you disregarded others.

I think that it is always wise to think about the effectiveness of the particular move that is being proposed here in the Senate or by the administration. I just don't think that putting it in an incredibly elaborate system of hoops and obstacles is a good way to make policy.

Mr. ROTH. If I could add to that, too, I think that the list that is in the current Lugar bill is a very one-sided list. It is sort of a maximalist business position. And if you are going to go through a list of considerations, put in what will be the effect on American credibility if we are seen as trading with somebody who is committing mass murder at home. You know, what will be the effect on our credibility if we are actually complicit in that because we are funding him by giving him aid?

Senator HUTCHINSON. I would imagine it would really get hard to quantify some of those things.

Mr. ROTH. But I mean I don't think any of this is so easy to quantify. It really is a balance of considerations and these are important considerations.

Senator HUTCHINSON. It would seem to me one of my concerns would be that such a requirement—in fact, in much of the legislation the goal would be to eliminate sanctions or to so restrict them that it makes it an ineffective option in foreign policy.

Ms. LEE. Or to slow it down so much. I mean, that is the other thing about reporting is that it is always great to have more information, but if it means that everything takes an inordinate amount of time because you need to have 19 different reports from 17 different agencies before you can proceed, then it becomes simply an excuse for slowing the process, and that has all the problems that we have been talking about here.

Mr. ABRAMS. If I could add, Senator, I think one has to ask, well, if that is logical, and I think it is, and that happens—that is, it slows sanctions down or makes it less likely that we ever adopt them—well, then, what are we going to do? It seems to me what it does is if you get pushed out of the broad middle of a lot of possible trade and economic sanctions, defining them broadly, you are either at one end where you are just making speeches, which is not going to have much of an impact, or you are pushed to the other end of the spectrum where you end up saying, well, maybe we should send in the Marines. So I don't see why it is effective as a policy tool for you to take that whole broad middle area and make it less likely and less possible to use it.

Senator HUTCHINSON. I am assuming that probably you already answered the question on defining what a sanction is. Should the denial of aid and benefits be considered a sanction?

Mr. ABRAMS. Could I just add one thing we didn't discuss? And I really would like to just make one statement about this. We didn't ask the question of what is unilateral. I was very struck in the Lugar bill that a unilateral sanction is something that you do alone and multilateral stuff happens under an international legal regime like the UN.

In other words, if you can get the British and the French and the Germans and the Italians and the Japanese with you, that is not multilateral under the Lugar bill. It has got to be very formal, under some kind of international organization. I don't see why that is a sensible definition at all.

Senator HUTCHINSON. You are argued in "Words or War" that that would put us in a position of going to the lowest common denominator and, in effect, giving any nation a veto power over our foreign policy in the area of sanctions, or multilateral sanctions anyway. Is that fair?

Mr. ABRAMS. It is, and in his written testimony Mr. Eizenstat said we cannot permit other countries to veto our use of sanctions by their failure to act. I think that is really the same idea.

Mr. ROTH. In terms of the question, is the conditional grant of economic assistance a sanction, I think we all answered no, it shouldn't be. I wanted to add one thing, if I could, which is that there is a tendency to view the U.S. as somehow sanctions-crazy and that we are imposing sanctions and nobody else does.

But if you take the Lugar definition, which would be that a conditional grant of economic assistance or a conditional grant of trade benefits is a sanction, then the European Union sanctions every single country that it has a trade and cooperation agreement with because all they do is give aid and trade benefits conditionally. That is the way they do it. In fact, I think in many ways that is a superior system because they actually have the recipient's signature on a contract and, in a sense, you have their consent to the withholding of aid or trade benefits if they violate human rights, say. We, instead, have broad legislation and then follow that legislation by revoking—

Senator HUTCHINSON. But you said you can't have it both ways. You can't have a broad definition of sanctions and then say we are the only one that has gone sanctions-crazy in the world when you look at the European—

Mr. ROTH. Precisely, because the EU does it everywhere.

Senator HUTCHINSON. What about the issue of giving Presidential waivers? How much does that—under the guise of flexibility, how much does that undermine the use and implementation of sanctions as a foreign policy tool?

Mr. ROTH. I think that the current system of having different kinds of waivers given in different situations is probably the right way to go because there will be times when you, in fact, want to give broad latitude to the executive branch, usually when you trust the executive branch.

Senator HUTCHINSON. Their argument was that almost every sanction has some kind of waiver, but that the waivers vary so much that there is no consistency in our policy.

Mr. ROTH. And I don't think consistency is the highest value here. In other words, there will be times when the administration is in your wave length and you can give it a national interest waiver because you trust it to be pushing as hard as it can. And the two examples that Secretary Eizenstat cited may be good examples of that.

But there will be other cases when the administration is not eager to do what Congress has asked it to do, in which case you will want to have a much narrower waiver authority. And I think it is important for the Congress to be able to vary in terms of how much leeway it is going to give the administration, depending on how willing it feels the administration is to really push the objectives of the congressional legislation.

Mr. ABRAMS. Again, it seems to me the search for consistency is ever-present, but it is probably the enemy of good policy here. I agree with Mr. Roth.

Senator HUTCHINSON. I think I had better quit. I have gone way over. That is the luxury of being the last one, but I don't want to torment you all too much.

Mr. ABRAMS, I want to compliment you. I enjoyed your article. I haven't read "American Purpose," the whole thing, but it was a very thoughtful piece. In it, you do make some reference to China and the missiles, nuclear technology transfer, and the possible connection to what India did in response to Pakistan's receiving of that technology.

I would like all of your opinions, and I will close with this. In the case, I guess it was last week or the last ten days, of the CBS reporter who was arrested in China, our response thus far—I don't know if we have had a response other than a verbal protest. I have written the Secretary of State.

Where we have ongoing human rights abuses, and sometimes even in the midst of—what are the appropriate steps? What should we be doing? What kind of tools should we have at our disposal to respond to situations like this most recent one, which in itself might not be the cause for action? But in this case there is a long pattern of abuses similar to that. Even in the face of the President's visit to China, we found that within a few days of his visit they were, before and after, rounding up those who would start an opposition political party.

While I don't know all of the circumstances or all of the facts concerning this reporter who was arrested, it seems to me it is part of the continuing pattern to prevent truth, access to the information by the Chinese people, and what is going on in China getting out. So I just wonder what kind of hierarchy of responses should we have at our disposal. What would be the proper kind of thing for our Government to be doing, if I could just get each of your opinions?

Mr. ABRAMS, since I complimented you so effusively, I will let you begin.

Mr. ABRAMS. Thank you, Senator. Well, this is a special kind of human rights matter because it involves an American, which we are bound to take very seriously. I don't fault the administration for starting to approach this with what we used to call quiet diplomacy; that is, with just saying to the Chinese fairly quietly this can't happen, this person needs to get out right now.

But I think if that doesn't happen immediately in this case or other cases, what you need to do is find a sanction that teaches—it may sound condescending, but that teaches the Chinese you can't do this and you will wish that you hadn't if you try it again. Maybe, for example, since we are dealing with one individual, what we do is we come up with a list of 10 Chinese officials who are barred from the United States for the next 3, 6, 9, 12 months, so that we say, look, we are not destroying the bilateral relationship, but next time you think about picking up an American, think twice because there will be a price to pay.

I think maybe going after individuals in a case like this is better than a broad-scale economic sanction. But I think we need to be willing to ratchet it up in a case where the person is not released. That is probably not this case, but it is a very good example of the kind of difficulties you run into in matching the particular sanction with the particular offense. And it is a very good example—I would just close with this—as to why it may not be so wise to legislate all of this and wiser to allow for a great deal of flexibility.

Senator HUTCHINSON. Go ahead.

Ms. LEE. Well, I guess I would agree that in the case of an individual like that you would start with diplomacy and hope that that would work. I would point out in terms of effectiveness and what sort of gets the attention of the Chinese government that back in 1995 we did threaten the imposition of tariffs on, I guess, about

\$100 million worth of Chinese goods over the violation of intellectual property rights, and that was one of the times we got the most response from the Chinese government. We didn't end up imposing those tariffs, but we did get some satisfaction. Maybe it was short-lived satisfaction.

Senator HUTCHINSON. In that case, it was not a human rights situation.

Ms. LEE. Right, exactly.

Senator HUTCHINSON. It was an economic situation which we responded very forcefully about.

Ms. LEE. We responded forcefully with the threat of economic sanctions, of unilateral economic sanctions, and it was effective in that short run. So I guess the point is simply that we shouldn't rule out the use of unilateral economic sanctions in the case that there are repeated human rights violations of that kind with a government that is not responsive. But I think that is a long-term, difficult question with the Chinese government.

Mr. ROTH. Well, I could go on at length about the Clinton administration's China policy, but suffice it to say that the Chinese government, in my view, has only responded to pressure over the last six years. When there has been sustained pressure, it has moved. When the administration has embraced solely a constructive engagement approach, it has gotten nowhere.

And what particularly concerned me over the last year is that there were two obvious sources of leverage that the administration had, neither of which would have entailed significant economic costs at all to the United States. One was proceeding with the critical resolution before the UN Human Rights Commission in Geneva which we gave up in return for a promise that is yet to be fulfilled that a human rights treaty would be signed. In other words, we got nothing out of withdrawing the treaty.

And the second was Clinton's visit to Beijing, where the President could have said quietly, if he wanted, I am not going to go to Beijing until you give me something systematic, stop reform through labor imprisonment, release the counter-revolutionary prisoners who are in prison for an offense that no longer exists on the statute books, release the people who are still in prison for the Tiananmen democracy demonstrations, give me something meaningful and then I will come to Beijing.

He didn't do that. He went, engaged constructively, got nothing in return. He got to talk on TV, you know, which was nice, but it is not something that has been of any immediate significance to the Chinese people. And I think it is the administration's refusal to use any form of leverage, any form of pressure, that has left us in such a hole when it comes to trying to improve human rights in China today.

Senator HUTCHINSON. Well, thank all of you. Thank you for indulging me for far more than five minutes.

Senator McConnell has given me authority to say the hearing is adjourned. Thank you.

[Whereupon, at 4:38 p.m., the Task Force was adjourned.]

TASK FORCE ON ECONOMIC SANCTIONS

WEDNESDAY, SEPTEMBER 9, 1998

UNITED STATES SENATE,
TASK FORCE ON ECONOMIC SANCTIONS,
Washington, D.C.

The Task Force met, pursuant to notice, at 2:33 p.m., in Room SH-216, Hart Senate Office Building, Hon. Mitch McConnell, (chairman of the Task Force) presiding.

Present: Senators McConnell, D'Amato, Hutchinson, Lugar, Warner, and Biden.

OPENING STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM THE COMMONWEALTH OF KENTUCKY

Chairman McCONNELL. This hearing will come to order.

Our first panel today for the task force on economic sanctions will include: Dr. Richard Haass of the Brookings Institution; Dr. Gary Hufbauer, a Reginald Jones Senior Fellow at the Institute for International Economics; and Mr. Barry Carter of the Georgetown University Law Center.

Later, we will be hearing from a second panel which will include: Tom Donohue, president and CEO of the U.S. Chamber of Commerce; a good friend of mine, Bill Sprague, who is president of the Kentucky Farm Bureau, testifying on behalf of U.S. agricultural interests; and William C. Lane, CEO of USA Engage.

Today's witnesses offer the most expertise in assessing the cost of sanctions. The members of the first panel have each been involved in thought-provoking and thorough studies of the policy, history, circumstances, purposes, accomplishments, and impact of sanctions on jobs, income, and our economy.

Yesterday, a number of members asked our witnesses how do we quantify the cost of sanctions. Well, today, we have assembled the experts to tell us.

The second panel can offer practical judgments about the impact sanctions have had on U.S. commercial and agricultural sales and related jobs.

Representing companies and constituents who are the heartbeat of the American economy, they know firsthand what it means to lose market access and share to the seemingly arbitrary impact of sanctions.

At some point over the past few years, each witness today has offered the view that most unilateral sanctions are ineffective and too costly. This view must be considered in the context of the thinking offered yesterday that we cannot allow other countries to veto

our interests in or use of unilateral sanctions by their failure to act.

Our challenge on this task force is to find the right balance between American economic opportunity and our use of sanctions to advance democratic free markets. These need not be mutually exclusive goals. However, since 1993, today's witnesses would suggest that the acceleration of sanctions seems to place more emphasis on the latter at the expense of the former.

I hope the two panels will help us arrive at a better understanding on how to achieve a better balance of our interest.

I see my colleague from Delaware has arrived.

What we did yesterday, Joe, was to have brief opening statements from the Chair and the Co-Chair and then go straight to the witnesses. So, if you would like to—

Senator BIDEN. Well, Mr. Chairman, I appreciate that. I will not take much time.

You have worked and our staffs have worked very hard on this issue, and I was not here yesterday. I want to explain, as they say in our business, a point of personal privilege. I was in a hospital just about to be handed my second granddaughter, and as important as sanctions are, I wanted to be there. So I do apologize for not being there, but I would have had great trouble explaining to my mother why I chose to go to a sanctions hearing rather than be at the hospital as my second granddaughter was delivered.

With your indulgence, Mr. Chairman, I would like to briefly deliver the statement I would have given yesterday.

As you know better than anyone, the majority and minority leader presented this task force two assignments; first, to make recommendations on sanctions imposed against India and Pakistan last spring, and that has already been fulfilled. A second assignment was to make recommendations on broader sanctions policy, which as we all know is far more difficult, both because of the complexity of the subject matter and the diversity of views within this body.

The question before the task force is not whether sanctions are legitimate, at least my view that is the question. It should go without saying that sanctions are a necessary part of the diplomatic toolbox, and the Constitution counts us in on that deal. It is a very important point to make, and we should not in any way, in my view, imply and/or suggest we are not legitimately involved.

Now, this is not micromanaging. This is a constitutionally authorized tool available to us as well. Nor is there any doubt about our ability to impose or enact economic sanctions. As I said, the power under the Foreign Commerce Clause gives us that authority.

But what Congress cannot do is conduct the daily business of diplomacy. Only the President can negotiate with foreign governments, and as a partner in the formulation of foreign policy, it seems to me that Congress has to take care to exercise its power in ways that do not unduly restrain the executive.

Foreign policy always involves a complex mosaic of interests, and it is rare that two cases will involve the same considerations. Therefore, it is difficult in the abstract, in my view, to devise a precise road map for use of sanctions, but in considering our rec-

ommendations to the Senate, it seems to me we can establish some guideposts to chart our course.

First, both Congress and the President should resist the rush to sanction when foreign policy challenges arise. Diplomacy should not be seen as a dirty word. It can work, but it requires patience and tenacity.

Second, we should be especially cautious in imposing unilateral sanctions. As the Senator from Indiana has pointed out time and again, they very seldom ever have a positive result.

As the global economy expands, our ability to use economic power to influence the country's decision-making will shrink.

I remember when Dr. Haass was helping us on this Committee. We used to talk about the ability to sanction economically a particular product or a particular endeavor, and we were the only game in town. If they did not get it from us, they did not get it. There is hardly anything we can say that about now.

So suppliers in Europe and Asia, unconstrained by governments which usually favor profits over principal, are happy to supply the goods that we restrict, thereby undermining our policy and depriving our companies of markets.

As the world's only super power, we must often lead by example—and act alone when necessary, but unilateral sanctions should be utilized only after other options have been exhausted, and in rare circumstances in my view.

Third, in enacting sanctions laws, the Congress should build in flexibility for the President, the flexibility to negotiate changes in the conduct that we oppose and flexibility to meet changing circumstances.

It has been my experience here, Mr. Chairman, and I am sure it is the same for all of us, that it is very hard to turn this super tanker around. Once sanctions are in place, they build a constituency, even though it may be a minority constituency, and to take out of the law a sanction that may have made sense at one time is not impossible, but one of the more difficult tasks in this town.

We are still talking about, I do not know how many years later, sanctions against the former Soviet Union and Russia relating to Jewish immigration that now I do not know anybody who argues that they have any utility any longer or any need, but it is very difficult to take it out of the law.

Fourth, in enacting sanctions, we should in most cases provide a sunset, thereby ensuring a regular review that they remain justified, again, shifting the burden to us to reimpose rather than have to generate the positive support to get enough votes to end them.

Fifth, in considering sanctions, it seems to me we should clearly define our objectives and attempt to quantify the costs and benefits, as Senator Lugar has proposed in his legislation. Cost estimates will always be imprecise, but we should consider whether sanctions are worth the price.

So, Mr. Chairman, today we have a distinguished group of witnesses, and I look forward to hearing their ideas.

I again apologize for not being able to be here yesterday with an equally distinguished panel.

I thank the chair.

Chairman McCONNELL. Thank you, Senator Biden.

Why don't we lead off with Dr. Haass, and then we will go to Dr. Hufbauer and then Mr. Carter.

TESTIMONY OF RICHARD N. HAASS, BROOKINGS INSTITUTION

Mr. HAASS. Thank you, Mr. Chairman.

What I would like to do is just make a few remarks. You have got my formal statement.

If I might, though, there are just two things I would like to say to Senator Biden before we begin. One is "mazel tov."

Senator BIDEN. Thank you.

Mr. HAASS. And the other is you have got one hell of a memory as it has been more than a quarter century since I had worked at this Committee.

Senator BIDEN. Well, I have been here more than a quarter century. That is the frightening part.

Mr. HAASS. For both of us.

I really also want to applaud all of you and your colleagues in setting up this Commission, on serving on it. I just think that this examination of what has become one of our most important foreign policy tools is long overdue, and I wish you well with it.

The most common question I hear is the question of do sanctions work. So let me answering with a resounding, unambiguous and clear answer, it depends. It depends most on the task that is set out for the sanction, and it depends a lot on how much time is allowed.

As a result, sanctions will tend to disappoint you if ambitious goals are set forth and if you are in a hurry, or to put it more positively, you may get something more from sanctions if you set out more modest goals and if you are a patient individual.

The second critical factor that will contribute to the effectiveness of sanctions is the degree of multilateralism. Again, as a result of thumb, unilateral sanctions ought to be avoided. That is not simply a bias, but it is really in many ways a reflection of the world we live in, and the trends will reinforce that. The more globalized we become economically, the more that entities will have the opportunity to find alternative sources of technology, equipment, financing, what have you, on either the black market or a gray market or even the white market.

I also think we ought to avoid secondary sanctions. What they tend to do is transform an existing dispute from one between the United States and the target to one between the United States and normally one of our allies, and in the process, it harms our relationships and broader interests.

When we have those situations where we cannot get our friends and allies to support the primary sanction that we would like, we really have two choices. One is to accept lesser sanctions, to see if we can come to some kind of a bargain, better to have multilateral support normally for a lesser sanction than go unilaterally with a maximal sanction, or to think about an alternative foreign policy tool. And I would like to come back to that issue at the end.

As a result of thumb, again, any sanction should include a humanitarian exception. For food and medicine, in here, I would say that is for both moral reasons. I think it tends to be the right thing for Americans to do, but also for practical reasons.

It has been my experience that humanitarian exceptions make it somewhat less difficult to garner international support for the basic sanction itself.

We want to keep our sanctions narrow. We do not want to hold an entire bilateral relationship normally hostage to disagreements in one area, and here I would cite the recent legislation that passed the Congress dealing with the Iran missile problem in which sanctions were introduced against Russia, and I think that was a step in the right direction. That seemed to me to be a good-faith effort on the part of the Congress to say here we have a disagreement with this aspect of Russian foreign policy. We do not want to bring down or burden the entire U.S.-Russian relationship because of this difference, so we are going to target the specific entities in Russia that were involved. And I think that is, in general, the right sort of approach.

By contrast, I would point to the other legislation that was triggered by the Indian and Pakistani test where the entire relationships with both India and Pakistan were essentially jeopardized because of our disagreements in one area, which was the nuclear area.

Impact statements ought to become part and parcel of the sanctions process at two times. First, when sanctions are being considered, we ought to have a very careful, rigorous assessment of what the likely costs and benefits of the sanction are going to be.

Secondly, at regular intervals thereafter, sanctions ought to be revisited because, as time passes, we no longer have to simply think about the likely impact. We will have the advantage of being able to look at the actual impact, and we can look at the costs and benefits to the full range of American foreign policy and economic interests, and in all of these cases, both at the time of adoption, as well as at regular intervals thereafter, we can look at the pros and cons of sanctions as compared to the potential pros and cons of other foreign policy instruments.

Here in Congress, I would think that you could perhaps look to the CBO or one of the other congressional support agencies to undertake this function for you, and this could be something that they would be tasked to do, and every year, they would come out with a set of impact statements on sanctions to help you and your colleagues decide whether this tool continues to make sense, if, indeed, it made sense in the first place.

I think if Congress adopts the sort of measures I am talking about, it will make sanctions better. With that said, we also need to think about other foreign policy tools, and let me end with that.

In some cases, no matter how wisely the sanction is crafted, it simply will not be the best approach, or to borrow from Senator Biden's metaphor, it will not simply be the best tool in the kit bag. There will be other tools in the kit bag that look better.

In some cases, for example, military force will be preferable. This was the judgment of the Bush administration at the time of Desert Shield that we essentially said instead of continuing with the sanctions, we thought that the use of military force come January 1991 was a better foreign policy approach for the United States.

More recently, several years ago when the Cuban government shot down several airplanes of the Brothers to the Rescue Organi-

zation, I would have preferred rather than introducing added sanctions as well as secondary sanctions that we perhaps had used several cruise missiles to take out the MIG aircraft in question or one Cuban airfield to let them know that that was simply unacceptable.

In the case of Bosnia, I think two administrations spent way too much time sticking to sanctions when, again, they should have turned to the military instrument. So I think one of the most important things is not simply making sanctions better or smarter, but making foreign policy better and smarter and not asking too much of the sanctions instrument.

In the area of nonproliferation policy, for example, which has been front and center since the Indian and Pakistani test, yes, we can turn to sanctions to carry the full burden of the policy, but there are other things we can and should do as well, strengthening the IAEA, improving export controls, perhaps putting more resources into theater and national ballistic missile defense, the sort of preventive attack that we launched against the Sudan. Those are other foreign policy instruments, and again, the answer is not to do away with sanctions, but in some ways to change the balance or the mix between sanctions and all the other instruments that are available.

I think this issue particularly comes into play when you face the problem of so-called rogue or difficult countries, North Korea, Cuba, Iran, Iraq even, and there in the case of North Korea, we have an interesting model. The agreed framework is an attempt to structure a relationship with North Korea in which sanctions have a part, but so, too, do very conditionally made available incentives.

I would think with the new government of Iran, that is a possible approach. Secretary Albright has already discussed the idea of a road map. So, rather than having a sanctions-only policy, which is essentially current American foreign policy, I can imagine structuring a policy towards Iran in which sanctions would play a part, but so, too, would their lifting is another way of talking about incentives if Iran were to meet certain behavioral norms.

I could say the same thing about Cuba. I could even say the same thing about Iraq. I just think that, again, the answer is not to do away with sanctions, but it is to better blend them or mesh them with the other tools of American foreign policy.

So let me then simply conclude, Senator, where I began. There is no universal answer to the question of when to use sanctions. Sometimes they will be the best tools; sometimes not.

Clearly, though, we will benefit from greater scrutiny of the likely and actual cost of sanctions and from greater scrutiny by both Congress and the executive branch of the available alternatives. My hunch is that if we go that approach, we will tend to use sanctions less as a light switch and somewhat more as a rheostat to be adjusted rather than just simply turned on and off, and we will probably use them somewhat less in comparison to other foreign policy instruments. And I think all things being equal, those sorts of evolutions would be desirable.

Thank you very much.

[The prepared statement of Mr. Haass follows:]

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TESTIMONY OF

DR. RICHARD N. HAASS

DIRECTOR OF FOREIGN POLICY STUDIES

THE BROOKINGS INSTITUTION

BEFORE THE

SENATE TASK FORCE ON ECONOMIC SANCTIONS

SEPTEMBER 9, 1998

I want to begin by thanking the members of this Commission for the opportunity to testify on this important subject. Even more, I want to applaud them for devoting the time and energy to the consideration of what has become an increasingly common but rarely examined tool of American foreign policy.

It is difficult to exaggerate the role of economic sanctions. The United States now maintains economic sanctions against literally dozens of countries. What is critical, however, is not just the frequency with which economic sanctions are used but their importance. Increasingly, sanctions define or dominate a number of significant relationships and policies.

Sanctions--best defined as the introduction of penalties aimed at a state or other entity for the purpose of altering its behavior--are employed for a wide range of foreign policy purposes and take many forms. But whatever the purpose or form of a particular sanction, the reality is that economic sanctions are unlikely to achieve the desired results if the aims are large or time is short. Sanctions--even when they were comprehensive and enjoyed almost universal international backing for nearly six months--failed to get Saddam Hussein to withdraw from Kuwait. In the end, it took nothing less than Operation Desert Storm. Nor could sanctions dissuade Serbia and Bosnia's Serbs to call off their military aggression for several years.

Nevertheless, sanctions can be of value. Under the right circumstances sanctions can achieve (or help to achieve) various foreign policy goals ranging from the modest to the fairly significant. Sanctions introduced against Iraq in the wake of the Gulf War increased Iraqi compliance with resolutions calling for the elimination of its weapons of mass destruction. Such sanctions also diminished Iraq's ability to import weapons and weapons-related technology of any sort. In the former Yugoslavia, sanctions were one factor that contributed to the Serbian decision to accept the Dayton agreement.

Both the Iraq and Yugoslav experiences were largely unilateral. Unilateral sanctions are rarely effective. In a global economy, unilateral sanctions tend to impose greater costs on American firms than on the target who can usually find substitute sources of supply and financing.

This is not to argue that unilateral sanctions never have an impact. Unilateral sanctions did penalize Haiti, and continue to do the same with Cuba. Sanctions mandated by the Pressler amendment have hurt Pakistan, which was receiving substantial U.S. military and economic aid. Such cases are the exception, though; as a rule, unilateral sanctions are little more than statements or expressions of opposition except in those instances in which the tie between the United States and the target is so extensive that the latter cannot adjust to an American cut-off.

The problem is that garnering international support for particular sanctions is often extremely difficult. Prospects for succeeding in bringing others on board tend to reflect a range of factors, including their commercial stakes, policy preferences, and the availability of funds to compensate lost revenues. Sanctions tend to work best when international political consensus exists as to the wisdom of employing sanctions and non-targeted countries, who must bear an economic cost as a result of the sanctions, are compensated. In most instances, the preference of other governments is for no or minimal sanctions. Other countries tend to place a higher value on commercial interaction than the United States and are less willing to forfeit it voluntarily. In addition, the notion that economic interaction is desirable because it promotes more open political and economic systems is an argument that normally has more resonance in other capitals.

Such thinking makes achieving what is desirable, namely multilateral support for sanctions, less feasible than the United States tends to want. It usually takes something truly egregious--Saddam's invasion and occupation of Kuwait, incontrovertible support of terrorism such as in the Lockerbie case--to overcome this anti-sanctions bias. And even in the case of Iraq, generous compensation for affected states, including Egypt and Turkey, was a prerequisite for these government's and others sustaining support for sanctions.

Trying to compel others to join a sanctions effort by threatening or introducing secondary sanctions against those third parties unwilling to sanction the target--as was done in the cases of Cuba, Iran and Libya--can cause serious harm to a variety of U.S. foreign policy interests. This approach has had some deterrent effect on the willingness of certain individuals and firms to enter into proscribed business activities, but at a significant political price. It has increased anti-American sentiment, stimulated challenges that had the potential to jeopardize the future of the World Trade Organization, distracted attention from the provocative behavior of the target governments, and made Europeans less likely to work with us in shaping policies to contend with post-Cold War challenges.

Unilateral sanctions can be expensive for American business. There is a tendency to overlook or underestimate the direct cost of sanctions, perhaps because the costs of intervening with sanctions (unlike the costs of military intervention) do not show up in U.S. government budget tables. Sanctions, do, however, affect the economy by reducing revenues of U.S. companies and individuals. Moreover, even this cost is difficult to measure because it needs to reflect not simply lost sales but also forfeited opportunities stemming from governments and overseas companies electing not to do business with the United States for fear that sanctions might be introduced and thereby interrupt the

supply of spare parts or otherwise complicate or prohibit normal commercial relations.

What, then, needs to be done? Multilateral support for economic sanctions should normally constitute a prerequisite for the introduction of economic sanctions by the United States. Such support need not be simultaneous, but it should be all but certain and likely to follow with little delay. Unilateral sanctions should be avoided except in those circumstances that the United States is in a unique situation to derive leverage based on the economic relationship with the target. Implementing this guideline will require intense, often high-level diplomatic effort and even then may not succeed. If this is so, then the task for policymakers is to compare what can be achieved by weaker sanctions as opposed to some alternative.

One instrument that can increase compliance is the provision of assistance to third parties in order to offset the economic cost of implementing sanctions. Arrangements to compensate countries whose support for the sanctions is central thus can be critical. This was the case with the Iraq sanctions; it is possible that sanctions against Haiti might have proved stronger had the Dominican Republic been more cooperative. Greater use should be made of Article 50 of the UN Charter, which sets forth a means by which third party states hurt by sanctions aimed at another state can approach the Security Council for redress. In addition, Congress should consider establishing a fund for this purpose within the U.S. foreign assistance budget.

Sanctions should focus to the extent possible on those responsible for the offending behavior or on penalizing countries in the realm that stimulated sanctions in the first place. There are several reasons for a response that focuses on the unwanted behavior: it helps avoid jeopardizing other interests and the entire bilateral relationship with the target over one area of disagreement; it causes less collateral damage to innocents; and it makes it less difficult to garner multinational backing. Recent legislation aimed at discouraging non-American entities from contributing to Iran's missile program is a step in the right direction.

Sanctions tend to be a blunt instrument that often produce unintended and undesirable consequences. Humanitarian exceptions should be included as part of any comprehensive sanction, both for moral reasons and because allowing a target to import food and medicine should make it easier to generate and sustain domestic and international support.

All sanctions embedded in legislation should provide for presidential discretion in the form of a waiver authority. Such discretion would allow the President to suspend or terminate a sanction if he judges it is in the interests of national security

to do so. The rheostat would replace the lightswitch as the operative metaphor. Such flexibility and latitude is needed if relationships are not to become hostage to one interest and if the executive is to have the flexibility needed to explore whether the introduction of limited incentives can bring about a desired policy end. The benefits of this latitude outweigh any diminution of the deterrent power inherent in automatic sanctions. The comprehensive sanctions mandated by the Glenn amendment and introduced against India and Pakistan in the wake of their May 1998 nuclear tests is a case in point. Congress should act quickly to provide the President the authority to waive those sanctions if he determines that by so doing he would help stabilize South Asia or promote U.S. national security interests in the region and beyond. Indeed, such waiver authority--possibly including a mechanism by which Congress could block a waiver through a two-thirds vote of each chamber--should become a component of any sanction.

Policymakers should prepare and send to Congress a policy statement not unlike the reports prepared and forwarded under the War Powers Act before or soon after a sanction is put in place. Such "impact" statements should be clear as to the purpose of the sanction; the required legal and/or political authority; the expected impact on the target, including possible retaliatory steps; the probable humanitarian consequences and what is being done to minimize them; the expected costs to the United States; prospects for enforcing the sanction; the degree of international support or opposition that can be anticipated; and an exit strategy, i.e., the criteria for lifting the sanction. In addition, policymakers should be able to explain why a particular sanction was selected as opposed to other sanctions or other policies altogether. If need be, portions of this report could be classified secret if this were required to avoid providing information that would be useful to the target. Any sanction initiated by Congress should be approved only after hearings in the relevant committees carefully considered the matter, thereby allowing members being asked to vote to refer to a report accompanying the proposed legislation that addresses these same questions. Similar reports measuring the actual costs and benefits of sanctions should be required thereafter on an annual basis. Congress should press the intelligence community to devote additional resources to this subject so that policymakers receive greater information as well as assessment highlighting the potential as well as actual impact of particular sanctions.

Reports along these lines would introduce much needed rigor into the sanctions decision-making process. Still, there is no quick fix to the sanctions problem. Legislation that would introduce greater scrutiny of sanctions before and after their introduction is desirable. Greater executive activism and discretion would also help. The Clinton administration can be faulted for its failure to veto laws calling for secondary

sanctions and for its haste in implementing sanctions triggered by India's and Pakistan's nuclear tests.

This said, the challenge goes beyond improving sanctions, something that will tend to make them narrower and less unilateral. The more fundamental question is one of the selection of the most appropriate foreign policy tool to deal with a particular challenge. Sanctions of any sort must be weighed against the likely costs and benefits of military action, covert programs, and both public and private diplomacy.

Sometimes it will be better to use military force. This was the lesson of *Desert Storm* and Bosnia--and may yet prove to be the lesson of Kosovo. Cuba is also worth considering in this context. Rather than tighten sanctions (which increased the misery of the Cuban people) and go along with Congress's introduction of secondary sanctions against U.S. allies, the Clinton Administration might have been wiser to launch a cruise missile salvo to take out the MIGs that shot down the unarmed plane flown by Cuban exiles.

In other instances, focused sanctions appear attractive. A more appropriate response to India's and Pakistan's nuclear tests would have been export controls designed to slow missile and nuclear bomb development and deployment. With Haiti, narrow sanctions aimed at the illegitimate leadership would not have triggered the human exodus that pressured the Administration into an armed intervention that could have proved extremely costly. Differences with Russia and China over their technology and weapons exports would best be dealt with by narrow sanctions. This said, sanctions will not be able to carry the full burden on non-proliferation policy, and policy tools ranging from preventive attacks on rogue state facilities, a stronger IAEA, and more robust defenses will need to be considered.

The principal alternative to economic sanctions, however, is best described as *conditional engagement*, i.e., a mix of narrow sanctions and political and economic interactions that are limited and made conditional on specified behavioral changes. A package of incentives tied to specific actions has helped manage North Korea's nuclear ambitions. Such a "road map" approach also might prove effective with Cuba and with Iran.

What these examples make clear is that there is no tool that is always preferable to sanctions, any more than sanctions themselves offer a universal answer. But the trend is clear. While there will be those instances in which sanctions can help, either alone or more likely in conjunction with other tools, recent history strongly suggests that the potential of sanctions to contribute to American foreign policy will be modest--and that asking more of them than that promises to be counter-productive.



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FOREIGN POLICY STUDIES PROGRAM

RICHARD N. HAASS

Dr. Richard Haass is Director of Foreign Policy Studies at the Brookings Institution. One of the most widely quoted experts on contemporary American foreign policy, he also consults for NBC News and is a frequent contributor to foreign affairs journals and the op-ed pages of major newspapers. His two most recent books are [The Reluctant Sheriff: The United States After the Cold War](#) and [Economic Sanctions and American Diplomacy](#).

Richard Haass has extensive government experience. From 1989-1993 he was Special Assistant to President George Bush and Senior Director for Near East and South Asian Affairs on the staff of the National Security Council. In 1991, Haass was awarded the Presidential Citizens Medal for his contributions to the development and articulation of U.S. policy during Operations Desert Shield and Desert Storm. Previously, he served in various posts in the Departments of State and Defense and was a legislative aide in the U.S. Senate.

Haass also has been Director of National Security Programs and a Senior Fellow of the Council on Foreign Relations, the Sol M. Linowitz Visiting Professor of International Studies at Hamilton College, a senior associate at the Carnegie Endowment for International Peace, a Lecturer in Public Policy at Harvard University's Kennedy School of Government, and a research associate at the International Institute for Strategic Studies. He has also consulted for numerous government agencies and corporations and hosted the international affairs forum of the [New York Times](#) on the Internet. A Rhodes Scholar, Haass holds a B.A. degree from Oberlin College and both the Master and Doctor of Philosophy degrees from Oxford University.

Richard Haass is the author of several books, including [Intervention: The Use of American Military Force in the Post-Cold War World](#), which was selected by [Choice](#) magazine as one of the outstanding academic books of 1995. His other books include [The Power to Persuade: How to be Effective in Any "Unruly" Organization](#); [Conflicts Unending: The United States and Regional Disputes](#); [Beyond the INF Treaty: Arms, Arms Control and the Atlantic Alliance](#); and [Congressional Power: Implications for American Security Policy](#). He is also co-editor of [Superpower Arms Control: Setting the Record Straight](#).

Haass was born in Brooklyn, New York in 1951. He lives in the Washington, D.C. area with his wife and two children.

[5/98]

Chairman McCONNELL. Thank you, Dr. Haass.
Dr. Hufbauer?

**TESTIMONY OF GARY HUFBAUER, REGINALD JONES SENIOR
FELLOW, INSTITUTE FOR INTERNATIONAL ECONOMICS**

Mr. HUFBAUER. Thank you very much, Senator.

Let me start off by saying that I associate myself with everything that Richard Haass has said, and I will try to be very brief.

I welcome the Lugar-Hamilton-Crane bill as an important reform in this area, and I endorse the remarks of Senator Biden.

That said, I do not associate myself, and I do not think my colleagues do or any of you Senators do, with those who say that we should never use sanctions or hardly ever use sanctions. I do not accept that position.

Let me just quickly go over about seven points, many of which are repetitive. My colleague, Kim Elliott, at the Institute for International Economics, has put together some numbers and charges which you have.

Just to briefly summarize, because I do think there has been some misrepresentation in the media, the number of unilateral sanctions cases is not particularly higher now than it had been in recent years in the 1990's. We have more multilateral cases because, of course, times have changed. The focus has shifted in just counting cases to Africa more than Latin America, and of course, that means that the United States is less likely to have unilateral sanctions because Africa has always, in diplomatic terms, been more closely associated with Europe and Latin America, with the United States.

The number of new cases is down somewhat, but when you look at the cumulative numbers, the U.S., of course, has been the preponderant user of sanctions over the century, and particularly since the second world war.

We put together some numbers. My colleagues at the institute, Kim Elliott and Jeff Schott and myself, put together some statistics on success, and that an hour's discussion how you measure it, but we have tried to be consistent over time. The last table shows a point which Richard made, and I think most commentators agree that the success ratio, however you measure it, is declining over time. We have been less successful in recent years than in earlier years, and unilateral sanctions are not very successful in terms of foreign policy goals.

One of the ironies of sanctions is that they are more effective against societies which are partly open and, again, societies which are substantially closed, and, of course, many of our adversaries, such as Burma and North Korea, are substantially closed societies.

The point that Richard made about sanctions not being seen in isolation is absolutely essential. I thought the administration's handling of the bin Laden incident and all that surrounding it was a model of diplomacy and a very difficult context, that is, mixing military force and sanctions. We could all tweak it somewhat, but I thought it was a big improvement over some of the earlier episodes.

Turning quickly to the cost, I see that the International Trade Commission has come out with a study. I have not had a chance

to read the study. They cite a range of \$5 billion to \$20 billion in lost U.S. exports because of all sanctions now in place. The \$20 billion, I take it, is the figure that my colleagues and I came up with, and the \$5 billion, I do not know where that comes from, but I am sure that that is also a respectable estimate.

Any of these magnitudes is fairly small given the size of the U.S. economy. Of course, you know, 15 minutes and the stock market gains or loses \$20 billion, as everybody knows, but the point which I would emphasize is that these costs are very particularized on individual communities and companies in our country. They are highly targeted, and one normally thinks of foreign policy as a cost, like defense, that we should all share in the country, and the way sanctions work is that particular companies were doing business with the targeted country, communities, workers, they lose, and they lose heavily. And I think that unfairness clearly attracted Congress' attention in the India/Pakistan case where the farmers were at risk, and in other cases rightly should attract congressional concern.

To me, there are two costs which are somewhat more important than just trying to add up the total lost exports. One is the morality issue in the following sense, as parsed by an economist. When sanctions are broad-based, as many of ours are, they do hit the least powerful, the most impoverished and deprived elements of these societies, Iraq, Iran, North Korea, Burma, Cuba, and so forth, and actually, they tend to strengthen the leaders that we dislike and are adversaries and in some cases are enemies. So that is very troubling to me, and I think that is a very high cost of broad-based sanctions. And there, I distinguish from the targeted kind of sanctions, the companies that Richard mentioned, bin Laden and other targeted cases.

And then the final cost, which I think is really quite high for our overall posture in the world is that we are setting up a very considerable backlash against ourselves because of the wide use of sanctions now covering more than half the world's population, not in any very heavy-handed way, but enough so that every Canadian you talk to, every Frenchman, they all know about these cases. They resent them. They regard them as excessive U.S. dictation of foreign policy, especially the secondary aspects, and I think that reads against our ability to marshal a consensus in many cases. It is a very heavy cost, I think we are paying, hard to quantify. It is not typically economist stuff, but it does trouble me.

Finally, let me just tick off four points where I would hope when the Lugar-Hamilton-Crane bill is enacted, if it is enacted, and signed that it will be strengthened. The multilateral aspect to the points that Richard made, any strengthening in that direction, I would welcome those to say that unilateral should be reserved for exceptional cases, even though as I say the numbers are not high. I think they are too high. They are not rising, but I think they are too high.

I think Presidential waivers are a good policy not only for new cases, but for existing cases, for reasons that I have written about, and because we have this substantial inventory of sanctions which has potential carrots for rewarding modular improvements towards good behavior, along the lines that Senator Biden spoke of.

I welcome more instances where sanctions are directed at rulers, at leaders. I will be very specific to take the India/Pakistan case. If I were running policy, which I was not, of course, I think our intelligence forces know that 50 or so people in India who are responsible for that decision, those individuals could have been named, and they could have been sanctioned in some way, shape, or form. Many of them have children or assets outside of India. To me, that would have been an improved policy over what we came to with the Glenn Amendment.

Finally, just to endorse what Richard said, I do think sanctions should be seen as just one element of diplomacy, and in particular, when we feel strongly enough about a country that we put on broad-based sanctions, which deprived the entire population of oil, imports, exports, truly broad-based sanctions, I think they have to be seen in the context of going on to military force. Otherwise, to me, it is immoral to have broad-base sanctions against a country for 10, 20 years because of the impact they have on the weaker elements on society.

Thank you very much.

[The prepared statement of Mr. Hufbauer follows:]

**HEARINGS OF THE TASK FORCE ON
ECONOMIC SANCTIONS
SENATE COMMITTEE ON FOREIGN RELATIONS
9 SEPTEMBER 1998**

Submissions by

**Kimberly Elliott and Gary Hufbauer
Institute for International Economics
Washington, DC**

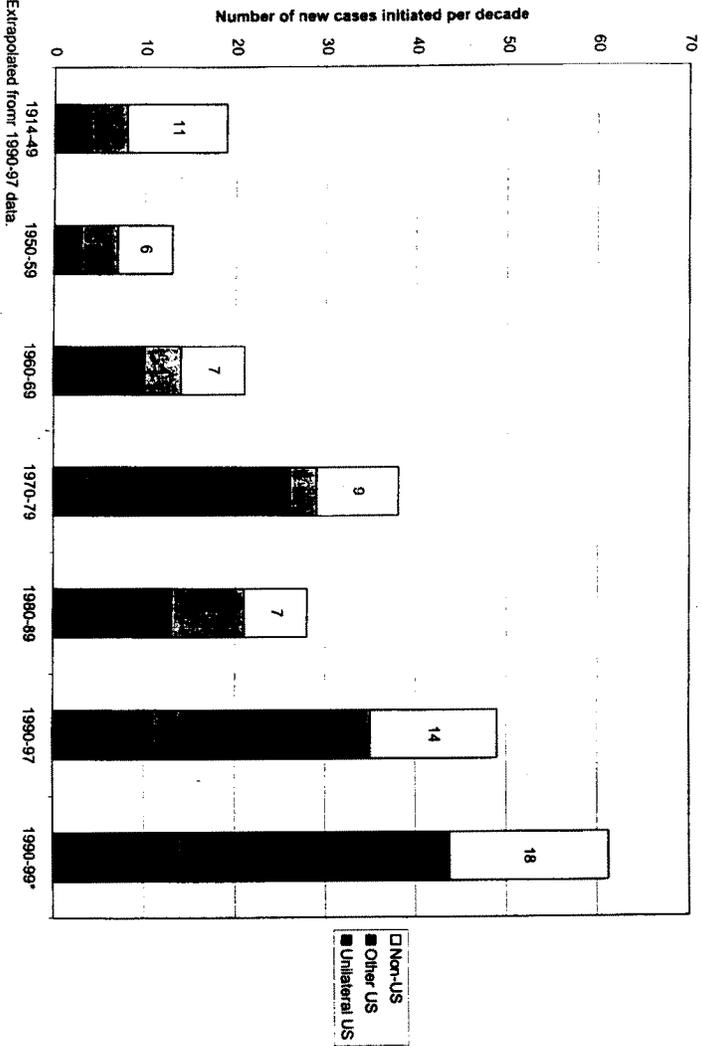
Attached are several charts and a table showing comparable data on the use of economic sanctions for the period 1914-97. Figure 1 shows the number of new cases initiated per decade since 1950 (and all sanctions prior to that grouped together). Figure 2 shows new cases initiated each year in the 1990s and Figure 3 shows all sanctions ongoing in each year from 1950-98. Finally, the table at the end shows success rates for all sanctions from 1914 to 1990, as well as for total and unilateral US sanctions from 1950 to 1990.

There are several things to note about Figure 1. First, the bar showing new sanctions imposed in 1990-97 does not support the view that recent increases in the use of US sanctions are very large relative to the previous peak in the 1970s. Only if recent trends continue (shown in the last bar), does one see a really large increase in the use of sanctions in this decade. Figure 2, however, suggests that the surge in sanctions in the early 1990s has slowed and that the extrapolation may overstate the increase in the use of sanctions that we will see at the end of the decade. The second thing to notice about Figure 1 is that, while there has been much discussion of *unilateral* US sanctions, the proportion of all US sanctions that are unilateral has actually declined sharply in the 1990s. That is in part due to increased activity by the UN and in part to a shift in the regional locus of many sanctions from the US backyard in Latin America to Europe's backyard in Africa.

Adding up the numbers, there were 168 total economic sanctions from 1914-97, 114 involving the United States, with 67 of those defined as unilateral. Thus a third rather than half of the US sanctions in this century have occurred in the 1990s and only a fraction of those under the Clinton administration.

Finally, the table suggests that practice does not make perfect in the sanctions field. Increased use has been accompanied by decreased utility.

Figure 1. Trends in the Use of Economic Sanctions



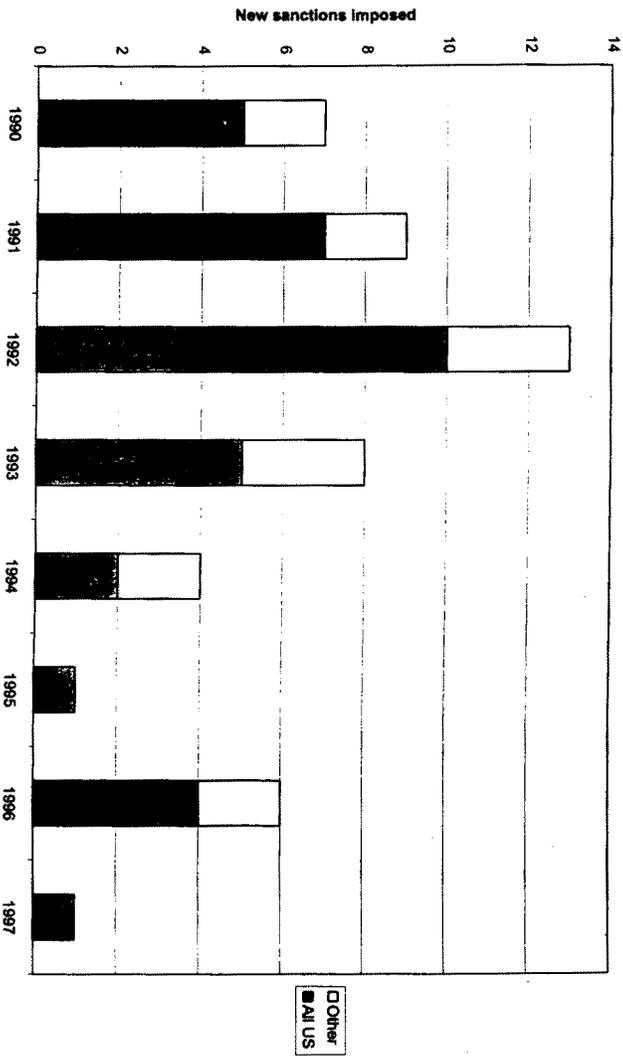
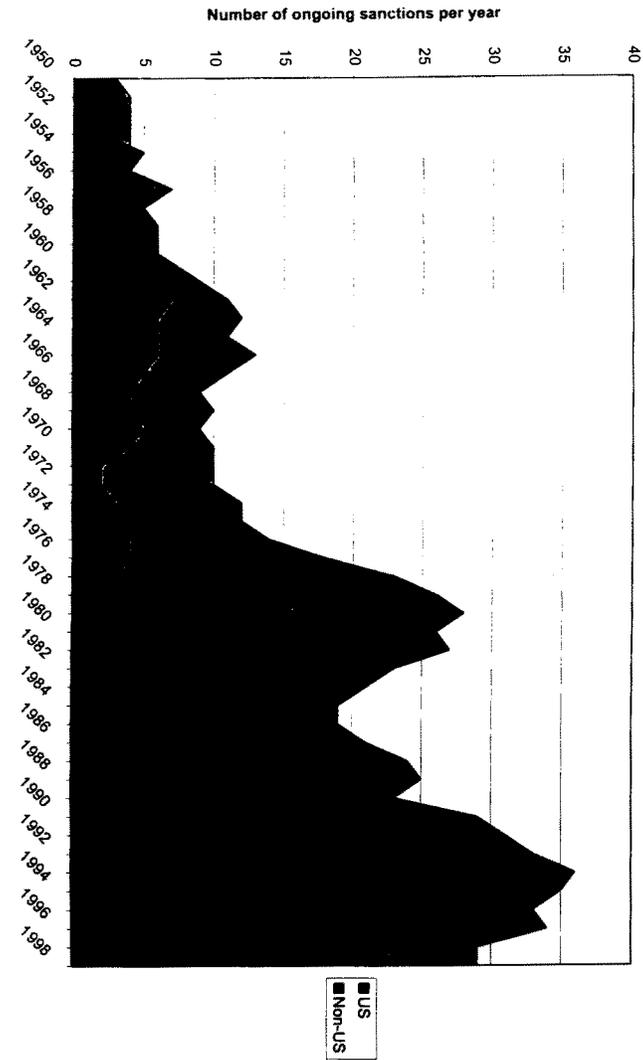


Figure 2. Sanctions in the 1990s

Source: Gary Clyde Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered*, 3rd ed, forthcoming, Institute for International Economics.

Figure 3. Trends in Ongoing Economic Sanctions



Source: Gary Clyde Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered*, 3rd ed., forthcoming, Institute for International Economics.

Table 1. Effectiveness of Economic Sanctions as a Foreign Policy Tool

	Number of successes	Number of failures	Success ratio (successes as a percentage of total)
All cases	40	75	35%
Cases involving US as a sanctioner			
1945-90	26	52	33%
1945-70	16	14	53%
1970-90	10	38	21%
Unilateral US sanctions:			
1945-90	16	39	29%
1945-70	11	5	69%
1970-90	5	34	13%

Source: Gary Clyde Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered*, 2nd ed, rvd., Washington: Institute for International Economics, 1990.

The Snake Oil Of Diplomacy

When Tensions Rise, the U.S. Peddles Sanctions

By GARY HUFBAUER

Stating the obvious, President Clinton recently lamented that the United States has become "sanctions happy." Clinton, of course, is the same president who has signed laws for new punitive measures against India, Pakistan, Cuba, Iran and Libya and has used his executive powers to add to the rich legacy of sanctions inherited from past occupants of the White House.

No country in the world has employed sanctions as often as the United States has. The American infatuation with economic sanctions was first by President Woodrow Wilson when he was trying to sell the idea of the League of Nations to his countrymen, together with its newly crafted economic weaponry. Wilson famously declared in 1919: "A nation boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. America didn't buy the League—the Senate refused to ratify U.S. membership in that precursor to the United Nations—but as the decades rolled on, America adopted Wilson's idea of sanctions as a diplomatic tool.

During this century, the United States

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has imposed economic sanctions more than 110 times. Economic sanctions entail the denial of customary export, import or financial relations with a target country in an effort to change the country's laws or policies. For example, the United States may block World Bank or International Monetary Fund loans in an effort to stem nuclear proliferation (India and Pakistan); or it may restrict trade with a country to change its human rights policies (Argentina, Chile and China).

The current inventory of U.S. sanctions covers 26 target countries, accounting for over half of the world's population. Since the demise of the Soviet Union, Congress has felt freer to interfere in foreign policy, instructing the president on the minute details of imposing and waiving sanctions. In short, whenever tensions rise, sanctions become the favorite tonic of American diplomacy.

What have we learned from this grand experiment in the diplomatic laboratory? Quite a lot.

First, as a substitute for military force—the Wilsonian notion—sanctions seldom achieve the desired change in the conduct of foreign countries. In plain language: Wilson was wrong. Perhaps one episode in five results in discernible changes abroad that can be traced to sanctions. The most recent qualified success was the election of Andres Pastrana as president of Colombia last month, following several years of U.S. sanctions directed personally against his predecessor, Ernesto Samper. Charging that Samper had accepted \$6 million from the Cali drug cartel for his 1994 presidential campaign, the United States disqualified Colombia

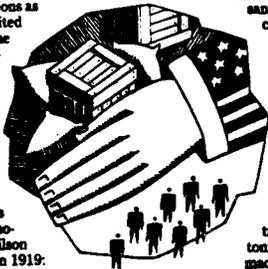
See SANCTIONS, C4, Col. 1

as a recipient of U.S. aid and took the unusual step of revoking Samper's entry visa, in effect declaring him persona non grata. These steps were, of course, not the only reason for Pastrana's victory, and probably not the major reason, but they were a contributing factor. Against this qualified success must be listed many unqualified failures: Haiti, Cuba, Libya, Iran, Iraq and China, to name the most prominent.

Advocates of sanctions offer South Africa as their favorite example. Economic sanctions were not the deciding factor, but they helped pressure F.W. de Klerk to concede power to Nelson Mandela in 1994. Why doesn't the South African experience translate to Burma, Sudan, India and other miscreants? One reason is that South African sanctions were multilateral, not just a U.S. initiative. Another reason is that, even under apartheid, South Africa was semi-democratic, and the white minority cared what the rest of the world thought.

In fact, this is one of the ironies: Democratic countries, where the elite cares what the rest of the world thinks, are far more susceptible to sanctions than authoritarian countries isolated from world opinion. The contrast between Sudan and South Africa, or between Cuba and Colombia, could not be sharper. An unintended consequence of financial sanctions against Pakistan, a weak but semi-democratic state, open to world opinion, is that the penalties may help topple the government of Prime Minister Nawaz Sharif—as Pakistan slips into deep economic depression—and pave the way for a truly authoritarian and fundamentalist regime.

The second lesson from the diplomatic lab is that it is naive to think of sanctions as a substitute for force when dealing with authoritarian powers. Draconian sanctions made little difference to the policies of Manuel Antonio Noriega in Panama, Raoul Cedras in Haiti or Saddam Hussein in Iraq. Only the use of force changed the governments of Panama and Haiti, and pushed Iraq out of Kuwait. The threat of force tempered Saddam's resistance to U.N. arms inspections early in 1996. But far more often, when U.S.



BY DAVID BLACK FOR THE WASHINGTON POST

presidents impose sanctions, they see them as an isolated measure, not as part of an escalating "force curve"—a steady progression from diplomatic protest, to economic sanctions, to military intervention; at each step, the target country knows worse is yet to come. The result of treating sanctions as a disconnected policy measure is that the United States has acquired a well-deserved reputation for bluffing: If an authoritarian adversary can withstand sanctions, it need not fear a surprise attack.

A third lesson is that economic sanctions can inflict pain on innocent people while at the same time increasing the grip of the leaders we despise. When sanctions are applied broadside—as against Haiti, Cuba and Iraq—the hardest hit are the most vulnerable: the poor, the very young, the very old and the sick. Left unharmed, and often strengthened, are the real targets: the political, military and economic elites.

A fourth lesson is that sanctions applied hard and fast are more likely to succeed (all other circumstances being equal) than sanctions applied soft and slow. But this lesson poses a dilemma. Hard sanctions usually require multilateral cooperation, if not from the U.N. Security Council, at least from the industrial democracies. While the United States may be the sole military superpower, it is not the only economic player. Without the cooperation of Canada, Western Europe and Japan, the United States alone cannot deny a target country key imports, critical markets or vital finances. So the prescription for hard sanctions—sanctions with both economic and moral effect—amounts to a caution against going it alone. On the other hand, multilateral cooperation takes time to arrange, and often is unachievable. Quick U.N. sanctions against Iraq in 1990 were a notable exception; more typical was the measured international response to India's recent nuclear weapons tests.

Another dilemma posed by the "hard and fast" lesson is that in circumstances where sanctions alone have the best chance of success—against societies that are semi-democratic and open to world opinion—it goes against the American spirit to pile on. Instead, we prefer to escalate sanctions slowly so as to give leaders of the target countries time to reconsider. This tactic also gives them time to take evasive measures.

In the modern age, sanctions are a marvelous tonic of foreign policy on the cheap.

So why not just muddle along with our sanctions policy? After all, in the view of many American officials, the United States has a special responsibility to deal with misdeeds in many places, ranging from religious persecution in Russia and China to despots in Cuba and Burma. But since military force is too costly and diplomacy is too feeble, why not apply economic sanctions as the global salve to problems abroad and consciences at home? Why not drink the marvelous tonic of foreign policy on the cheap?

The reason, again to quote President Wilson, if not in the sense he intended, is that sanctions are a "terrible remedy." Start with the domestic costs. Estimates made by Kimberly Elliott, Jeffrey Schott and myself indicate that economic sanctions in place today cost the United States some \$20 billion in lost exports annually, depriving American workers of some 200,000 well-paid jobs. It would be one thing if these costs were compensated from the public purse, so that everyone shared the burden; it is quite another when the costs are concentrated episodically on individual American firms and communities.

Then consider the morality. U.S. economic sanctions, along with Fidel Castro's own mismanagement, have helped close the income gap between Haiti and Cuba—by driving Cuban living standards downward toward the desperate Haitian level. Speaking of Haiti, that blighted economy has yet to recover from penalties imposed by the first Clinton administration. The multitudes poor in Iraq, Iran and Vietnam are that much more miserable thanks to prolonged sanctions. With a little resolve, we could also worsen the lives of Nigerians, Indonesians and Burmese. Pope John Paul II had a point when he said during his visit to Cuba in January that the effects of economic sanctions are "always deplorable, because they hurt the most needy"—in effect, that ordinary Cubans, not Castro and his inner circle, are paying the price. The same would happen in these other ill-governed countries.

tions to every cause and country badly erodes U.S. leadership. When the United States applies sanctions to half the world's people, and when it imposes secondary sanctions on allies and friends, it prompts a reaction against American hegemony. Sanctions against China have neither shaken the leadership nor hindered the country's drive for growth. Sanctions against India will have approximately the same lack of effect. And few secondary sanctions do more than irritate U.S. allies. (Americans, above all, should understand symbolic offenses. The British tea tax imposed no real economic hardship on colonial Boston. It did inspire a revolution against the greatest power of the day.)

Recovery from this love affair will require decisive steps by the White House and the Congress. Clinton appears ready to start the cure, but much more needs to be done.

Passage of the sanctions reform bill, introduced last fall by Sen. Richard Lugar (R-Ind.) and Reps. Lee Hamilton (D-Ind.) and Phil Crane (R-Ill.), would be a useful next

step. This bill seeks "to establish an effective framework for consideration by the legislative and executive branches of unilateral economic sanctions." It proposes several sensible guidelines when economic sanctions are considered, either by the president or Congress.

The procedural reforms include increased executive branch consultation with Congress, public hearings, a cost-benefit analysis, a preference for targeted and multilateral measures whenever possible, presidential waivers for all legislatively imposed sanctions and sanctity of contracts. If passed, Hamilton-Lugar would be a landmark law.

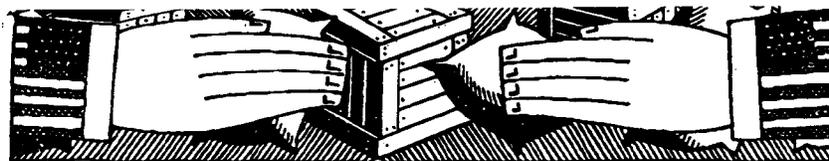
But additional steps are still needed:

• The United States should rarely impose sanctions when it cannot get the support of its friends. This Hamilton-Lugar benchmark needs to become standard operating procedure. Ideally, the U.N. Security Council should support the sanctions. At a minimum, the NATO allies, or groups of like-minded states in Latin America, Asia or the Middle East should endorse the effort.

■ We should realize that the huge inventory of sanctions now in place could have tremendous value as diplomatic carrots, if the president were able to withdraw them to reward good foreign behavior. For that, the president must have unfettered freedom to lift sanctions step by step. Hamilton-Lugar states that the president "should" have waiver authority when Congress enacts a new sanctions measure. The Justice Department needs to go further than that: it should challenge in court any sanctions legislation that does not contain a national interest waiver that the president can exercise. The Glenn Amendment, mandating sanctions against India and Pakistan for their nuclear explosions, would make an excellent test case. Mandatory legislation of this nature unconstitutionally infringes the president's power in the realm of foreign affairs.

■ When dealing with authoritarian regimes, the president should direct sanctions at rulers, not the populace at large. Iraqis are not our enemies. Nor are Cubans. We can single out individuals and agencies that give offense or outrage. We can devise civil and criminal penalties, buttressed by bounties, so that their persons and property are at risk whenever they venture outside their own territory.

▼ Finally, when the president imposes comprehensive sanctions on an authoritarian regime, he should view those sanctions as a prelude to the exercise of military force, not as a substitute for force. Unless we are prepared to remove bad governments with military force, we have no business heaping prolonged punishment on innocent people.



'A Terrible Remedy'

Ongoing foreign policy sanctions, defined as the "deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations," have been imposed either multilaterally or by the United States on the following nations:

Target Country	Initial Year	Type of Sanctions	Precipitating Event	Key Changes to Sanctions
Angola	1993	Limited trade restrictions (arms and oil embargo); Air and travel sanctions	Failure to implement peace agreement	Air and travel ban (1997) Ban on UNITA diamond exports (1998)
Armenia	1992	Restrictions on financial assistance (including Overseas Private Investment Corp.)	Embargo of Armenia over Nagorno-Karabakh	
Burma	1988	Restrictions on aid (including U.S. Export-Import Bank, OPIC), travel restrictions Ban on trade preferences Investment ban	Repression of political opposition	Massachusetts state sanctions (1996) Ban on new U.S. investments (1997)
Cambodia	1992	Limited trade restrictions; Log boycott; oil embargo	Failure to implement peace agreement; repression of opposition	Aid restrictions (1997)
Cameroon	1992	Restrictions on aid	Repression of opposition	
China	1989	Restrictions on financial assistance; Export-OPIC; Limited export restrictions	Tiananmen Square massacre	Limited export restrictions (1991)
Cuba	1960	Comprehensive trade and financial sanctions; Secondary sanctions to inhibit foreign investment	Castro-led takeover; military interventions in Africa (1980s); Repression of opposition	Cuban Democracy Act restricts trade of U.S. subsidiaries abroad (1992) Helms-Burton bill codifies embargo; adds secondary sanctions against third-country investors in Cuba (1996)
Gambia	1994	Restrictions on aid		
Haiti	1997	Restrictions on aid	Political instability	
India	1998	Ban on financial assistance (including Exim, OPIC); Limited trade restrictions; Ban on bank loans to government; Postoperatory of non-humanitarian official assistance funding	India's nuclear tests	

against Serbia over Kosovo

sanctions against Iran

Indonesia	1991	Military aid restrictions; Ban on arms sales	Political repression, especially in East Timor	
Iran	1984	Comprehensive trade and financial sanctions; Secondary sanctions to prevent foreign investment	Support for terrorism; opposition to peace process in Middle East; affects to acquire weapons of mass destruction	Limited export restrictions (1984) Export boycott added (1987) Total export embargo (1995) Iran-Libya Sanctions Act adds secondary sanctions against foreign firms investing in oil sector (1996)
Iraq	1990	Comprehensive trade and financial sanctions, except limited oil sales under U.N. oil-for-food program	Invasion of Kuwait; post-war discovery of extensive program to acquire weapons of mass destruction	
Liberia	1992	Arms embargo		
Libya	1978	Comprehensive trade and financial sanctions; Air travel ban	Gadhafi regime support for terrorism; bombing of Pan Am Flight #103	Limited U.S. export restrictions (1978) U.S. boycotts Libyan oil (1982) U.S. imposes comprehensive sanctions (1986) U.N. imposes limited trade sanctions; air travel ban (1992-93) Iran-Libya Sanctions Act adds secondary sanctions against foreign firms investing in oil sector (1996)
Niger	1996	Restrictions on aid		
Nigeria	1993	Restrictions on aid; U.S. bans all financial assistance, Exim, OPIC; Restrictions on arms sales; Travel restrictions	Abrogation of election results; execution of Ken Saro-Wiwa, other dissidents	
North Korea	1950	Comprehensive trade and financial sanctions	Korean War; possible development of nuclear weapons	U.N. threatens trade and financial sanctions to forestall nuclear weapons acquisition (1993-94)
Pakistan	1979	Ban on financial assistance, OPIC, Ex-Im, export credit guarantees; Ban on bank loans to Pakistan's government; Postponement of non-humanitarian loans	Nuclear weapons program; nuclear weapons tests	U.S. imposes limited sanctions (1979) U.S. waives sanctions during Soviet intervention in Afghanistan (1980s) U.S. expands sanctions; G-8 imposes limited sanctions (1998)
Somalia	1992	Trade embargo		
Sudan	1988	Comprehensive trade and financial sanctions	Civil war and human rights abuses; support for terrorism	Aid sanctions (1988-89) Comprehensive sanctions (1997)
Syria	1986	Ban on U.S. assistance, including Ex-Im, OPIC; Limited trade restrictions	Support for terrorism	
Vietnam	1954	Denied most-favored- nation status	Vietnam War and aftermath; personnel missing in action	Total trade embargo lifted, other restrictions remain (1994)
Yugoslavia	1991	Comprehensive trade and financial sanctions	Civil war in Bosnia; European sanctions of Dayton agreement ending Serbian war intervention in Kosovo	U.N. trade sanctions lifted, restrictions on multilateral lending after Dayton sanctions remain (1995) Additional sanctions imposed against Serbia over Kosovo (1998)
Zaire	1990	Restrictions on aid	Mobutu corruption and suppression of opposition; continued repression under Kabila regime	Sanctions continued after Kabila takeover (1998)
Zambia	1996	Restrictions on aid	Suppression of opposition, human rights violations	

SOURCE: Institute for International Economics

Chairman McCONNELL. Thank you, Dr. Hufbauer.
Mr. Carter?

**TESTIMONY OF BARRY E. CARTER, GEORGETOWN UNIVERSITY
LAW CENTER**

Mr. CARTER. Thank you, Chairman McConnell.

Senator McConnell, other distinguished Senators, ladies and gentlemen, it is an honor to appear before this task force, and it is also a challenge to try to suggest some useful ideas.

I prepared a longer statement, and with your permission, I would ask that it be entered in the record.

Chairman McCONNELL. Each of your statements will be made a part of the record.

Mr. CARTER. Thank you.

I do want to congratulate this task force and the U.S. Senate for deciding to take a step back and undertake a careful overall look at U.S. economic sanctions. For many years, these sanctions often seemed to be authorized by Congress and implemented by the executive branch without any particular order or rationality.

Ten years ago in 1988, I published a book about economic sanctions with a title that noted the haphazard U.S. legal regime. The situation has become even more haphazard over the succeeding 10 years.

I realize how busy you Senators are and how focused you are in improving matters. So let me start at the end by highlighting my conclusions.

First, I support S. 2244, subject to possible modifications of the definitions and exclusions. This bipartisan bill introduced by Senator Dodd for himself, Senator Hagel, Senator Biden, and Senator Roberts, provides the possibility of a Presidential waiver for important national interest in most existing sanction laws. It allows for more consistency in applying sanctions, and it provides more U.S. flexibility in foreign policy.

Second, I also support S. 1413 and its companion, H.R. 2708, again, subject to some minor modifications. This bipartisan bill introduced by Senator Lugar and Representatives Hamilton and Crane provides a much-needed process for careful implementation and evaluation of unilateral U.S. sanctions.

Third, along with Dr. Haass, I would encourage the task force to consider secondary sanctions. I call them secondary boycotts. I would hope this task force considers somehow creating the presumption against so-called secondary boycotts.

Just as the United States strongly opposed the secondary demands on U.S. businesses by the Arab boycott of Israel, I believe the United States should be very hesitant to impose unilateral U.S. sanctions that do not work directly on the target country or entities in that country, but act as a secondary boycott against foreign companies or individuals who do business with the target country.

I will come back to these conclusions later. However, let's first ensure that we have a workable definition of sanctions because I think that one can try to do too much, and I think there is often confusion or conflict over definitions that are unnecessary. And I think it is also helpful to get the historical trend.

As for a workable definition, I think the task force would have more than enough to chew on by focussing on U.S. unilateral economic sanctions for foreign policy purposes. Let's parse that a bit more.

Economic sanctions can be defined to include measures that limit exports, limit imports to the United States, investment in the target country, and private financial transactions between U.S. persons and the target country.

This also includes directions for the United States to vote against loans in the international financial institutions.

Further, it should include restrictions on U.S. Government programs, Ex-Im Bank, OPIC, foreign assistance, aircraft landing rights, because changing those programs can have a definite impact on the target countries and on U.S. companies.

I think it is also important to define the purposes of the sanctions you are going after. The focus should be on sanctions for foreign policy practices where foreign policy is defined broadly to include national security, nonproliferation, anti-terrorism, human rights, democratization, environmental concerns, and anti-narcotics efforts.

Well, what is left or what should be left, I do not think the definition of "foreign policy" should include the use of economic sanctions as a tool in trade disputes or trade negotiations. Although these are interesting and very important, the use of economic sanctions for such economic purposes, trade purposes, bring a host of other situations, such as market access, intellectual property rights. They raise new and difficult legal and policy issues, and they often involve different laws. As a result, I suggest that you focus on sanctions that are undertaken for non-economic foreign policy purposes.

I also suggest that you focus on unilateral economic sanctions. These are the ones that the U.S. is authorized under U.S. law to impose or already has imposed without comparable actions by other countries against the target country. These sanctions are the most controversial, in part, because the impact of the sanctions might be diluted by offsetting foreign countries filling the gaps or because U.S. companies use business to foreign rivals.

With these parameters as our working definition, let's briefly recall some relevant history. Between the end of World War II and until the mid-1970's, U.S. economic sanctions were primarily a part of the cold war and employed against Communist countries. There were some rare exceptions. However, it was starting in the mid-1970's, in part, because of congressional initiatives that sanctions were authorized and used in more foreign policy cases against human rights abuses, terrorism, and proliferation.

This growth in the 1970's slowed down considerably when the use of unilateral U.S. economic sanctions encountered strong domestic criticism during President Carter's agricultural embargo against the Soviet Union in 1980 and then very strong foreign opposition to President Reagan's abortive oil pipeline sanctions against the Soviets in 1982.

In some ways in the early 1980's, a generation of congressional and executive policy-makers received an education about some of the limits to unilateral sanctions.

As a result, the late 1980's were a period of relative restraint in the use of new U.S. sanctions. Well, as noted by several speakers, things have heated up against during 1993 through 1998. In part, it might well be because of the major turnover in Congress and the new generation of policy-makers in many places.

In any event, although there are variations in the numbers of various studies, there is a consensus that U.S. unilateral economic sanctions now cover at least 26 target countries that include over half the world's population.

I want to emphasize that the reasons behind sanctions is usually commendable. The difficult question is whether U.S. unilateral economic sanctions are the appropriate measure to take, rather than making diplomatic protest, pushing for multilateral sanctions, using cruise missiles or the like.

Even if U.S. unilateral economic sanctions might seem appropriate in a situation, there are real questions what might be the most cost-effective sanctions. I believe that cutting off U.S. exports directly affects revenues and jobs in the United States, and would seem to be the economic sanction of last resort. Maybe cutting off foreign aid or foreign aircraft landing rights or even limiting imports from the target country might have an effect without the same cost to the United States. One needs to tailor the sanctions to the specific situation.

Well, whatever one thinks of the particular uses of U.S. sanctions, I think there are some grounds for consensus on certain points that this task force can easily reach.

I think there is a need to instill more order and rationality into the process. To begin with, right now there is no system for recording in any comprehensive fashion the various U.S. unilateral sanctions, much less evaluating their impact.

Given the controversy generated by some of these sanctions, the public discourse would be greatly aided if Congress decided that there should be a regular report on unilateral U.S. economic sanctions.

The report should include at a minimum a listing of them, a listing which does not exist today.

There should also be a requirement for some empirical analysis of the impact of these sanctions on the target country and on U.S. businesses and U.S. jobs.

The International Trade Commission has been doing a major study at the request of a congressional committee. The ITC is an independent agency, and I encourage the use of the ITC for further studies, but let me be more specific.

As I mentioned before, first, I urge the Senate to support S. 2244. I would, however, suggest that one needs to examine the definitions and exclusions in S. 2244 carefully.

For example, my earlier definition of U.S. economic sanctions is generally consistent with the one in 2244, except there is a last subsection there about intellectual property that I think is unclear and inconsistent with the other definitions.

For another example, although the exclusions in 2244 are understandable, why exclude arms sales from a possible Presidential waiver, as the bill does, since the President might well have national security reasons to waive such a sanction?

Also, the last clause of the bill says that the bill's waiver does not preempt any more restrictive waivers. Well, that is vague, and I am sure it is going to lead to dispute. I think it could be clarified.

I support 2244. I just think that there are some ways that it can be improved, as I am sure this task force is looking at it.

Secondly, I also support Senator Lugar's S. 1413. In commendable ways, it goes beyond the basic reporting and evaluation process that I recommended earlier. However, again, I think one should look carefully at the definition of sanctions, such as the one regarding intellectual property.

The bill might also benefit from a section about statutes that are excluded from its coverage, much as Senator Biden's bill does have that exclusion section. Otherwise, if you do not have such an exclusion section, an amendment to an economic-based trade law, such as anti-dumping or countervailing duties, might fall incorrectly, I believe, under the definition of sanction. We do not need to get into those issues. I suspect Senator Lugar and others did not intend to. The bill might make it more clear.

Third, and for a new idea, I encourage the Senate task force to somehow create a presumption against new laws imposing secondary boycotts. The phrase "secondary boycott" is much more precise than the word "extraterritoriality." I think the word "extraterritoriality" deserves an award, an award for one of the most vague and amorphous terms in international politics and law.

There is extraterritoriality everywhere, in the laws of the United States, the European Union countries, and others, be it an anti-trust, securities or smuggling.

For example, the European Union rails against our extraterritoriality in the Helms-Burton law and the Iran-Libyan Sanctions Act. However, the EU also carefully examined and even required changes in the merger between Boeing, a Seattle-based corporation, and McDonnell-Douglas, a company headquartered in St. Louis.

The EU interest in that merger was understandable, though, because of the world trade in the area, but it surely demonstrated that one cannot and does not want to simply prohibit extraterritoriality.

I think the better dividing line is a secondary boycott. Let me be clear. A primary boycott limits trade and other transactions between the host country and the target country. Most U.S. sanctions and laws involve a primary boycott; for example, limits on trade by U.S. companies with Libya or Syria.

A secondary boycott limits trade between companies in Country A and a third country, C, or its entities because the third country is going business with the target country, B. So you pick on C to get at B.

Until recently, the best known example of a secondary boycott in international relations was the Arab boycott of Israel. Certain Arab countries not only prohibited their companies from trading with Israel, a primary boycott, but they imposed sanctions on third-country businesses, such as our companies, U.S. companies, for trading with Israel; hence, a secondary boycott.

In 1977, the U.S. amended the Export Administration Act to make it illegal, indeed, a potential felony for a U.S. company to act

in furtherance of the Arab secondary boycott. And I think we ought to think very hard before we impose secondary boycotts.

Thank you again for the opportunity to testify here today. I hope you have questions or comments, but I also hope that if there is an opportunity for your staff or others who would like to work with me, I would be happy to work with your staff and others.

[The prepared statement of Mr. Carter follows:]

Testimony by Prof. Barry E. Carter, Georgetown University.

To the Task Force on Economic Sanctions of the

United States Senate

September 9, 1998

Bringing More Order and Rationality to
U.S. Unilateral Economic Sanctions

Co-chairmen Senators McConnell and Biden, other distinguished Senators, and ladies and gentlemen:

It is an honor to appear before this committee, and it is a challenge to try to suggest some useful ideas on the important subject of U.S. economic sanctions.

This committee--and the U.S. Senate--are to be congratulated for deciding to take a step back and undertake a careful, overall look at U.S. economic sanctions. For many years these sanctions often seemed to be authorized by Congress and implemented by the Executive Branch without any particular order or rationality.

In 1988 I published a book about economic sanctions with a title that noted the "haphazard U.S. legal regime."¹ The situation has become even more haphazard over the succeeding 10 years.

One can quibble over the fine points of what constitutes a new U.S. economic sanction. However, by about any definition, the United States is resorting increasingly to unilateral economic sanctions against a broad range of target countries for a wide variety of reasons. Indeed, 1993-1998 appear to have been banner years for new U.S. sanctions.

My fellow panelist, Dr. Gary Hufbauer, estimated just this July that "the current inventory of U.S. sanctions covers 26 target countries, accounting for over half of the world's population."²

I realize how busy the Senators on this Task Force are and how focused you are on improving matters. So, before I provide some analysis of existing sanctions and historical trends, I wanted to highlight my conclusions:

¹ Barry Carter, International Economic Sanctions: Improving the Haphazard U.S. Legal Regime (Cambridge Univ. Press: 1988).

² Gary Hufbauer, "The Snake Oil of Diplomacy: When Tensions Rise, the U.S. Peddles Sanctions," The Washington Post, July 12, 1998, p. C1. See generally Gary C. Hufbauer, Jeffrey J. Schott, and Kimberly A. Elliot, Economic Sanctions Reconsidered: History and Current Policy (2d ed. 1990), which is now being updated. See also National Association of Manufacturers, A Catalog of New U.S. Unilateral Economic Sanctions for Foreign Policy Purposes (with analysis and recommendations) (1997).

First, I support S.2244, subject to possible minor modifications of the definitions and exclusions. This bipartisan bill, introduced by Senator Dodd for himself, Senator Hagel, Senator Biden, and Senator Roberts, provides for the possibility of a Presidential waiver for “important national interests” in most existing sanctions laws. It allows for more consistency in applying sanctions. It also provides more U.S. flexibility in foreign policy.

Second, I also support S.1413 (and companion H.R. 2708), again subject to minor modifications. This bipartisan bill, introduced by Senator Lugar and Representatives Hamilton and Crane, provides a much-needed process for careful implementation and evaluation of unilateral U.S. sanctions.

Third, I would encourage the Task Force to consider somehow creating a presumption against secondary boycotts. Just as the United States strongly opposed the secondary demands on U.S. businesses of the Arab boycott of Israel, I believe the United States should be very hesitant to impose unilateral U.S. sanctions that do not work directly on a target country or entities in the target country, but act as a secondary boycott against other foreign companies or individuals who do business with the target country.

I will come back to these conclusions later. However, let’s first ensure that we have a workable definition of the area being covered and a sense of the historical trends.

As for a workable definition, my focus and that of some other recent studies is on U.S. unilateral economic sanctions for foreign policy purposes. Let’s parse that a bit more. Economic sanctions are defined to include measures that limit exports from the United States, imports to the United States, investment in the target country, and private financial transactions between U.S. persons and the target country’s government or citizens. This also includes directions for the United States to vote against loans in the international financial institutions (IFIs).³ Finally, the measures include restrictions on U.S. government programs (e.g.,

³ The international financial institutions usually are meant to include the World Bank Group, the International Monetary Fund (IMF), and the regional development banks (such as the Inter-American Development Bank). Sometimes, the laws (e.g., on inadequate anti-narcotics efforts) talks of votes in the multilateral development banks (MDBs), which is the same group of institutions except that it does not include the IMF.

Eximbank and OPIC programs, as well as foreign assistance and aircraft landing rights) that can have a definite impact on the target countries and on U.S. companies.

The definition of unilateral economic sanctions also takes into account the purposes of the sanctions. The focus is on sanctions for foreign policy purposes, where foreign policy is defined broadly to include national security, nonproliferation, anti-terrorism, human rights, democratization, environmental concerns, and anti-narcotics efforts.

On the other hand, the definition here of foreign policy does not include the use of economic sanctions as a tool in trade disputes or trade negotiations. Although interesting and important, the use of economic sanctions for such economic purposes brings in a host of other situations (e.g., intellectual property protection and market access efforts), raises new and difficult issues, and often involves different laws. As a result, my study of economic sanctions laws and decisions includes only ones that were undertaken for noneconomic foreign policy purposes.

My focus is also on U.S. unilateral economic sanctions. These are sanctions that the United States is authorized under U.S. law to impose or already has imposed without comparable actions by other countries against the target country. These sanctions are the most controversial, in part because the impact of the sanctions might be diluted by foreign countries filling any gaps and because U.S. companies lose business to foreign rivals.

The United States also participates in multilateral sanctions, such as those now in place against Iraq and Libya. These are usually the result of U.N. Security Council decisions. The United States also participates in international control regimes that envision some form of collective action against exports of sensitive goods and technology--i.e., the Wassenaar Arrangement (the successor of COCOM), the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Group. Again, however, the focus of my study is on U.S. unilateral sanctions, as is the focus on S.2224 and S.1413.

With these parameters as our working definition, let's briefly recall some relevant history.

Between the end of World War II and until the mid-1970s, U.S. economic sanctions were primarily a part of the Cold War and employed against the Communist countries. There were some "rare exceptions," such those occasionally imposed against some Latin American countries (for example, Cuba, Chile, and the Dominican Republic); those limiting the export of nuclear items; those designed to maintain stability in volatile regions, such as the Middle East; and, of course, those helping implement U.N. sanctions, such as against Rhodesia and South Africa.

However, starting in the mid-1970s, in part because of Congressional initiatives, sanctions were authorized and used in more foreign policy cases--e.g., against human rights abuses, terrorism, and proliferation.

This growth slowed down considerably when the use of unilateral U.S. economic sanctions encountered strong domestic criticism during President Carter's agricultural embargo against the Soviet Union in 1980, and then very strong foreign opposition to President Reagan's abortive oil pipeline sanctions against the Soviets in 1982. In some ways, a generation of Congressional and Executive policy makers received an education about some of the limits to unilateral sanctions in terms of effectiveness and costs. As a result, the late 1980's were a period of relative restraint in the use of U.S. unilateral sanctions.

Things heated up again during 1993-98. In part, it might well be because of the major turnover in Congress and a new generation of policy makers in many places.

In any event, although there are variations in the numbers of various studies (e.g., by Dr. Hufbauer, by the National Association of Manufacturers, and by the President's Export Council), there is a consensus that U.S. unilateral economic sanctions now cover at least 26 target countries that include over half the world's population. In addition to the countries that the United States has designated as supporting terrorists (Libya, Iran, Iraq, Syria, Cuba, North Korea, and Sudan), the target countries include, among others, India, Pakistan, China, and Myanmar (or Burma).

The reasons behind these sanctions are usually commendable. The difficult question is whether U.S. unilateral economic sanctions are the appropriate measure to take, rather than making diplomatic protests, pushing for multilateral sanctions, or taking other actions.

Even if U.S. unilateral economic sanctions might seem appropriate, there are real questions about what might be the most cost-effective sanctions. Cutting off U.S. exports directly affects revenues and jobs in the United States--and would seem to be the economic sanction of last resort. Maybe cutting off foreign aid or foreign aircraft landing rights--or even limiting imports from the target country (especially if it were not yet a member of the World Trade Organization)--might have an effect without the same costs to the United States. One needs to tailor the sanctions to the specific situation.

A need for systematic recording and evaluation. Whatever one thinks of the particular uses of U.S. sanctions, there should be grounds for consensus on certain points to instill more order and rationality into the process. To begin with, there is now no system for recording in any comprehensive fashion these increasing U.S. unilateral sanctions, much less evaluating their impact. My study of the new sanctions in 1993-96 required drawing on a wide variety of laws, Federal Register notices, and other published materials, as well as talking to people who follow the subject. Just getting the basic list together was difficult.

Given the controversy generated by some of these sanctions, the public discourse could be greatly aided if Congress decided that there should be a regular report on unilateral U.S. economic sanctions. The report should include, at a minimum, a listing of the sanctions.

There should also be a requirement for some empirical analysis of the impact of these sanctions on the target country and on U.S. businesses and jobs. The President's Export Council, an advisory body of senior business and labor leaders, proposed in 1996 that the International Trade Commission, an independent agency, do such a study. A Congressional committee has asked the ITC to undertake an empirical study of sanctions. I understand that the study is well along. The results could be interesting.

Although the above suggestions should be generally accepted, let me make some more specific recommendations and link them to bills pending in the Senate.

First, I urge the Senate to support S.2244. By allowing for the possibility of a Presidential waiver for "important national interests" in most existing sanctions laws, it adds more consistency in the application of U.S. sanctions. It also provides

more U.S. flexibility in the changing circumstances that often surround the use of sanctions.

One should examine, however, the definitions and exclusions in S.2244 carefully. For example, my earlier definition of a U.S. economic sanction is generally consistent with the one in S.2244, except for the last subsection about intellectual property (Section 2(e)(1)(A)(x)). This subsection is unclear and seems inconsistent with the other definitions, raising a whole new set of issues about market access.

For another example, although most of the exclusions are understandable, why exclude arms sales (in subsection (vii)) from a possible Presidential waiver since the President might well have national security reasons to waive such a sanction?

Also, the last clause of the bill saying that the bill's waiver does not preempt any "more restrictive" waivers is vague and sure to lead to dispute. "More restrictive" needs to be defined, if only by examples from existing laws.

Second, I also support S.1413. In commendable ways, it goes beyond the basic reporting and evaluation process that I recommended earlier as minimum requirements. Again, however, I think one should look carefully at the definition of sanctions, notably the last subsection on intellectual property. Also, S.1413 might well benefit from a section excluding certain U.S. statutes, as found in S.2244. Otherwise, an amendment to our economic-based trade laws (such as regarding anti-dumping or countervailing duties) might fall, incorrectly I believe, under S.1413's definition of a sanction.

Third, I encourage this Senate Task Force to consider somehow creating a presumption against new laws imposing secondary boycotts.

The phrase "secondary boycott" is much more precise than the word "extraterritoriality." Extraterritoriality deserves the award for one of the most vague and amorphous terms in international politics and law. There is extraterritoriality everywhere in the laws of United States, the European Union countries, and others--be it in antitrust, securities, or smuggling. For example, the European Union rails against our "extraterritoriality" in the Helms-Burton law. However, the EU also carefully examined and even required changes in the merger

between Boeing, a Seattle-based corporation, and McDonnell Douglas, headquartered in St. Louis. The EU interest in the merger was understandable, but it surely demonstrated that one cannot, and does not want to, simply prohibit “extraterritoriality.”

The better dividing line is a “secondary boycott.” Let me be clear. A primary boycott limits trade and other transactions between the host country and the target country and entities there. Most U.S. sanctions laws and regulations involve a primary boycott—for example, limits on trade by U.S. companies with Libya or Syria.

A secondary boycott limits trade between companies in country A and a third country C or its entities because the third country or its entities do business with the target country B. Until recently, the best known example of this was the Arab boycott of Israel. Certain Arab countries not only prohibited their companies from trading with Israel (a primary boycott), but they imposed sanctions on third country businesses, such as U.S. companies, for trading with Israel (hence, a secondary boycott). In 1977, the United States amended the Export Administration Act to make it illegal—indeed, a potential felony—for a U.S. company to act in furtherance of the Arab secondary boycott.

Parts of the recent Helms-Burton Act as well as parts of the Iran-Libya Sanctions Act constitute secondary boycotts. It is these provisions that have especially caused considerable friction with our allies, like the European Union, Canada, and Mexico. I think we should create a presumption, or some other extra hurdle, before there are new U.S. laws that involve secondary boycotts. Our principled stand against the Arab boycott of Israel was correct. We should pause before we begin imposing secondary boycotts of our own.

Thank you again for the opportunity to testify here today. I hope you have questions or comments.

In any case, I would be honored to work further with you and your staffs as you commendably delve into this important area of unilateral U.S. economic sanctions.

Biography

Barry E. Carter has an extensive background in law, foreign policy, and international trade and business.

Mr. Carter is presently a professor of law at Georgetown University, teaching primarily international courses and also chairing the International Law Programs Committee. He returned to Georgetown in August 1996 after over three years as the acting Under Secretary and then Deputy Under Secretary of Commerce for Export Administration. During 1993-96, Mr. Carter also was the U.S. vice chair to Secretary of Defense William Perry on bilateral defense conversion committees with Russia, Kazakstan, Ukraine, and Belarus. He was the U.S. chair of the committee with Uzbekistan. As a result of these responsibilities, he helped streamline U.S. export controls and enforce them. His Bureau of Export Administration (BXA) was active in hands-on law enforcement, with its special agents making arrests, seizing goods, and collecting a record amount of fines. Mr. Carter also helped other countries strengthen their controls over nuclear and other sensitive items, and he assisted those countries in converting some of their defense facilities to civilian production, often in joint ventures with U.S. companies. He also worked to reorganize and downsize the 370-person Bureau and he helped prepare and manage its \$40+ million budget.

Before entering the government, Mr. Carter had been a Georgetown professor since 1979 and Executive Director of the American Society of International Law during 1992-93. He was active in the 1992 Clinton-Gore campaign and transition, working on NAFTA and other trade and investment issues. He was a visiting law professor at Stanford in 1990. He served as a senior counsel on the Senate Select Committee on Intelligence Activities in 1975. He was a Fellow at Harvard's Kennedy School of Government and an International Affairs Fellow at the Council on Foreign Relations in 1972. A member of Dr. Kissinger's National Security Council staff from 1970-72, he worked on the SALT negotiations, other U.S.-Soviet issues, and NATO. While an Army officer, he was a program analyst in the Office of the Secretary of Defense in 1969-70. He has been a trial and appellate lawyer in California and Washington, D.C.

Mr. Carter, a native Californian, graduated Phi Beta Kappa from Stanford University in 1964, received a master's degree in economics and public policy from Princeton's Woodrow Wilson School of Public and International Affairs in 1966, and graduated in 1969 from Yale Law School, where he was the Projects Editor of the Yale Law Journal.

Prof. Carter's book on International Economic Sanctions: Improving The Haphazard U.S. Legal Regime (Cambridge Univ. Press: 1988) received the 1989 annual award from the American Society of International Law for the outstanding new book on international law subjects. His casebook on International Law (Little, Brown & Co.: 2nd ed. 1995) (with Phillip Trimble) is in use in over 60 law schools. Prof. Carter has also published articles in the Washington Post, Los Angeles Times, Scientific American, law reviews, and other periodicals.

He is a member of the Council on Foreign Relations. He is on the U.S. roster of individuals eligible to serve on binational panels that review antidumping and countervailing duty matters under Chapter 19 of NAFTA. Until joining the Commerce Department, he had also been the vice president of the Arms Control Association and the chairman of the Advisory Board of the Defense Budget Project.

Chairman MCCONNELL. Thank you, Mr. Carter.

We are going to do 5-minute rounds.

If I may ask each of you to respond briefly to the following question. Do you consider conditioning foreign aid a sanction?

Dr. Haass?

Mr. HAASS. I would say it is, yes. I would say that conditioning foreign aid to make it available only if certain conditions are met or to take it away if certain things are done is a form of a sanction.

Chairman MCCONNELL. Dr. Hufbauer?

Mr. HUFBAUER. Yes.

Chairman MCCONNELL. Mr. Carter?

Mr. CARTER. I do. I think it should be just like OPIC and Ex-Im Bank aid.

Chairman MCCONNELL. You have each made the point that the U.S. is the largest user of unilateral sanctions. A witness yesterday pointed out that if a sanction is the conditioning or linkage of economic aid with a specific action, every trading partner for Japan or European countries should be viewed as subject to a sanction since there is always a quid pro quo or conditioning of aid. Do you all agree with that observation?

Mr. HAASS. I think what is different, Mr. Chairman, about the American use of sanctions is the use of sanctions for what you might describe as foreign policy purposes rather than trade-related purposes, and I think we are then distinguishing or taking out of the conversation things like special and Super 301 or their equivalents in other countries.

What we are essentially saying is here is—that we can basically either make available or take away various types of economic interaction, the access to investment, the access to markets, the access to aid, what have you, but it could also be military tools. It also could be political. And we are going to take those away normally if certain behaviors not to our liking continue, and I think that is what is qualitatively different about American foreign policy is the use, again, of largely economic sanctions for this much wider range of purposes rather than for the promotion of trade-related interests.

Mr. HUFBAUER. I agree. When I think about Japan, which has the largest aid program, which obviously promotes their corporate interests on a wide scale, occasionally those are interrupted, as with India and as with China in Tiananmen Square, but most of the conditions which were referred to, I think by the earlier panel, have to do with furthering interests of Japanese companies.

Chairman MCCONNELL. Mr. Carter?

Mr. CARTER. I would agree with both of my co-panelists. Separate the trade issues on economic trade from these foreign policy purposes.

Chairman MCCONNELL. Senator Biden?

Senator BIDEN. Dr. Haass, go back 25 years. You are the director of this Committee. I am being serious now about this. You have to recommend to the Chairman and me how we fulfill our responsibility given by the leadership.

Should we attempt to write a piece of legislation governing under what circumstances sanctions can or should be imposed? We are legally able to do that, but is that a judicious undertaking? Should

we be laying out a panoply of options or should we put out in a report guidelines as to what sound sanctions policy should entail?

You are a student of the Congress. I am not being solicitous. You are a student of the Congress as well as foreign policy. What should we be doing in your view?

Mr. HAASS. That is a good question.

I would think there is three things that would probably be useful. For what you might call omnibus legislation, I think it makes sense to include procedural reforms about how these issues will be dealt with, the need for impact statements and so forth. I think that is what lends itself to an across-the-board type approach.

Secondly, I do not think you can—and I think you would probably agree with me, Senator—you cannot come up with the equivalent of a foreign policy recipe here. There is no cookbook for sanctions, thou shalt use them in the following situations or not. I think that is the sort of approach that gets you in trouble because it is too inflexible.

All you can do then, I think, is on individual things to come along is approach them intelligently, and I would say the single most important reform in that regard would be waivers. Waivers give you and give the executive branch latitude, and I am not a constitutional lawyer, but one thing you may want to think about in order to maintain the right balance between this body and the executive branch is some sort of mechanism where if you build a waiver into every sanction, on those situations where the executive chooses to exercise it, then there is not simply a reporting requirement with the justification, but there could even be some recourse for Congress to overturn the waivers, perhaps by a two-thirds vote of each chamber, if that does not get you into constitutional hot water.

But I think that more than any other single reform you could make would be as you pass individual sanctions—would be to introduce waivers, and the third thing about the general approach about when sanctions ought to be used as opposed to other foreign policy tools, I think these hearings do some good, and I think that is what report language is for, to give some general indication or guidance as to the future.

Senator BIDEN. Gentlemen, would you comment on the waiver notion as sort of a staple of whatever sanction would be in the future imposed by the Congress on a foreign policy issue? Is that wise? Is it relevant to talk about always having—there is no such thing as always, but always having a waiver built in?

Mr. HUFBAUER. Senator, I spoke to that one. You were, I believe, out of the room, and I strongly endorse the idea of waivers not only in future cases, but all past cases, as a matter of flexibility.

For me, the exceptions would be extremely rare.

Senator BIDEN. I know you have not responded, Mr. Carter, but the yellow light is on. Let me do what we do here and ask another question and get it under the wire, and you can answer both.

Does the sunset provision build in—does that obviate the constitutional dilemma that is created sometimes by how the waiver is drafted, whether or not we are dealing with the presentment clause of the Constitution? What about the notion as a matter of

policy of forcing upon the Congress the requirement of reinstating the sanction?

Mr. HAASS. Do you want me to take that?

Senator BIDEN. I would ask all of you. I would ask Mr. Carter first.

Mr. CARTER. First, I think sunset provisions are generally a good idea. However, for instance, on the laws regarding Jewish emigration from Russia—

Senator BIDEN. Yes.

Mr. CARTER [continuing]. As you pointed out earlier—however, I think they are only part of the answer. One, you can draft a waiver clause. It should be acceptable, such as in your proposed bill, 2244. I think it is immanently constitutional.

I think you would want to have a waiver, but you would also want to have reporting and evaluation as well, as Senator Lugar has proposed.

Mr. HUFBAUER. I am against—my one big difference with the bill written by—proposed by Senator Lugar, I am against sunset provisions, and the reason I am against them is that it just invites the waiting out by the foreign power, which happens all too often in any event. So that is one provision which I do not welcome.

Mr. HAASS. I would reluctantly take issue with Senator Lugar, and this would be one of my rare cases of disagreement with him.

I have two problems with waivers. One is, say, in the case of India and Pakistan.

Senator BIDEN. Waivers or sunset?

Mr. HAASS. I am sorry. With sunset. I apologize. With sunset. Thank you.

One is, say, in the case of India and Pakistan now. I would not want to have to wait until a sunset clause was triggered. I think it was a mistake, and I do not want to have to go through, say, the next year or 2 years until we reach the end of that road. I think we will pay a price in the meantime.

Secondly, in a version of what Gary Hufbauer said, I am never comfortable with the idea of foreign policy being set by inaction, and the idea that Congress would make foreign policy by inaction makes me uncomfortable, even though the bias would clearly be something I want, which is to make sanctions less prevalent.

So, while I agree with the end, if you will, I would much prefer waivers being used in lieu of sunset because I think waivers give you that option at any step along the way.

So if it were constitutionally doable, I would recommend that approach.

Senator BIDEN. Thank you, Mr. Chairman.

Chairman MCCONNELL. Senator Lugar?

**STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR
FROM THE STATE OF INDIANA**

Senator LUGAR. Well, thank you very much, Mr. Chairman.

Let me thank the panel. I think that these hearings are useful because they give each of you and others an opportunity to offer expert testimony to help refine our views.

Yesterday, in his testimony, Secretary Eizenstat agreed with a number of the principles of the legislation that Congressmen

Crane, Hamilton and I have introduced. Yet, at the same time he had two problems, one of which was that he wanted much more discretion on the part of the President.

He felt that our parallel construction which says that the Congress and the President must rationalize what they are doing and must be accountable is uneven. We are too restrictive on the executive, and that Congress might, behind the barn, change the rules suddenly and, lighten up the load.

In order to obviate that prospect, Secretary Eizenstat wanted to widen the latitude for the administration. He may have some valid points. One of the problems in looking at this issue is that we must proceed in some rational way prospectively when proposing sanctions because someone ought to explain what our foreign policy objective is, and ought to do that up front, including the President.

If it is an emergency, our bill allows him to waive most of the procedural requirements in the bill, but there has to be on the book some reasons why we did all this, and some bench marks as to whether we had any success, and finally some idea of what the costs are to ordinary Americans. I think that is still very significant, despite important foreign policies and human rights considerations. There are costs involved in terms of jobs and income to real people.

So I would hope that both the administration and the Congress meet their standards. I am troubled that Secretary Eizenstat in all of our negotiations has not accepted that point.

Secondly, Secretary Eizenstat wanted to dip back with waivers of existing sanctions, as well as future sanctions. Not a bad idea, I suspect, in remedying old foreign policy dilemmas or mistakes, but I said as a practical matter, my sanctions bill is having a very tough time prospectively, quite apart from taking on the Cuban fight, the Iran fight, or various other fights with people who are in the trenches.

Insistence upon tackling existing sanctions is strictly a headed-to-the-graveyard proposition. I think this is frustrating. The Washington Post story today starts out by saying protracted negotiations began again yesterday in this setting.

Leaving aside the merits, the fact is the administration is not on board. The administration has not endorsed my amendment and ultimately, the President has to sign a bill and we have to try to work that out.

Among our Task Force, there are some members more enthusiastic about limiting sanctions than others, and I think that was reflected in the vote we had on the floor on my amendment. A good number of Senators would like to have the ability to drop a sanction or two whenever it seems to fit their purpose.

So this careful rational process is not their cup of tea, and we will have to work out. I am somewhat more frustrated by the fact we cannot seem to come to closure with the administration. This is why your testimony is helpful. Your public testimony—you all have all written about sanctions extensively—and the help you have given to USA Engage, the Farm Bureau, and other groups in our society, have in fact helped to limit sanctions this year.

We have no legislation enacted, but the tide is clearly against sanctions. I think everybody understands that. The Wall Street

Journal account yesterday is more helpful. It is going to come, probably not in this session, not with those we are dealing with now, but with whatever players are coming on board. I think that is probably right.

I have no questions. I appreciate the comments you have made on the sunset provision, and you may be right. We do not even know, as Mr. Carter said, the list of sanctions we have. It is useful to be accountable, to sweep them off as dead wood, and this is one way of getting on with that.

Thank you, Mr. Chairman.

Chairman MCCONNELL. Thank you, Senator Lugar.

Senator HUTCHINSON?

Senator HUTCHINSON. Thank you, Mr. Chairman, and thank you for holding the hearings. I think they have been very valuable, certainly for me.

Dr. Haass, I found some of your writings very provocative, and I would just like for you to comment on a couple of things.

In your book, "Economic Sanctions and American Diplomacy," you make the assertion that imposing economic sanctions should be as serious a step as military action. In fact, if I can quote exactly, "Economic sanctions are a serious instrument of foreign policy and should be employed only after consideration, no less rigorous than what would precede any other form of intervention, including the use of military force," and again, you said, "Sanctions are a serious business. There is a tendency to see them below use of military force on some imagined ladder of foreign policy escalation. This tendency needs to be revised."

Well, in fact, that is exactly the way I have always viewed sanctions, as being an intermediary step, as being on a ladder of foreign policy escalation below the use of military force, and to say that the standards ought to be the same, that would seem to me to be putting soldiers in harm's way. We send military troops in and risk their lives. That is, in fact, an escalation of foreign policy options.

I would like you to comment on your writing, on your thought.

Mr. HAASS. Thank you.

I am sure it will come as no shock to you that I will stand by it.

The reason I said that, Senator—and it raises some big issues—is, first, sanctions are an important tool of foreign policy. So, when the United States uses sanctions, it is speaking in the name of the United States, and any time we commit foreign policy acts, I think it has weight.

Secondly, in many cases, sanctions, if they are comprehensive and they are in place for a while, can cause tremendous—

Senator HUTCHINSON. You did not make that stipulation.

Mr. HAASS. Okay.

Senator HUTCHINSON. Denying foreign aid. Denying foreign aid or conditioning foreign aid and putting that in the same category as the use of military force.

Mr. HAASS. Well, let me sort of finish the answer.

Secondly, sanctions can cause widespread hurt. If you have sanctions that are in place and are at all comprehensive and long lasting, you can cause tremendous civilian discomfort.

Look at the Catholic bishops, for example, when they have spoken out on this subject. They have spoken out at great length about the moral justification and considerations that have to go in because of the potential hurting of innocents.

Take the case of Cuba I mentioned before. I actually think that it is possible again that a narrow use of military force, I believe, would have been preferable to what I think has been the impact on sanctions.

Lastly, if sanctions do not work and we begin to go down that path, look at what happened in Haiti and other places. It in many ways creates tremendous pressures then for military force to be used.

If you basically say a situation is unacceptable—and unacceptable, as you know, means just that—if you put sanctions in place, sanctions do not work, then increasingly you find yourself down the road on the hook to use military force.

What I think, then, is before we head down that road using sanctions and saying a situation is unacceptable is then we ought to think about the consequences of that because we may create tremendous pressure, as we did in Haiti, for the United States to intervene.

Senator HUTCHINSON. We will just simply disagree. I think narrowly targeted sanctions against the elite of a country, that is not going to have the effect upon the populace and those who are economically disadvantaged, and to equate that or to put that in the same category as a determination to use military force and put American soldiers' lives at risk, to me, I am sorry. I think we need to see this in a sense of a ladder of escalation; that there is benefit in having many tools, many options before we get to the point of having to use military force.

Another of what I thought was provocative at least, on page 206 of your book, you state that one instrument that can increase compliance is the provision of assistance to third parties in order to offset the economic cost of implementing sanctions. Arrangements to compensate countries whose support for the sanctions is central, thus, can be critical. A fund for this purpose should be established within the U.S. foreign assistance budget.

If I am hearing that correct, if I am reading that correctly, what you are saying is that we ought to reward countries or we ought to pay countries in order to cooperate with sanctions that we might impose, whether it is France or Russia to cooperate in maintaining sanctions on Iraq. I mean, I think that would open an absolute—a Pandora's box in trying to ever use the option of sanctions.

Every country would, in effect, be coercing, blackmailing, demanding payments and asserting that there was some kind of economic cost to them in cooperating what might be something that there was broad worldwide multilateral consensus on.

Mr. HAASS. What that came out of was my experience in the Bush administration during the Gulf War, when it very quickly became a fact of life that we could not get Turkey on board the sanctions without significant economic support, and we ultimately had to forgive some \$6 billion or \$7 billion worth of Egyptian debt to get the Mubarak government where we wanted them.

That to me, then, was simply a recognition of the fact that if you have some poor countries that are relatively trade dependent on relations with the target state, it is simply a fact of life that we are either going to find a way of subsidizing them or they are going to carry out contraband.

Again, it is not something I like, but it is simply reality, and that, to me, is potentially a price worth paying in the name, say, of strengthening sanctions against Iraq.

I would be willing to do something along those lines for some of the neighboring countries if that is what it took.

Senator HUTCHINSON. Thank you, Mr. Chairman.

Chairman MCCONNELL. Thank you, Senator Hutchinson.

I just wanted to mention that I may have to miss the second panel because of a matter I am handling on the floor, and my friend and colleague, Joe Biden, has agreed to finish up the hearing if I have to do that.

Senator D'Amato?

STATEMENT OF HON. ALFONSE D'AMATO, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Well, thank you, Mr. Chairman, and I think it is important that we get a prospective on the whole issue of sanctions.

And to be quite candid, I have been somewhat distressed at the editorials and at the utterances of the administration as it relates to the imposition of sanctions against Libya and Iran. They would have us think now that suddenly a rogue state, that still suppresses its own people, that finances acts of terrorism, and has been involved in acts of terrorism carried out against the American people, that somehow their attitudes have changed when their actions have not. I find that rather distressing, very distressing.

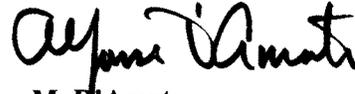
And the editorial writers who sanctimoniously call for the engagement of Iran, we need more than rhetoric, but we need some specific signs and actions and not just sending over a wrestling team or other wonderful things. I am not against sending wrestlers to Iran, but I am absolutely opposed to the thought that somehow they have changed their attitude.

Now, you can say that they have elected one official over there who talks like a moderate, but take a look at what they are doing and what their actions are. And I have to say to you that I am rather distressed at the question, and I applaud you, Dr. Carter, for making a distinction about this extraterritorial impact of our sanctions legislation.

Indeed, extraterritorial impacts have taken place over the years with respect to positions and legislative actions that other countries have taken, and you pointed out very well the question of the European Community coming together and literally holding up the approval of the Boeing-McDonnell Douglas merger until certain conditions were met.

So with regard to this business of extraterritoriality, let me ask you. Were we successful to any extent in your opinion, Dr. Carter, in the specific sanctions that we took against the former Soviet Union with respect to denial of a whole host of economic benefits? Did that help us or did it hurt us? Did it have any impact in terms

of the manner in which the Soviets treated their citizens when we fought for human rights? Do you believe it was beneficial?
[The prepared statement of Senator D'Amato follows:]



**Statement of Senator Alfonse M. D'Amato
Sanctions Task Force
September 9, 1998**

Thank you Chairman McConnell. I appreciate the opportunity to speak on the important topic of sanctions. I am honored to be a part of this panel which has been convened to study the impact of sanctions on U.S. foreign policy.

We must state from the outset that sanctions work. In Iran, the target of multi-level U.S. sanctions in retaliation for its aggression against the U.S. and our allies, the economy is in shambles. Because of its own mismanagement as well as sanctions placed upon it by the United States, Iran is in dire straits. Inflation is staggering and crucial exports are down in Iran. The economy is stifled by the inability to obtain much needed foreign investment in its oil sector. It is the revenues from their oil sales that Iran uses to advance its program of

weapons proliferation and support for terrorism. The Iran-Libya Sanctions Act, which I along with Senators McConnell, Inouye and others sponsored, targets this investment. The law has had a chilling effect on Iran. With the exception of the Total deal, which I add, the Administration incorrectly supplied a waiver for, there has been a total lack of investment in Iran's oil fields.

Equally important is the amount of investment deals with Iran that have been stopped because of the legislation. BHP of Australia, JGC of Japan, Shell and others have decided against investing in Iran because of these sanctions. Experts in the oil industry estimate that Iran has lost billions in lost deals, and billions more in lost oil revenues from this lack of investment.

Iran, Libya, and other terrorist states must make a choice. Do they want to feed their people, or incur the wrath of the world by its continued sponsorship of those who murder and

maim innocent men, women, and children.

Mr. Chairman, we must remember that sanctions are an important tool for U.S. foreign policy. It is our prerogative to decide with whom we will do business. It will be a sad day when we will sacrifice our country's security on the mantle of political expediency. A deal is a deal, but it is not a good deal if it hurts our nation's security. For a company to place its own greed ahead of the well-being of the nation that it serves, is a reprehensible act.

A nation has to have morals. When we see a nation like Iran, or Libya, sponsoring terrorism against Americans -- killing our citizens in bombings of embassies or of airliners -- we have to ask ourselves, what will we do? Will we sit back and allow the terrorists to continue to strike, or do we defend ourselves? Sanctions are the least we can do to deny terrorist states like

Iran, Libya, North Korea and the others from destabilizing civilized society. When these rogue states put down the gun and seek to join the civilized world, then sanctions can be reconsidered. Otherwise, we can not let down our guard.

Government has a duty to protect its citizens. If it fails at that, then it fails in everything. Thank you Mr. Chairman.

Mr. CARTER. The Soviet Union was huge, and it had many market opportunities, but I think there was clearly evidence that it hurt the Soviet Union's technological development; that they had trouble and higher cost to get technology, but part of the reason we were successful is because we cooperated with other countries.

They were not as good as we were, as we discovered, and there are some horrible stories about our allies not cooperating, but to the extent we got cooperation with the allies, that was when the sanctions and high technology were most effective.

Senator D'AMATO. Let us take a look at an area we are getting little, if any, cooperation as it relates to Iran specifically, notwithstanding the failure of some of our allies, and I say the French in particular, but that should not be new to us. We have seen that before, and if that is provocative, it is meant to be.

Notwithstanding, they are almost going out of their way to say we will do what we deem in our national interest, and the promotion of the Total deal with the Iranians, as it related to development of their oil fuels, haven't those sanctions brought great economic pressure? And haven't there been many oil deals that otherwise would have developed and led to greater resources that the Iranians would have had at their disposal were we not to have imposed those sanctions?

Mr. CARTER. Senator, my information is that there might have been some impact, but I have to question whether it is worth the cost of all the problems we created with our own allies, and, by the way, with our companies.

Senator D'AMATO. Let's develop that. Talk about the problems. You mean because they are upset with us?

Mr. CARTER. Well, they are threatening to take actions against us, and more importantly, what happens is they force waivers out of us, and then our own companies cannot go into Iran.

We are in this horrible situation where Totale is going forward, but U.S. companies cannot. And I think what we should do is try to develop a common policy rather than letting the foreign companies go forward, as they are, Totale and Gazprom, while, say, Conoco and others are kept out.

Senator D'AMATO. I have to tell you, I find that kind of logic—and not yours, but those who expound that on the alter of economics unacceptable. Either we are going to stand up for human rights, and do what is right, or we are going to waffle for reasons of political expediency, and I have seen that and it is wrong. And there are a number of issues in which I believe that the national security of this country has been compromised just by that kind of logic, and where we have lost our moral compass. I just cannot believe that this administration and previous administrations cannot do a better job behind the scenes, working with our allies.

I think we did a very poor job in terms of attempting to coordinate our activities to assure our allies that we were not trying to one-up them in terms of economic advantage; that if we could get a change from the Iranians or the Libyans in terms of their conduct, that we would look to see that they were not disadvantaged when future economic opportunities opened up. I think we have done a horrible job in this area.

We have not worked at it. We have just gone from crisis to crisis without there being a consistent policy of attempting to bring about uniformity of action together, particularly when dealing with rogue nations and their actions that no one can countenance.

That little red light has gone on, but with the indulgence of my two colleagues, I would make one other observation, if I might be permitted.

It seems to me that some of our allies think that by kind of being passive or less than supportive of the sanctions that somehow the terrorist acts which are then directed at the United States and our interests will be deflected away from them, and that they will not have to face the same kind of violence. That is part of what some people in the diplomatic circles bring back to me as it relates to their failure to embrace publicly some courses of action, but I think it is important that we have some kind of dialogue with respect to this.

I do not think there should be a bill that covers all situations, and I do think that the waiver provisions are absolutely essential, as Senator Lugar has provided in his legislation and that my colleagues, Senator McConnell and Senator Biden, have provided.

I certainly thank them for holding this hearing and all of you for your appearances.

Senator BIDEN [presiding]. Thank you very much, Senator.

This is a rare opportunity, I might add, Senator Lugar, for me to chair a hearing these days. This was going to be a short hearing.

We may have this go on a couple of hours, just so I remember what the feeling was like. I may not get a chance for another couple decades, the way things are going.

Does anyone want a second round here?

Senator LUGAR. You are doing fine.

Senator BIDEN. Well, I thank the panel very much for being here today, and if they have no further comments, we will go to the next panel. Thank you all very much.

Senator BIDEN. Our next panel, our first witness is Mr. Tom Donohue, CEO of the U.S. Chamber of Commerce, his flight—he is flying in from out of town, and I understand he may not be here in time to make this hearing, I am told by staff, but we hope he is. When he comes in, I would ask staff to just bring him to the table.

Bill Sprague is president of the Kentucky Farm Bureau. He is representing the American Farm Bureau Federation. If Mr. Sprague is here, I would invite him to come forward.

Mr. William Lane is the Washington director of Government Affairs for Caterpillar, Incorporated. He represents USA Engage, a coalition of businesses which opposes sanctions.

I welcome you both and hope Mr. Donohue will be able to join us. Gentlemen, I would invite you in the order you have been called, Mr. Sprague and Mr. Lane in that order, to make any opening statements you might have, and then we can move to questions.

**TESTIMONY OF WILLIAM R. SPRAGUE, PRESIDENT, KENTUCKY
FARM BUREAU, REPRESENTING AMERICAN FARM BUREAU
FEDERATION**

Mr. SPRAGUE. Thank you very much, Senators. It is a pleasure to be here, and I thank you for holding this hearing on this very important subject.

I am Bill Sprague. I am a corn and soybean farmer from down in Western Kentucky, but serving as president of the Kentucky Farm Bureau and also here representing the American Farm Bureau Federation as one of their board members.

The American Farm Bureau Federation represents about 4.8 million member families in the United States and Puerto Rico, and our members produce very type of farm commodities grown in America.

And I think just to bring some facts to you that you know, I am sure, we feel very strongly how important this issue is of losing markets through unilateral sanctions is to our industry. American farmers and ranchers depend very heavily on the export sales for over one-third of everything we produce, and this makes American agriculture more than twice as relying on foreign trades than the U.S. economy as a whole.

With only 4 percent of our population, the world population, living in the United States, you can see why it is so important that we maintain our trade relationships.

If we are going to grow and be economically stable American farmers and ranchers, then we must have free and open access to these other 96 percent of the world's consumers if we want to have a viable industry in this country.

Agriculture, which includes a wide variety of industries, more than we normally think of in production agriculture, but those that have all the inputs and outputs, constitute one of the largest sections of our U.S. economy. Combined with the food processing, marketing, and shipping industry, we are the Nation's largest employer.

In 1997, food and fiber industries, which included producers of farm equipment and suppliers, processors, transporters, manufacturers, retailers, and the financial and insurance and other services, comprised about 16 to 17 percent of the gross national product.

As well as being the Nation's largest direct and indirect employer for the past several years, the sales of agricultural commodities have provided the only positive return to the U.S. balance of trade.

These accomplishments can only be sustained if our international markets remain open. It has been well documented that unilateral trade sanctions are sanctions against U.S. exports and destroy our reputation as reliable suppliers.

Farm Bureau strongly opposes all artificial trade constraints such as unilateral sanctions. We believe that opening trade systems around the world and engagement through trade are the most effective means of reaching international harmony and social and economic stability.

Export markets are not easy to develop and are even more difficult to win back when our customers see the United States as an unreliable supplier when sanctions are imposed.

Unilateral sanctions have become the weapon of the moment, to address actions or our trading partners when we are a Nation disagree with actions they take. However, by recent actions, India told the U.S. that she was not concerned whether or not we applied sanctions. When we impose sanctions on our customers, our competitors are standing by to take over our markets. Today, our customers can go elsewhere for their food and fiber needs.

In my written testimony, there was a table there that showed all the agricultural commodities that are imported by these sanctioned countries, and I think you can see that even though these numbers are not huge, U.S. producers are not even able to compete in these sales, and therefore, they are a loss to our competitors.

The opportunity for peaceful engagement and the ability to influence our neighbors through trade are greater than ever before and must be safeguarded from unilateral sanctions that destroy these opportunities.

For 50 years, the United States has followed a reasonable consistent policy of engagement with the world to promote peace and freedom.

Recently, the United States has begun to depart from this long-standing preference for engagement. In just 4 years, the United States has imposed 61 unilateral economic sanctions on 35 countries. These countries in which the United States is isolating itself contain about 40 percent of the world's population who are the customers we need.

The Institute for International Economic estimates that unilateral economic sanctions costs the United States \$15 billion to \$19 billion in lost exports in 1995. This translates into the loss of more than 200,000 American export-related jobs.

To continue to impose sanctions during a time when we are working to secure free trade through the World Trade Organization and international agreements gives our trading partners conflicting signals.

As we move into the next round of the WTO negotiations, several of our most important markets, such as Japan, are expected to use sanctions as a reason to resist opening markets. They will try to protect their markets by declaring that they must be self-sufficient in food production as the world market is unreliable. American farmers and ranchers are the world market they are keeping out.

The Soviet embargo in the 1980's cost the United States about \$2.8 billion in lost farm exports, and the U.S. Government's compensation to American farmers. When the United States cut off sales of wheat to protest the Soviet invasion of Afghanistan, our suppliers, France, Canada, Australia, and Argentina stepped in. They expanded their sales to the Soviet Union, ensuring that U.S. sanctions had virtually no impact.

Russia still appears to restrict purchases of American wheat fearing the United States may again use food exports as a foreign policy weapon. We are seen as an unreliable supplier. Unilateral sanction gives up our market to our competitors.

The State Department has identified 78 countries that could be responsible for actions that some find that could find some reasons for imposing unilateral sanctions. Sanctions against just six of these countries, China, Egypt, Pakistan, Indonesia, Russia, and

Saudi Arabia, could cost the American farmers and ranchers over \$5 billion in lost sales.

We cannot continue to provide American consumers with the most economic food supply in the world or maintain a positive return to the national trade balance if we do not have access to world markets to maintain our economic base.

I must stress that when any type of sanction or embargo is imposed or threatened, either politically or economic, agriculture is the first industry to be targeted in retaliation.

During the Japan-U.S. automobile parts debate, Japan released its proposed retaliation list in response to the U.S. threat of imposed sanctions. Agricultural products led the list. Just the threat of sanctions put American agricultural exports at risk.

American agriculture, as well as other export-dependent industries, are in a critical economic situation, largely because of our inability to open new markets due to the lack of fast-track trade-negotiating authority and the ongoing fiscal crisis in Asia, for which the International Monetary Fund is a major player in resolving this situation.

You recognize how critical export markets are to agriculture when Congress passed the exemption to the Pakistan and India sanctions that allowed for the sale of U.S. wheat under the USDA guaranteed credit loan program. I want to applaud you for this and urge you to move quickly with the work of this task force, which I hope will result in recommending the reasonable monitoring and reform approach laid out in Senator Lugar's bill, S. 1413.

The American Farm Bureau Federation strongly supports passage of S. 1413. This legislation will help prevent future useless embargoes by requiring a reasonable evaluation of the consequences of imposing unilateral sanctions before they are imposed.

Senator Lott posed some very important issues to the task force to examine, and I have provided some of those answers in my written testimony, but as the leader in world trade, the United States has an unprecedented opportunity to promote its values throughout the world by peaceful engagement.

Reaching out through engagement and trade, not withdrawing behind sanctions or embargoes, is the best way to achieve positive change, not by imposing unilateral sanctions.

Thank you very much for the opportunity to speak on behalf of American agriculture.

[The prepared statement of Mr. Sprague follows:]

**STATEMENT OF
THE AMERICAN FARM BUREAU FEDERATION
TO THE
SENATE TASK FORCE ON ECONOMIC SANCTIONS**

Presented by

**William R. Sprague
President
Kentucky Farm Bureau Federation**

September 9, 1998

Mr. Chairman and members of the Committee, I am William Sprague, President of the Kentucky Farm Bureau Federation and a member of the Board of Directors of the American Farm Bureau Federation. The American Farm Bureau represents 4.8 million member families in the United States and Puerto Rico. Our members produce every type of farm commodity grown in America. I want to give you a few facts and figures to stress how important the issue of losing markets through unilateral sanctions is to our industry.

America's farmers and ranchers depend on sales to the export market for over one-third of our production.

American agriculture is more than twice as reliant on foreign trade than the U.S. economy as a whole.

Only four percent of the world's consumers live within the United States borders.

To grow and be economically stable American farmers and ranchers must have free and open access to the 96 percent of the world's consumers who live beyond our borders.

Agriculture, including the wide variety of industries involved in farm inputs and outputs constitutes one of the largest sectors of the U.S. economy. Combined with food processing, marketing and shipping industries that make up our industry, we are the nation's largest employer.

In 1997 the food and fiber industries, which include producers of farm equipment and suppliers, processors, transporters, manufacturers, retailers and the financial and insurance service industries that serve them, comprised 16-17 percent of the gross national product.

As well as being the nation's largest direct and indirect employer, for the past several years the sales of agricultural commodities have provided the only positive return to the U.S. balance of trade.

These accomplishments can only be sustained if our international markets remain open. It has been well documented that unilateral trade sanctions are sanctions against U.S. exports and destroy our reputation as reliable suppliers.

Farm Bureau strongly opposes all artificial trade constraints such as unilateral sanctions. We believe that opening trading systems around the world and engagement through trade are the most effective means of reaching international harmony and social and economic stability.

Agricultural markets around the world are now very unstable. Asia represented over 40 percent of agriculture's export market in 1997. For 1998, USDA has estimated that we have already lost over \$40 million in sales to this region and further losses are projected to go even higher. Until this crisis is turned around and these economies are again stabilized, with returned buying power, agriculture is poised to lose in excess of five percent of its export sales per year. Lost exports could reach as high as \$3 billion a year.

Our ability to expand markets with our close neighbors to the south is restricted by lack of authority to negotiate new trade agreements while our competitors are doing just that. Europe, our largest single market, is blocking U.S. products produced through the use of genetically modified organisms, which our scientists believe are safe. World prices are low and some sectors will be blessed with excellent yields but no place to sell them. The 1996 farm bill removed traditional production safeguards and at the same time Congress promised our producers the necessary tools to be players in the world market. Times are tight for farmers and we still do not have the tools needed to be strong players in the marketplace.

Unilateral sanctions have become the weapon of the moment to address actions by our trading partners when we as a nation disagree with some action they take. Farm Bureau believes former President Ronald Reagan had the right approach when he said, "the freer the flow of world trade, the stronger the tides of human progress and peace among nations."

By its recent actions India told the U.S. that she was not concerned whether or not we applied sanctions. When we impose sanctions on our customers, our competitors are standing by to take over our markets. Today, our customers can go elsewhere for their food and fiber. Markets were not easy to develop and are even more difficult to win back when our customers see the United States as an unreliable supplier. Let me call your attention to the attached table of agricultural commodities imported by sanctioned countries (see appendix). While these are not huge numbers, U.S. producers are not even able to compete for these sales. These are sales lost to our competitors.

In the last decade, democracy has ascended amidst economic liberation in Taiwan, Korea, Poland, Hungary, Slovenia, the Czech Republic, Chile, Argentina, Bolivia, Peru, Brazil, Uruguay and Ecuador. These are all countries that are markets for American agricultural products, but they are also potential targets for unilateral sanctions. The opportunities for peaceful engagement and the ability to influence our neighbors through trade are greater than ever before and must be safe guarded from unilateral sanctions that destroy these opportunities.

Let me review some Farm Bureau policies that express the deep commitment of our members to opening and keeping open markets -- not closing doors as happens when sanctions or embargoes are enacted:

We believe free trade should not be tied to social reforms, labor or environmental standards of other countries.

Farm Bureau believes all agricultural products should be exempt from all embargoes except in the case of armed conflict.

Should a trade embargo or restrictions be declared under such circumstances, the embargo should apply to all trade, technology and exchanges. An embargo should not be declared without the consent of Congress.

The threat of embargoes or other restrictions adversely affects markets and is an inappropriate tool in the implementation of foreign policy. If an embargo or sanctions are enacted, farmers should be compensated by direct payments for any resulting loss.

All export contracts calling for delivery of agricultural commodities or products within nine months of date of sale should never be interfered with by the U.S. government, except following an embargo consented to by Congress. This sanctity of contracts is essential to maintain the United States as a reliable supplier.

Farm Bureau is dedicated to more open trading systems around the world -- not more sanctions or embargoes.

For 50 years, the United States has followed a reasonably consistent policy of engagement with the world to promote peace and freedom. Recently, the United States has begun to depart from the long-standing preference for engagement.

In just four years, the United States has imposed 61 unilateral economic sanctions on 35 countries according to the U.S. Alliance for Effective Engagement. These countries, from which the United States is isolating itself, contain about 40 percent of the world's population.

Professor Donald Losman of the U.S. Industrial College of the Armed Forces has stated, "Comprehensive economic sanctions almost always fail to achieve their political goals, while at the same time opening a Pandora's box of economic and international relations headaches. They tend to strengthen offending regimes and policies. Pain without gain is probably the best description."

The Institute for International Economics estimates that unilateral economic sanctions cost the United States \$15-19 billion in lost exports in 1995. This translates into the loss of more than 200,000 American export-related jobs. A 1994 Council on Competitiveness report found that eight unilateral sanctions episodes cost the U.S. economy \$6 billion in annual sales and 120,000 export-related jobs. Current sanctions are costing U.S. wheat producers up to 50 percent of world markets. To continue to impose sanctions during a time when we are working to secure

freer trade through the World Trade Organization (WTO) and international agreements gives our trading partners conflicting signals.

As we move into the next round of the WTO negotiations several of our most important markets such as Japan are expected to use sanctions as a reason to resist opening markets. They will try to protect their markets by declaring that they must be self-sufficient in food production as the world market is unreliable. American farmers and ranchers are the world market they are keeping out.

The Soviet grain embargo in 1980 cost the United States about \$2.8 billion in lost farm exports and U.S. government compensation to American farmers. When the United States cut off sales of wheat to protest the Soviet invasion of Afghanistan, other suppliers -- France, Canada, Australia and Argentina -- stepped in. They expanded their sales to the Soviet Union, ensuring that U.S. sanctions had virtually no economic impact. Russia still appears to restrict purchases of American wheat, fearing the United States may again use food exports as a foreign policy weapon. Unilateral sanctions give our markets up to our competitors.

America's prosperity is tied to our competitiveness in global markets. Export sales move over 30 percent of U.S. agricultural production. Over 12 million working Americans and their families depend upon U.S. exports and access to global markets for their jobs. The United States only accounts for four percent of the world's consuming population. We must maintain access to the 96 percent of our customers who are outside of our borders. Sanctions and embargoes are sanctions against our own people and only serve to disrupt the marketplace on which we depend.

The State Department has identified 78 countries that could be responsible for actions that some would find as reasons for imposing unilateral sanctions. Sanctions against just six of these, China, Egypt, Pakistan, Indonesia, Russia and Saudi Arabia, would cost American farmers and ranchers over \$5 billion in lost sales. We cannot continue to provide American consumers with the most economical food supply in the world or maintain a positive return to the national trade balance if we do not have access to world markets to maintain our economic base.

I must stress that when any type of sanction or embargo is imposed, or threatened, either political or economic, agriculture is the first industry to be targeted in retaliation. During the Japan-U.S. automobile parts debate, Japan released its proposed retaliation list in response to the U.S. threat of imposed sanctions on Japan auto makers. Agricultural products led the list. Just the threat of sanctions puts American agricultural exports at risk.

American agriculture, as well as other export dependent industries, is in a critical economic situation largely because of our inability to open new markets due to the lack of fast-track trade negotiating authority and the ongoing fiscal crisis in Asia for which the International Monetary Fund is a major player in resolving this situation. You recognized how critical export markets are to agriculture when Congress passed the exemptions to the Pakistan and India sanctions that allowed for the sale of U.S. wheat under the USDA guaranteed credit loans programs. I want to applaud you for this and urge you to move quickly with the work of this task force which I hope will result in recommending the reasonable monitoring and reform approach laid out in Senator Lugar's bill, S. 1413.

The American Farm Bureau Federation strongly supports passage of S. 1413, the Enhancement of Trade, Security, and Human Rights Through Sanctions Reform Act . This legislation will help prevent future useless embargoes by requiring a reasonable evaluation of the consequences of imposing unilateral sanctions before they are imposed.

There are clearly four actions that the administration working with Congress can take to protect the economic stability of American agriculture as well as for the nation. They are: Congressional approval for the \$18 billion needed for the International Monetary Fund, providing the administration fast-track trade negotiating authority, providing permanent Normal Trade Relations status to China, and beginning the process of removing existing unilateral sanctions and preventing future unilateral trade sanctions unless there is a justified reason for them and sound reason to expect the success of the defined policy goals. The American Farm Bureau Federation is committed to working for passage of these actions.

As the leader in world trade, the United States has an unprecedented opportunity to promote its values throughout the world by peaceful engagement. Reaching out through engagement and trade, not withdrawing behind sanctions or embargoes, is the best way to achieve positive change, not by imposing unilateral sanctions.

Senator Lott posed very important issues for the task force to examine. Some of these must be answered by a complete review of existing sanctions and others may have very subjective answers depending on the focus of the responder. Following is Farm Bureau's response to some of the issues posed:

1. "What constitutes a 'sanction' ?" Sanctions may confer authority, approval or permission. However, the issue at hand rests in the application of penalties intended to enforce compliance or conformity with a U.S. belief or policy. Farm Bureau is concerned when economic trade sanctions are imposed on our trading partners to force compliance or to punish them. There are clearly issues that must be addressed that effect national security. These issues need to be clearly defined by the Congress in cooperation with the administration.

Sanctions affecting U.S. commercial activity should not disrupt free market trade or investment, as long as the activities are clearly in compliance with international trade rules. Actions taken unilaterally rarely if ever put pressure on the country intended as there are other suppliers of almost every product produced in the United States. The makers of these goods stand ready to step into the market vacuum created by sanctions.

3. "How should success be assessed in determining the effectiveness of sanctions?" This can only begin to be measured when the sanction is clearly thought out and the potential outcomes identified before it is imposed. Included in the evaluation of the success must be the "cost" to the U.S. economy by imposing the sanction. Just as U.S. agencies are required to provide a cost-benefit analysis on regulations, sanctions should also undergo a cost effectiveness study which would include the likely ability of the sanction to result in the desired behavior change or policy goals.

4. "How should policy goals be defined in considering and implementing sanctions?" If a clear and positive change in policy or political behavior cannot be identified prior to the imposition of a sanctions it would appear that there is little likelihood of a sanction working. The policy goal must have a direct linkage to a definable outcome which should be a political or commercial change. If the sanction is a "punishment" it carries little incentive for the other party to change as opposed to sanctions that encourage positive actions.
5. / 6. "Effective procedures to ensure coordination between the executive and legislative branches and for oversight and compliance seen to be lacking or at least hidden in the depths of legislative history." If the task force does not uncover such procedures and moves to put them in force, the sunset provisions and coordinated review by the Executive branch and Congress called for in the Lugar legislation should be enacted.
7. "Unique Senate floor or committee procedures for considering sanction legislation should be enacted." At a minimum, Senator Lugar's proposal should be considered.

Thank you for the opportunity to speak on behalf of American agriculture.

Agricultural Commodities Imported by Sanctioned Countries (in thousands of metric tons) : Ave. of 1996-7

Country	Corn	Rice	Wheat	Soy Beans	Soy Meal	Coarse Grains	Total Oils	Total*
Cuba	161	350	925	5	277	166	41	1,764
Iran	1,275	838	5,775	0	555	5,143	921	13,232
Iraq	0.0	660	1,615	0	60	1,259	238	4,032
Libya	260	93	1,280	0	80	886	70	2,408
Sudan	0	13	477	0	0	4,372	72	4,933
Syria	426	183	32	100	233	1,693	44	2,283
N. Korea	371	285	494	35	202	371	15	1,402
Total	2,491	2,420	10,797	140	1,407	13,888	1,401	30,052

Source: USDA Data Base

* Does not double count corn, which is included in course grains

Senator BIDEN. Thank you very much.
Would you like to go first?

Senator LUGAR. Should we hear Mr. Lane?

Senator BIDEN. Oh, I am sorry. Mr. Lane, I beg your pardon. I was just handed a note on something else, and I was just distracted. I apologize, Mr. Lane.

**TESTIMONY OF WILLIAM C. LANE, CEO, USA
ENGAGE COALITION**

Mr. LANE. You are very welcome.

Chairman Biden, Senator Lugar, on behalf of Caterpillar and the 676 members of the USA Engage Coalition, thank you for this opportunity to discuss our concerns about the proliferation of U.S. unilateral sanctions and the importance of engagement.

Caterpillar is proud to be a leader of the USA Engage effort. We think we have special standing to discuss this issue. As you may know, Caterpillar's business strategy is somewhat unique in that we compete globally from what is primarily a U.S. manufacturing base.

As a result, we rank as one of America's largest exporters, but relying on a U.S. manufacturing base also means that when the U.S. imposes unilateral sanctions, the impact is greater on us than on many other companies.

Today, about half of our sales are outside the U.S., and in the year 2010, 75 percent of our sales opportunities will be outside the U.S.

We also have a keen appreciation on how unilateral sanctions have undermined our competitiveness, particularly what occurred in the early 1980's as a result of the Soviet pipeline sanctions.

You may recall at that time, Caterpillar was forced to cede the Soviet market to our Japanese competitors. The results of the policy were pretty clear. 12,000 man-years of work were transferred from Illinois to Japan. Caterpillar and other U.S. exporters were tainted as unreliable suppliers. Kamatsu of Japan grew in strength, which made them a more effective competitor against Caterpillar on a global basis, and that is a legacy that is still with us today. And the Soviets completed their pipeline ahead of schedule.

I might add that even though Russia is a democracy, our customers still ask if we can be counted on as a reliable supplier.

Farmers in Illinois can recount similar experiences about the Soviet grain embargo and how it hurt their business. Today, they are not talking about the Soviet embargo. They are talking about how Indian and Pakistan sanctions affect international grain prices.

Let me be specific. From our viewpoint, economic sanctions or unilateral economic sanctions generally fall into three categories. The first are sanctions that cut off U.S. trade and investment. The most notable example of this is the U.S. policy towards Cuba. The most recent example is the U.S. policy towards Sudan.

The second category or sanctions that make it hard to export American products overseas, examples are recent sanctions against India and Pakistan that cut off Ex-Im financing, OPIC, P.L. 480, and the Commodity Credit Corporation programs.

Then, thirdly, as a broader category, sanctions intended to discourage economic development. While there is no right to U.S. economic assistance, cutting off assistance, nevertheless, is a form of punishment that falls within a common-sense definition of sanctions.

Much has been said today about the proliferation of sanctions in all the countries that have been covered recently. I am not going to get into that, but the main question is are these sanctions working.

At USA Engage, we are not aware of any systematic accountability checks that are currently taking place within the U.S. Government to assess the effectiveness of existing sanctions.

But we do know that America's sanctions-based foreign policy is proving costly to other U.S. objectives. Based on Caterpillar's experience, the cost of sanctions can be evaluated in several forms, but before I go into the four points, let me say something that is happening.

Companies like Caterpillar have decided to take our export markets very seriously. We are putting our best people in some of the hardest places in the world to live, in China, in India, in Russia, in the former Republics of the Soviet Union. They are our best people, and they complain loudly.

It is one thing to see other governments helping our competitors. We would like it if our Government was helping us sell in these markets. We can handle it if the U.S. Government is neutral when we are trying to open up these markets, but it really does hurt when we see the U.S. Government undermining our efforts to sell in these countries. These are the markets of the future.

Some of the recent experiences that we have had is we have lost sales in Colombia because of sanctions imposed in 1996 and 1997. The reason, our European competitors had access to competitive financing, which was denied by the American Government.

In China, even though there is massive flooding currently going on throughout China, the White House efforts to discourage the export of American-made products to China's Three Gorges Dam have reduced Caterpillar sales in Central China.

In Iran, we completely ceded the Iranian market to our European competitors, particularly the Italians.

Even in Canada, we have lost sales because fear of the extraterritorial application of U.S. law convinced one of our customers that, to quote him, "It is just easier to buy German engines."

In Sudan, the most recent sanction, right after the November 4th declaration of a trade and investment embargo, Kamatsu of Japan took out full-paged ads announcing their new marketing—this is in Arabic. So I will not expect you to—

Senator BIDEN. I can read it.

Mr. LANE. But, anyway, announcing their new marketing and service operations. We have lost several important contracts there, the most recent of which occurred last week. This is a country that is in the middle of a famine, and we cannot sell farm tractors to Sudan.

Secondly is the issue of being tainted as an unreliable supplier. When you buy a Caterpillar bulldozer or a Boeing jet, you are mak-

ing a decision that will last decades. Any uncertainty about our ability to provide product support means that we are at a competitive disadvantage. That is occurring today in Russia, Malaysia, and several Republics of the former Soviet Union.

Thirdly is the issue of enhancing the competitiveness of our foreign rivals. When you cede a major market to your competitors, you are, in effect, giving them a protected home market which allows them to cross-subsidized sales in other markets. This is what occurred in the Soviet Union in the early 1980's which made Kamatsu a much stronger competitor, not just in Asia, but in Europe and Latin America, in North America, and in Africa.

Finally, and perhaps this is the most important issue, that U.S. sanctions sometimes undermine other U.S. objectives. Let me give you some examples.

We note with concern today that at a time when the U.S. is trying to maintain multilateral support for a unified policy toward Iraq, we find that the United States has imposed or threatened sanctions against all Arab members of the Gulf War Alliance, except Kuwait, and three of four of the other permanent members of the UN Security Council. You do not have to be a foreign policy expert to realize that these sanctions may be one of the reasons why it has been so hard to win agreement on a common policy toward Iraq.

Even more disturbing is at a time when the U.S. is mounting an intensified fight against international terrorism, the United States is seriously considering sanctions against moderate Arab countries over the issue of religious rights.

Senator let me conclude by saying that we believe Senator Lugar's sanctions reform bill is a modest and only a modest step in the right direction. We believe with greater prevention, better process, and accountability, we can have a much better foreign policy.

At this time, I would be pleased to answer your questions.

[The prepared statement of Mr. Lane follows:]

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**Testimony of William C. Lane
Washington Director -- Governmental Affairs
Caterpillar Inc.**

**Before the Senate Task Force on Sanctions
September 9, 1998**

Mr. Chairman ... members of the Committee, on behalf of Caterpillar and 676-member USA*Engage Coalition I would like to thank you for this opportunity to share our concerns about the proliferation of U.S. unilateral foreign policy sanctions and the importance of engagement. Caterpillar is proud to be a leader of the USA*ENGAGE effort.

At Caterpillar, we believe we have special standing to discuss the issue of unilateral sanctions. As you may know, Caterpillar's business strategy is somewhat unique in that we compete globally from what is primarily a U.S. manufacturing base. As a result, we rank as one of America's largest exporters. But relying on a U.S. manufacturing base also means that when the U.S. imposes unilateral sanctions, the impact is greater on us than on many other companies.

Caterpillar also has a keen appreciation of how unilateral sanctions undermined our competitiveness in the early 1980s as a result of the Soviet pipeline sanctions. You may recall that at that time Caterpillar was forced to cede the Soviet market to our Japanese competitors. As a result of that policy:

- 12,000 man-years of work was transferred from Illinois to Japan.
- Caterpillar and other U.S. exporters were tainted as unreliable suppliers.
- Komatsu of Japan grew in strength which allowed them to more effectively compete against Caterpillar on a global basis -- a legacy that's still with us today.
- And the Soviets completed their pipeline ahead of schedule.

I might add that even though Russia is a democracy, our customers still ask if we can be counted on as a reliable supplier. Farmers from Illinois can recount similar experiences about how the Soviet grain embargo hurt their businesses. Of course today their focus is on how recent sanctions against India and Pakistan might affect international grain markets.

From our viewpoint unilateral economic sanctions generally fall into three categories:

1. Sanctions that cut off U.S. trade and investment. The most notable example is the U.S. policy toward Cuba. The most recent example is U.S. policy toward Sudan.
2. Sanctions that make it hard to export American products. Examples include recent sanctions against India and Pakistan that cut off EXIM financing, OPIC, PL-480, and Commodity Credit Corporation programs.
3. Sanctions intended to discourage economic development. While there is no "right" to U.S. economic assistance, cutting off assistance is never-the-less a form of punishment that falls within the common-sense definition of a sanction.

We note that last year the President's Export Council reported that U.S. unilateral sanctions threaten 75 countries or 52 percent of the world's population. With the addition of recent sanctions against India and Pakistan, U.S. sanctions now target two-thirds of the world's population.

Are these sanctions working? At USA*Engage we are not aware of any systematic accountability checks that are currently taking place within the U.S. Government to assess the effectiveness of existing sanctions.

But we do know that America's sanctions-based foreign policy is proving costly to other U.S. objectives. Based on Caterpillar's experience the cost of sanctions can be evaluated from several perspectives.

- (1) **Lost Exports and Jobs.** Clearly, the most obvious impact of U.S. unilateral sanctions is the impact they have on U.S. exports, and American jobs. At Caterpillar, we can document exports lost as a result of numerous sanctions regimes. A few recent examples include:
 - **Colombia.** As a result of sanctions imposed in 1996/97, Caterpillar lost several important contracts to sell mining equipment to Colombia's coal industry. The reason: European competitors had access to competitive export financing which was forbidden to American companies by the U.S. government.

- **China.** White House efforts to discourage the export of American-made products to China's Three Gorges Dam have reduced Cat sales in Central China. Even though the world's largest construction project is progressing as scheduled, U.S. companies still don't have access to export financing. Consequently, American companies are at a competitive disadvantage vis-a-vis their foreign competitors.
 - **Iran.** As a result of U.S. export restrictions imposed against Iran in 1995, the entire Iranian market for construction equipment and engines was completely ceded to European manufacturers.
 - **Canada.** Fear of being entangled in U.S. extra-territorial sanctions prompted a Canadian Cat customer to buy diesel engines from Europe. Last year, the potential customer told a Caterpillar sales representative that "since the engines were being incorporated into products that might be sold in the Mideast, the best way to avoid problems is to buy German."
 - **Sudan.** Immediately after President Clinton's November 4, 1997 imposition of a trade and investment embargo, Komatsu of Japan took out newspaper ads in Khartoum announcing its new Sudan sales and support locations. Since then, Caterpillar has lost several important export contracts. The most recent lost sale occurred last week.
- (2) **Tainted as an Unreliable Supplier.** To determine the cost of unilateral sanctions, one must recognize that lost exports can also occur as a result of being labeled as an unreliable supplier. This is of particular concern for producers of capital equipment. After all, when you buy a Caterpillar bulldozer or an off-highway truck, you are making a decision that will last decades. Any uncertainty about our ability to provide long-term product support from the United States gives our European and Japanese competitors a significant competitive advantage.

Earlier this year the issue of being a reliable supplier was a major hurdle in our efforts to sell in Russia, Malaysia, and several Republics of the former Soviet Union.

- (3) **Enhanced Competitiveness of Foreign Rivals.** Even though it is hard to quantify, it is important to recognize that U.S. unilateral sanctions can enhance the competitiveness of our foreign competitors. When the U.S. cedes an export market to its foreign competitors, it has in effect provided them with a protected "home market." As a result, they not only benefit from increased economies of scale, but have the opportunity to cross subsidize sales in other markets.

Put another way, when the U.S. government gave the Soviet market to Komatsu, Cat also ended up with a more formidable competitor in Europe, Asia, and the Western Hemisphere.

- (4) **Undermine other U.S. Objectives.** Perhaps the biggest cost of sanctions is how they impact other U.S. foreign policy goals.

We note with concern that, at a time when we are still trying to maintain multilateral support for a united policy toward Iraq, we find that the United States has imposed or threatened sanctions against all Arab members of the Gulf War alliance -- except Kuwait -- and 3 of 4 other permanent members of the UN Security Council. You don't have to be a foreign policy expert to realize that these sanctions may be one of the reasons why it has been so hard to win an agreement on a multilateral sanctions policy toward Iraq.

Even more disturbing, at a time when the U.S. is mounting an intensified fight against international terrorism, the United States is seriously considering sanctions against moderate Arab countries over the issue of religious rights.

There is also a cost incurred when U.S. sanctions violate our trade and treaty obligations. When this occurs, we undermine the very multilateral institutions that can play an important role not only enhancing the world economy ... but promoting positive change. For example, if extra-territorial sanctions violate U.S. commitments made to the World Trade Organization, the United States has less leverage to force other countries to honor their GATT obligations. As a result, the WTO loses credibility and Americans don't fully benefit from a more open trading system.

Allow me to conclude by emphasizing that the business community fully recognizes that much of the world remains a dangerous place. We strongly believe the U.S. should continue to use sanctions as "a" tool of foreign policy. But we also believe that in recent years unilateral sanctions have been grossly over-used.

Recognizing that the track record of sanctions demonstrate that they rarely work, are often counterproductive and almost always costly to other objectives we believe it is appropriate to consider some common-sense reforms when considering new unilateral sanctions.

For starters, before considering unilateral sanctions the Congress and Executive Branch should ensure that potential alternatives -- such as diplomatic initiatives and multilateral pressure -- have been exhausted. If unilateral sanctions are to be considered, they should be judged by:

- (1) whether they actually can achieve their intended results;
- (2) the harm they will cause to other national interests;
- (3) and the costs imposed on Americans.

Finally, we believe future unilateral sanctions should be subject to a meaningful accountability review every two years.

While sanctions -- even unilateral ones -- may be appropriate at times, we should all recognize that engagement can be a powerful force for positive change when pursued at all levels -- political, diplomatic, economic, charitable, religious, educational, and cultural. In contrast, a unilateral sanction can isolate America, taking away the influence and credibility we gain by being involved.

The Lugar Sanctions Reform Act (S.1413) provides reasonable reforms that would provide a more disciplined, deliberative process for considering unilateral sanctions. With greater focus on prevention, process and accountability we believe the U.S. will have a more effective foreign policy. We ask that you make passage of S.1413 a top priority for the remainder of this Congress.

Thank you. At this time, I'd be pleased to answer your questions.

Senator BIDEN. Thank you very much.

I just have two brief questions, and by the way, let the record show, I was being facetious when I said I can read Arabic. In the atmosphere today in American politics, I am sure somebody may later pull that up and say, "Biden claimed to be able to read Arabic." That was a poor attempt at humor.

Let me ask you two questions, each of you the same question. What constitutes multilateral in your view? For example, you both imply—you do not say, but you imply that if it is a multilateral sanction, you could live with it or at least you are not making the case that you are opposed to multilateral sanctions. Is that because you are certain we will have multilateral sanctions, or is that—I am not being facetious now—or is that because you see circumstances under which, notwithstanding the fact—withstanding the fact it would hurt your business, that it may be necessary? So my question is what constitutes multilateral.

If Canada and the United States imposed sanctions against Tanzania because we were each victims of terrorist attacks—and there is no evidence of this—that was sanctioned by the Tanzanian government, would that constitute a multilateral sanction, even though the French and the Germans would still be able to sell heavy equipment or sell soybeans or whatever? I would ask each of you that question, if I may.

Mr. SPRAGUE. Well, I think that is a good question, and our idea is some way that—first, let me say that as farm people, there are probably no more patriotic strong believers in strong government anywhere in the country. So we understand in national crises, things have to be done, and we understand that.

And our idea is that if things were so bad, that surely there would be agreement of multiple nations to interact. Now, where you say that is 2, 10, 35, or what, we would assume there would be some—hopefully a UN-type action that would get the whole world behind such action, but at the same time, we also believe there needs to be strong enough waivers or whatever you want to call them in any kind of legislation like this to allow the U.S. to protect its national interest under conditions if they could not attract this multi-national-type unit.

Senator BIDEN. Thank you.

Mr. Lane?

Mr. LANE. Senator, first of all, no one in the business community that I am aware of complains against the sanctions against Iraq, nor the UN sanctions against Libya, nor the sanctions against some of the former parts of Yugoslavia. They are multilateral. We know there is leakage. We know there is significant leakage, but they are still a good-faith effort, and I am not aware of any real complaints.

Against Cuba and the UN, I believe three countries voted with us or two other countries voted with us. Israel, which is an important investor in Cuba, and Uzbekistan, I have no idea how we convince Uzbekistan to vote with us, but we did—that clearly is not a multilateral sanction.

In the Lugar legislation, other legislation, I know some of the thoughts were—if three of the G7 participated, we would consider it multilateral.

As long as there is a real movement in that direction, we are going to support multilateral sanctions, but one thing that really does bother us—and let me go back to the Sudan for a second. It is a small country, from an economic standpoint, but it is the most recent sanction, in that comprehensive embargo was put in place in November. The next month, the United States participated in the APEC conference in Vancouver. All of our major trading partners were there.

We talked to USTR and State Department, and they confirmed there was no effort to multilaterize the sanctions, and this was after the President declared that this country represented an extraordinary threat to the national security. That is not even trying.

Senator BIDEN. My time is up.

Welcome, Mr. Donohue. It is nice to have you here. I had explained that you were en route, and we will hear your testimony.

Mr. DONOHUE. Thank you, Senator. I appreciate your courtesy.

Senator BIDEN. There are going to be times that we, the United States, are a particular target, like the Sudan, where there may be no target. France may not be a target. Germany may not be. We could be as well. We may be a target of terrorist activities, either engaged in by the host country in the sense that they are either malfeasors or nonfeasors. So I suspect we are going to be faced with that.

The Farm Bureau is the biggest farm organization in my State, and I might add, you will know this, but no one else in this room will, except maybe the Chairman of the Committee. Agriculture is the biggest product in my State, not chemical industry, but agriculture.

One of the places I find it very difficult—and the Senator from Arkansas is here. He is a strong proponent of human rights. It is on religious freedom.

As a matter of fact, your Farm Bureau target list, what constitutes pro and con votes, you remind me of labor. You always put in things that have nothing to do with farming as to whether we are good or bad, whether we vote for a constitutional amendment on the flag or something.

Mr. SPRAGUE. We can get farmers to agree on those issues.

Senator BIDEN. I know that.

And one thing the farmers agree in my State, and the Farm Bureau agrees on, is the notion of religious freedom. Do you have any conflict within the Farm Bureau as to whether or not the sanction imposed is one on a subject that they care about as opposed to one they do not? I am not being facetious when I say that. Could you speak to that just a second?

And my time is up, and I will yield to the Senator from Indiana.

Mr. SPRAGUE. Again, Senator, you ask tough questions, don't you? I think there is no question that we would agree with sanctions that would have some benefit. The problem that we see is that most of the time, we are shooting ourselves in the foot.

Even though we are trying to get certain policies adopted that we agree with, the people that we are punishing usually are the ones that do not make those decisions, anyway, and especially with food and medicine and those kind of things.

So our concern is that we believe there are better ways to hit religious issues than there are economic trade sanctions. They do not work, and not to belittle the issue that we are trying to do, but the fact that economic sanctions are not the most efficient way to address those issues.

Senator BIDEN. I happen to agree with you. I appreciate your answer.

Should we ask this panel and then have Mr. Donohue testify, or how would you recommend we do this?

Senator LUGAR. It makes no difference to me.

Senator BIDEN. Mr. Donohue, do you want to make your opening statement, and then you can join in and be questioned as well?

**TESTIMONY OF THOMAS J. DONOHUE, PRESIDENT AND CEO,
U.S. CHAMBER OF COMMERCE**

Mr. DONOHUE. That will be fine. I will be very brief, Senator.

First, I appreciate the panel and the Committee making arrangements so I could get back to testify. I did fly halfway across the country to do this. I had a choice of staying—beginning or cancelling a speech to 800 people in Cedar Rapids, and I decided to go see the countryside.

Senator BIDEN. Are you running for President?

Mr. DONOHUE. No, sir.

Senator BIDEN. That is the only reason any of us go to Iowa.

Mr. DONOHUE. No. I am going to Iowa to try and keep track of the people that are.

Let me make it very clear to the members of the Committee that the Chamber takes second place to absolutely no one on our common quest for basic human rights. No reasonable or moral person can countenance the persecution, torture, and other atrocities that are committed around the world against our fellow human beings, whether the political, economic, social, or religious pretext is the reason that this is going on.

And we all know that basic human rights are a core American value, but we do not believe, as much as we have studied and considered this issue, that unilateral—and I understand “unilateral”—economic sanctions are an approachable, a workable or practical way to address this. In fact, the fundamental question is, can anyone rise and tell us where sanctions, unilateral sanctions, have worked.

When you stop and think about it, we have in a very, very short period of time, imposed sanctions more than 120 times in 80 years, and we maintain unilateral economic sanctions of one kind or another against 70 countries right now. Who is left? Bermuda and the Caribbean Islands? At the rate we are going, we apply unilateral sanctions like giving out candy bars. It is irresponsible, particularly when I say again, does anybody have an example of where it really works.

In virtually all the instances, the actions that we take fail to alter materially the target country’s objectionable behavior. Instead, the regimes we target gain support from others around the world. U.S. businesses are hurt. Our workers bear the burden, and what really happens is that the people we are trying to help, reli-

gious groups, economic groups, political groups, are punished for what we do and we become the enemy.

You could go all around the world, and Senator Lugar who has had extensive experience in the foreign affairs area, as others here have, will tell you that we become the critical enemy within regimes who are trying to look to somebody that is causing—they can blame for causing the problems within their country.

Now, studies have indicated that unilateral sanctions have cost our economy between \$15 billion and \$20 billion a year in lost export sales, and up to maybe a quarter-of-a-million jobs. Well, that is nothing compared to what is going to happen in the future.

Stop and think about it, that we are a fraction, a small fraction, infinitesimal of the world's population. We want to trade with all of those people, and when we put a sanction in, here is what happens. We lose France, Germany, Spain, Italy, all of Latin and South America, most of Asia. All of those people walk, and even the Russians, and they present themselves ready to trade in natural resources, in finished products, in services. They are ready, willing, and able, while we are impeded because of a program that has demonstrated its inability to work.

I get a feeling sometimes, Senators, about sanctions the way we feel about our teenage children. You all remember the times we wanted to kill them, but it is not allowed, and it is certainly not something that we want to do.

So what do we do? We impose sanctions. We send them to their room or we ground them or we take away the car keys. I am not sure those are the things we have found work in our families, but they sure as hell do not work around the world.

There are two other points I would like to just raise with my remaining time. Number one, it is bad enough to deal with sanctions on a national level, but when you have States and cities with the enlightened leadership that you can occasionally find there in terms of international affairs, opposing sanctions against countries, prohibiting investment, prohibiting exchange of technical information, prohibiting trade, we have a serious problem. We cannot let that happen, and we have joined in some lawsuits on that matter.

Let me end with just a couple of recommendations. First of all, we have to mandate the application of some sort of benefit analysis, as Senator Lugar has suggested, before we even think about a sanction.

We have to make China normal trade relations a status, a permanent issue, and face up to the realities of China. The religious persecution issue there is going to be fixed a lot easier by open trade than by behind-the-door sanctions.

We have to lift the embargo on Cuba. Cuba is treated worse in terms of food and in terms of medical care than are the Iraqis, and everybody else that deals with Cuba has all their claims resolved, land claims, the takings and so on. We are the only ones that have not, and that Castro fellow, he has got a lot more staying power than our sanctions. We need another approach.

And we need to repeal unilateral sanctions against others, including Iran and Libya, unless national security dictates that we should not. In that instance—and you raised a good question, Senator. When the terrorism is overt and direct right on us, there are

probably things other than sanctions we ought to do, and we might want to talk to former Senator Cohen about that. We have to prevent the enactment of the Freedom from Religious Persecution Act, the way it is written because, after you get past the rhetoric, you get down to the application, and it is not going to help. Any church, any missionary folks, they are going to tell you please do not do this.

Senator BIDEN. The way it was written by whom? The one that I cosponsored or the other one?

Mr. DONOHUE. The Wolf-Specter bill, the way it is written, if you talk to the missionaries, you talk to religious groups, you talk to others, the way it is applied, the way sanctions are put in are going to do nothing but hurt those people, and I think we have to be very careful about that.

Senator BIDEN. I am confused. Are you supporting the Wolf-Specter?

Mr. DONOHUE. No, sir.

Senator BIDEN. You are opposing it.

Mr. DONOHUE. I am supporting the objectives of stopping religious persecution anywhere that it happens. I am concerned that this piece of legislation will exacerbate the problem and get us now—by the way, it could be fixed. There are issues in there, and I have spoken to Congressman Wolf on numerous occasions, but, anyway, gentlemen, I have used more time than you have allowed, and I appreciate that.

I appreciate, again, you allowing me to join you a moment late.
[The prepared statement of Mr. Donohue follows:]

STATEMENT
on
ECONOMIC SANCTIONS
before the
SENATE TASK FORCE ON ECONOMIC SANCTIONS
for the
U.S. CHAMBER OF COMMERCE

by
Thomas J. Donohue

September 9, 1998

Introduction

I am Thomas J. Donohue, President and Chief Executive Officer of the United States Chamber of Commerce. The U.S. Chamber is the world's largest federation of business organizations, representing more than three million businesses and professional organizations of every size, in every business sector and in every region of the country. The Chamber serves as the principal voice of the American business community. An important function of the Chamber is to represent the interests of its members before the U.S. Congress, the Executive Branch, the independent agencies of the federal government, and the federal courts. The Chamber welcomes this opportunity to present its views on the efficacy of U.S. economic sanctions to the Senate Task Force on Economic Sanctions.

Engagement, Not Isolationism, Fosters Positive Change

I want to make clear that the Chamber takes no issue with the underlying motives or objectives that sanctions advocates cite as justification for their efforts. The Chamber takes second place to no one in our common quest for basic human rights and political and economic freedom. No reasonable or moral person can countenance the persecution, torture and other atrocities that are committed around the world against our fellow human beings, whatever the political, economic, social or religious pretext. Basic human rights are core American values. We believe just as strongly in the need to combat other man-made scourges, such as terrorism, weapons proliferation, and drug trafficking, that plague us. But we do not believe that unilateral economic sanctions are an appropriate approach toward solving these problems.

Throughout the U.S. and around the world, individual liberty and free enterprise go hand in hand. By their very presence and operations, American companies and the expatriate communities that depend on them contribute mightily to economic, political and religious freedom in their host countries. Continuing U.S. company presence and engagement abroad is critical to the inculcation of American civic values. Evidence of the positive effects of the U.S. presence abounds worldwide.

In 1980, nearly every country in **Latin America** lived under authoritarian regimes and closed economies. But after years of economic liberalization and efforts to attract foreign investment – much of it from the United States – every nation in Latin America except Cuba is now democratic. While there remain significant problems and challenges to these democratic systems in many countries, there is no question that political and economic liberalization have proceeded together. And our unilateral policy toward Cuba – the hemisphere’s last holdout against democratic change – has served to reinforce rather than weaken Castro’s dictatorship, and to discourage, rather than encourage, the democratic changes we all seek.

In **eastern Europe and the former Soviet Union**, a combination of economic collapse and a continuing quest for economic, political and social freedom led to the end of generations of totalitarian Communist rule. Considerable credit for this victory is due to the Catholic Church under Pope John Paul’s leadership and the Solidarity labor movement in Poland. But at the same time unrelenting exposure to western culture, economics and politics played a significant role. Through its business council network, the Chamber federation and the U.S. business community have had an organized presence in the former Soviet bloc since at least the Brezhnev era. And it is through networks such as these that western society is best able to maintain a lifeline to the forces of reform and freedom in that part of the world. While progress in the region is clearly uneven, substantial reforms have taken place in the Czech Republic, Hungary, Poland and Slovenia. And despite enormous problems that persist to this day, Russia has cast off seven decades of Communist rule and continues to lurch forward in its own way toward modernity.

In **Asia**, U.S. trade and investment played significant roles in fostering the transition away from authoritarianism and toward democracy in Taiwan and Korea. And in China, U.S. business presence has resulted in greater job choice for workers, higher wages and living standards, better workplace safety and health standards, improved education and training opportunities, and a host of other benefits sought by workers in the U.S., China and all over the world. And as hundreds of millions of Chinese people continue to migrate from the interior to the coastal regions to take advantage of these imported economic opportunities, the potential for expanded U.S. economic, social, cultural influence will be historic. These workers will make more money, read more western books and periodicals, and receive greater exposure to western ideals of social, economic and political reform than their compatriots who remain isolated. Unilateral restrictions on U.S. firms in China not only imperil U.S. competitiveness in that country, but also compromise a principal source of human progress for nearly one-fourth of the world’s people.

In **southern Africa**, it is precisely the multilateral character of sanctions against South Africa – rather than a unilateral, go-it-alone approach – that permitted those sanctions to have some positive effect. And it should not be forgotten that the de Klerk regime’s concerns over increasing internal violence were no less important than external

economic sanctions as a motivating force for South Africa's own homegrown version of *glasnost*.

Unilateral Sanctions Do Not Work

Recent history is replete with U.S. actions to terminate, restrict, or impose unilateral conditions on commerce with other nations for the stated purpose of penalizing various aspects of other countries' behavior. The United States has imposed some form of economic or trade sanctions on other countries more than 120 times in the past 80 years. Over half of these have been imposed in the last five years. Currently, the U.S. maintains unilateral economic sanctions of one kind or another against over seventy countries.

And in virtually all meaningful instances, those actions failed to alter materially the target countries' objectionable behavior. Instead, erstwhile "allies" castigate U.S. foreign policy, while the regimes we target gain support and U.S. businesses and their workers bear the burden of market opportunities lost to Asian and/or European competitors, whose own countries have chosen not to embark on similar unilateral courses of action. Various studies have indicated that unilateral sanctions have cost the American economy between \$15 billion and \$20 billion a year in lost export sales, and up to 250,000 export-related jobs. And this may be an understatement, as it is often difficult to quantify business that was lost because it was never sought.

Moreover, unilateral economic sanctions imposed by the United States often extract horrific costs when measured by the adverse effects on the quality of life of the most vulnerable citizens in targeted countries. The embargo against Cuba is a case in point: despite a nearly four-decades-long embargo against that country, Castro is not only still well-established as head of state, but we maintain restrictions on the sale of food and medicine to that country that we don't maintain against much worse regimes, such as Iraq and North Korea.

Other major industrial countries that find themselves targeted by U.S. sanctions are not sitting still for them. The **European Union** has made clear on several occasions that it will not remain idle in the event sanctions are imposed on its companies that do business in or with Cuba, Iran and Libya.

Last November, **Russia's** huge natural gas consortium Gazprom -- which controls 40 percent of the world's natural gas -- cancelled a \$750 million Eximbank deal that would have permitted U.S. equipment producers to supply a \$2 billion Gazprom gas field development project. Gazprom took this action because U.S. policy objected to the fact that the project is in Iran. Yet, participating French, Russian and Malaysian companies faced no similar constraints, and U.S. sanctions policy will do nothing to stop the project.

The continuing unilateral U.S. embargo of Cuba -- which was codified and expanded with the 1996 enactment of the Helms-Burton legislation -- has not only failed to weaken that country's Communist regime, it has actually permitted that regime to obtain quasi-martyr status by permitting its subjects to focus on an external enemy, namely, the United States. With the enactment of Helms-Burton, the Cuba embargo has mutated into a secondary boycott of a variety of Canadian, European and other interests -- some of whose governments have actually passed laws blocking their citizens from complying with this U.S. law in their countries.

In south Asia, the U.S. threat and subsequent application of automatic, non-discretionary sanctions has palpably failed to deter either India or Pakistan from taking steps each regards as indispensable to its national security. Worse, without flexibility and discretion, the U.S. government is in a very weak position to engage the two states in order to stabilize one of the most dangerous conflicts on earth.

Opposition to U.S. sanctions policies is not limited to business leaders, policy analysts and technocrats. During his recent trip to Cuba, Pope John Paul II made very clear his humanitarian opposition to the U.S. embargo against that nation. Similarly, with respect to China, the Dalai Lama has spoken on several occasions of his preference for engagement as opposed to efforts to isolate that country. And prior to his recent visit to the United States, South Korean President Kim Dae Jung called for a relaxation of the multilateral embargo against North Korea, on the grounds that those sanctions have extracted major costs from the North Korean people without achieving significant changes in their government.

State and Local Economic Sanctions Are Unconstitutional

As problematic as federally-imposed unilateral sanctions are, they are by no means the only problems with which we must come to grips.

Increasingly, state and local governments are seeking to express their displeasure at developments in other countries by punishing dozens of them -- and their industries and companies -- for a variety of human rights, labor, environmental and other policies and practices. Dozens of state and local measures are either on the books or awaiting action which, among other things, would restrict local and state procurement from and/or investment in companies doing business with targeted countries.

On April 30, the National Foreign Trade Council (NFTC), an association representing some 550 companies with substantial international interests, filed a lawsuit challenging the constitutionality of a Massachusetts law prohibiting state agencies and authorities from contracting with companies that do business in Burma. Doing business is defined very broadly and would, for example, include U.S. subsidiaries of foreign parents. This means, for example, that a U.S. subsidiary of a Japanese parent could be subject to sanctions -- even if the U.S. subsidiary had no connection to Burma -- if the Japanese parent was doing business in Burma, as allowed under Japanese law.

The NFTC's challenge to the "Massachusetts Burma law", as it has come to be known, is based on three principles:

1. Responsibility for the conduct rests with the federal government, and should rest as such, as it is the entire United States that is targeted for criticism or retaliation by other countries as a consequence of foreign policy actions taken by states.
2. "The Massachusetts Burma Law also violates the Foreign Commerce Clause of the United States Constitution, which prohibits state laws that discriminate against foreign commerce, burden foreign commerce, or impede the federal government's ability to 'speak with one voice when regulating commercial relations with foreign governments.'"
3. The Massachusetts Burma law conflicts with and undermines more limited and responsible federal efforts to bring about desired changes in Burma's repressive internal policies. Significantly, those federal efforts include a commitment to work with other countries in the region, as well as trading partners, to achieve the desired changes.

The U.S. Chamber views the proliferation of such state and local initiatives around the country with alarm. For this reason, we were pleased to endorse the NFTC effort via an *amici curiae* brief we filed in U.S. District Court on July 7 in partnership with the Organization for International Investment. Application of a patchwork quilt of often inconsistent sub-federal sanctions on top of our already flawed federal regime – which will prompt numerous, as yet undefinable and hostile foreign reactions -- threatens to do incalculable additional harm to our national interests.

Recommended Changes In U.S. Sanctions Policy

U.S. economic sanctions policy is in clear need of substantial revision. The failure of the automatic sanctions we imposed on India and Pakistan in the wake of their nuclear tests is but one indicator of this need. The current system simply cannot work. Accordingly, to begin coming to terms with the global realities of the 1990s and beyond, we should refrain from using unilateral economic sanctions other than to counter direct threats to the national security of the United States. There is no evidence that such sanctions have achieved their stated objectives. The U.S. experience is that the only measurable consequences of unilateral economic sanctions have been harmful to American businesses and their workers. Congress and the administration should also enact legislation and take other actions as needed to:

Mandate the application of a series of "cost-benefit" measurements and evaluations that must be considered prior to implementation of economic sanctions. U.S. laws currently require that we consider the environmental impact of a wide variety of economic projects and initiatives. Preservation of endangered species, maintenance of clean air and water and other objectives are deemed to be of such importance that we are willing to put a hold on activities that might run counter to these objectives. Yet we

maintain almost no comparable standards for protecting our national interests from potentially unwise foreign policy actions. It makes no sense for us to assign lower priority to vital U.S. international interests than we do to our domestic environmental interests. Accordingly, we should establish and enforce a series of criteria that require consideration of costs and benefits before sanctions are imposed. Such criteria should include: (a) will the sanctions work; (b) what are the resultant economic costs to U.S. industry and agriculture; (c) will the sanctions result in a serious backlash against other U.S. humanitarian, security, and foreign policy objectives; and (d) have other policy alternatives such as multilateral initiatives or diplomacy, been tried and failed? Bipartisan, bicameral legislation by Senator Richard Lugar and Representative Lee Hamilton, the "Enhancement of Trade, Security, and Human Rights through Sanctions Reform Act" (S. 1413/H.R. 2703), are models for achieving these objectives. Economic sanctions activity that should be subject to Lugar-Hamilton criteria includes, but is not necessarily limited to: (a) prohibitions or restrictions on export or import trade with target countries; (b) prohibitions on investment or other types of participation in target countries; (c) denial of access to the benefits of trade and investment development programs, such as Eximbank, OPIC, the Trade and Development Agency or other trade agencies identified in the annual National Export Strategy report; (d) opposition to World Bank, International Monetary Fund and other multilateral assistance programs in target countries; (e) secondary boycotts or other penalties against third countries which permit their nationals to do business in U.S.-targeted countries; (f) government application of "codes of conduct" to U.S. company behavior; and (g) unilateral prohibitions or restrictions on U.S. travel by nationals of targeted countries or third countries doing business with targeted countries.

Make China's "normal trade relations" (NTR) status permanent.

Termination of normal trade relations (previously known as "most-favored-nation" or MFN status) with China would amount to a draconian economic sanction against the world's largest nation and one of its fastest growing economies. U.S. tariffs on imported Chinese products would skyrocket and Chinese retaliation would be certain and severe. Our Asian and European competitors would have our markets handed to them on a silver platter, and we would forfeit countless opportunities for leaving an American imprint on the development of China's rapidly evolving society. Congress did the right thing earlier this summer when it recognized "most-favored-nation" status as normal trade treatment we provide virtually every trading nation and revised U.S. laws to reflect this changed designation. Still, the annual NTR renewal process itself casts a continuing pall over China-U.S. commercial relations – without regard to the actual outcome. Pending China-U.S. deals are in effect held up or suspended for weeks before each annual MFN vote until it can be confirmed that the vote will be "positive." It is time to enact such legislation as may be necessary to make permanent that status. H.R. 1712 (Bereuter) and S. 1327 (Roth) represent positive but partial steps in that they would make China's NTR status permanent upon China's accession to the World Trade Organization (WTO). H.R. 1712 would, on the other hand, also direct the President to increase duties on Chinese products if China was not according adequate trade benefits to U.S. products or making sufficient progress to join the WTO.

Lift the embargo on Cuba, beginning with food and medicine. The “Cuban Democracy Act” (incorporated into Public Law 102-484) and the “Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995” (Public Law 104-114) should be repealed. Both statutes are notable for their isolating effects on U.S. foreign policy and continuing failure to weaken the Castro regime. The latter, more severe statute, often referred to as the “Helms-Burton” law, codifies and goes beyond the three-decades-old unilateral U.S. embargo of Cuba. However, it has failed to weaken Castro’s regime as intended. But its extraterritorial provisions providing for lawsuits and entry restrictions against foreigners doing certain business in Cuba have undermined U.S. interests and reputations in Canada, Europe and elsewhere. As noted above, both Canada and Europe have enacted blocking statutes which prohibit compliance with the Helms-Burton law in their countries. But the real humanitarian tragedy caused by the embargo lies in our uniquely harsh restrictions on the sale of food and medicine to Cuba. The “Cuba Women and Children Humanitarian Relief Act” (S. 1391), sponsored by Senators Dodd, Warner and others, and the “Cuban Humanitarian Trade Act of 1997” (H.R. 1951), sponsored by Representatives Torres, Leach and many others, are models that would further this objective, and, as such, represent an important first step toward the complete lifting of the embargo – a step that addresses most directly the humanitarian crisis exacerbated by the embargo.

Repeal requirements for unilateral sanctions against Iran and Libya as contained in the “Iran and Libya Sanctions Act” (Public Law 104-472). Among other things, this law (often referred to by its acronym ILSA) directs the President to impose extraterritorial U.S. sanctions against foreign firms engaged above a certain financial threshold in the development of those countries’ petroleum sectors. National security waiver authority is available. Nevertheless, like the Helms-Burton law, ILSA has provoked significant European opposition because Europe depends heavily on those two countries for petroleum and other energy resources. ILSA has also failed to alter materially the target countries’ objectionable behavior. At the same time, ILSA has added to the pall of unreliability that U.S. firms operate under, through no fault of their own.

Prevent enactment of H.R. 2431 (Wolf) and S. 772 (Specter), the “Freedom from Religious Persecution Act of 1997” or similar proposals. Among other things, these proposals would establish mechanisms for monitoring religious persecution as defined in the bills and (subject to certain waiver authorities) require the president to impose certain unilateral sanctions. These sanctions include prohibitions against certain trade development assistance and export promotion for trade with countries where defined levels of persecution exist. Target countries include major trading partners with whom the U.S. shares a variety of vital interests. Moreover, no other major trading partner is enacting comparable statutes. Even with proposed authority to waive actual sanctions, these and other similar proposals would result in isolation of U.S. interests without material “improvement” in target countries’ conditions. This approach is especially problematic in that it would require very public U.S. identification of, and possible retaliation against, potentially dozens of countries with whom the U.S. shares a variety of vital interests. Some of these countries are bastions of pro-U.S. assistance in

parts of the world where substantial American interests are literally in the gunsights of terrorists – whose religious justification for their mayhem is tragically ironic.

Conclusion

As the twenty-first century approaches, global competition becomes more acute, and U.S. leadership becomes ever more critical, we as a nation must take stock of our mission, our capabilities and our limitations. Despite numerous conflicts and differences we share with other nations, the United States is still both the sole remaining superpower and an inspiration to billions of our fellow human beings. The fall of Communism demonstrates that the market-based American approach to prosperity is critical to our continuing status, power and influence. But leadership requires a willingness of others to follow. If we use our clout to engage other societies as they aspire to our freedoms and accomplishments, we can grow and lead indefinitely. But if we insist on adhering to a restrictive, isolationist model that has no relevance to the global community, other nations will look for other paths – paths which may lead not only to tragic consequences for them, but diminished horizons for us as well.

Going it alone no longer works, if it ever really did. As President Reagan was fond of repeating, we have a choice: lead, follow or get out of the way. Through engagement, we can lead. With unilateral sanctions, we encourage others to push us out of the way.

That concludes my testimony. I will be happy to try to answer any questions you may have.

Senator BIDEN. Senator Lugar?

Senator LUGAR. Thank you very much, Mr. Chairman.

Mr. Donohue has presented a number of foreign policy issues and an important agenda that I suspect the next Congress will have to deal with, and I say that seriously. His statement goes well beyond the legislation that I presented, which was prospective.

If we are to debate Cuba, Iran, and Libya—and perhaps we should, these are very, very important issues. I acknowledge that, and I appreciate your discussion.

I liked the specifics which Mr. Lane gave from the standpoint of an American manufacturer, and a very good one with a competitive product. It is a real problem when other governments have policies that help their exporters. It is at least preferable to have neutrality. When our Government works against our manufacturers, and does so systematically, country by country, that is a real problem.

And it becomes a great problem for each of us in the Senate to promote jobs, to speak to businesses and labor unions about prosperity. We are all for that, and, yet, our policies are clearly not necessarily for that; as a matter of fact, it may be working against it.

I want to speak specially to Mr. Sprague who is frequently before the Agriculture Committee, as you might imagine, and a very good witness there.

The problem that he has presented is a profound one, and that is that we have, right now, worldwide deflation of commodity prices. That is clear to farmers. It is also clear to people in oil and in the metals and minerals industries. It may be a phenomenon of short duration, but it might not be. Many people are writing about a new deflationary cycle that we have not faced in this world for half-a-century.

It hits the farmers first, and we saw that with the wheat market and the corn and the soybeans. As a result, almost every Senator is coming to the Agriculture Committee wanting money for farmers. It does not matter in what form, however you need to rewrite the farm bill, just send it, and in the next 60 days preferably. So I understand that, and there are very real problems when prices go down.

One reason why prices are going down is because Asian demand has evaporated, and not in Asia alone. As a matter of fact, world trade as a whole in the agricultural sector is sharply diminished.

When demand evaporates, prices usually go down. When supply is fairly constant, we are having a reasonably good year.

That means that farmers are very interested in sanctions and in foreign policy and have become much more aggressive. It is not surprising that farmers have joined USA Engage in an unusual coalition of the agricultural, manufacturing and business sectors of our country.

I think it is constructive that they have done so and just in time, and I think you are winning, as I suggested in my questions. We have not passed the sanctions reform bills, and I am not sure we will. I think the numbers of ways the administration can continue to frustrate us are legion, quite apart from disagreements we have, but the American people understand the game and they do not like it.

Furthermore, when it comes to human rights issues that many are raising, is it every justifiable to embargo food and medicine? What kind of human rights are involved under this situation?

I come down on the side of those who say it is not justifiable, we ought to get out of that business. I think the distinguished chairman says the same thing.

Now, if you are an advocate for socking Cuba forever, ditto Iran, Libya, whoever, you do not listen to that point of view. You are for human rights, but in the abstract. But there are actual people getting hurt, and there are humanitarian concerns that we ought to have as Americans, as people who have the strong religious precepts.

So I appreciate your testimony. It has been very specific and provocative and very helpful to us. As I said, I think we are winning the war, not the legislation. I hope we will do better on that front in due course.

Senator BIDEN. Now I will introduce the other team. Senator Hutchinson.

[Laughter.]

STATEMENT OF HON. TIM HUTCHINSON, U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator HUTCHINSON. Well, it is not a war. Thank you, Mr. Chairman. And I hope we do not view it that way. I do not know of anybody who thinks that our sanctions policy has been wise or effective or does not need reform.

I certainly believe it does, but I also believe this. Many of those who are such adamant opponents of any kind of sanctions or unilateral sanctions, they are doing so purely out of an economic—I mean, that that is the motivation. There has historically been a moral component to our foreign policy, and the American people want that.

Regardless of what France does or regardless of what Great Britain does, we have stood on certain values. We have stood for freedom of religion. We have stood for freedom of expression. We have stood against human rights abuses and labor abuses, but that has been part of what we stand for as a Nation. To say that is going to be irrelevant to what we do in our foreign policy and that we are going to look at the profit margin and the bottom line as being—and I know Farm Bureau is one of the greatest organizations in this country, but I know that the membership of Farm Bureau, they care about those things. They care about markets. They care about selling those products, but they also care about what is happening to people in China.

Constructive engagement, I do not care what you say, it has not worked in China. Things are not better.

A CBS reporter was arrested within the last 2 weeks, detained. After the President's visit to China, they were rounding up those who dared to say we would like to form another political party.

Now, you may call that success in bringing about reform in China. I do not see it.

I think we have had a very valuable discussion about unilateral sanctions, where they work, where they do not, or maybe they never work, but a strict requirement that we only use multilateral

sanctions, what my concern is, my fear would be that in a situation where we drew the parameters so severely that we effectively eliminated unilateral sanctions as an option, it would force us and force our foreign policy to the lowest common denominator of what our allies want.

Until we can build a consensus with our allies, we would not be able to use this option. I do not think we want to get that restrictive in how we utilize sanctions. If we take the sanctions option off the table, how then do we reflect American values?

Mr. Donohue, you used the analogy of wanting to kill our kids at times because of their behavior, and instead of killing them, we decide we are going to take the key away from them or put them in their room or ground them. Well, I think that is exactly what we ought to do. I do not think killing them ought to be our option.

And to say we are going to talk to them or we are going to kill them is not a very good alternative. Yet, when it comes to foreign policy, are we not saying we are going to use rhetoric, and if that does not work, our only option is military force?

So those who are saying let's get rid of the sanctions, let's eliminate that or greatly restrict the use of sanctions, my question—and maybe we will just present this to the panel—what is there between words and war? What do we do?

We will accept the proposition that our current use of sanctions is not very effective, that we are not getting the desired result. Give me an option. If we take that off the table, where do we go, short of going to Secretary Cohen, military action every time we have a problem with a country's egregious actions? That is what I want to hear is what are our options short of military force if we eliminate the sanctions option where we can reflect the values of the American people in our foreign policy.

Mr. DONOHUE. Senator, if I might just try a couple of comments that might add to our conversation.

Your point about eliminating all sanctions must be seen with the other bookend where we impose them without a great deal of thought.

When you have 70 nations under sanction and when we would all agree in a quiet conversation that very many of those do not have any effect, the addition of the seventy-first nation is not very significant because people have found they can get any products they need. They can do their business in any way they like, and the United States really becomes irrelevant in that issue.

I believe that we need to find ways to enhance and export our values, and we are doing a lot of things. The Chamber runs CIPE, the Center for International Private Enterprise, and I would like to sit down with you for a half an hour one day and look at the programs that have been—the unions run the other side of it, you know, and we do it together—that have been enhancing freedom and liberty and non-government organizations in Eastern Europe and all over the world that have led to freedoms and liberties, economic, social, and religious.

We do have a problem also that in our enthusiasm for our values that it is our view that everyone in the world ought to adopt them.

I recognize that everyone in the world ought to avoid torture and all those things, and we ought to try and do a lot of stuff about

that, but I would suggest to you, sir, that we have had massive improvement in China over the recent 10 years. Just a short time ago, it was a closed nation, and now people travel more freely. Churches are more able to function.

Is it perfect? Of course not. We have problems with the monks and the Tibetans and others, but I believe that, first, real engagement, economic, cultural, political, presence in that country, a demonstration of an improved standard of living and of a way of life has greater influence than extracting ourself from the process and leaving it to everybody else when we know that that sanction is not going to work, and how frustrating it is for the Congress and for the American people to recognize that there is a great gap between going to war and seeking some other way.

In this modern world where money, technology, and people and everything is fungible and moving, you are right. We need to seek some other ways to do this. Do we have the absolute—

Senator HUTCHINSON. I asked for it.

Could we have Mr. Sprague and Mr. Lane? Because my time is up, and I really would like to hear their opinions on whether there are—I mean, you criticized my position on China, and—

Mr. DONOHUE. No, sir. I did not criticize your position. I simply offered another opinion.

Senator HUTCHINSON. What I did not hear was options in between.

Mr. DONOHUE. Well, no, I gave you the option. My option is to make a strong, viable, economic, social, and cultural presence in those countries and get the benefits we have seen for that over 30 years.

Senator HUTCHINSON. No one objects to that.

Yes, sir.

Mr. SPRAGUE. Well, I think we would all agree that there are going to be individual situations where the hammer is the only method, and economic sanction would be the only thing that would turn a dictator or something around, but I think the question is we are just randomly using this so blatantly without any real reasoning.

So what we are saying, let's study the situation and see who is getting hurt. I would argue let's get them hooked on Caterpillar, and then they cannot get away from it because they have got to have the mechanics in every other day.

Mr. LANE. Not every other day. Once a year.

Mr. SPRAGUE. You know, just build up this relationship in the long run, it is going to do more than cutting people off from supplies and making them more relying on other countries that have less ideas of freedom than what we would have.

Mr. LANE. Senator, I have a list here of 77 different action steps ranging from friendly persuasion to hostile activities. Sanctions are part of it.

I should add, first of all—let me be very specific. I know when I was introduced, USA Engage was described as a coalition against sanctions. We are against the proliferation of sanctions, but we understand that sanctions are a tool of foreign policy. It should not be the tool.

In getting to that, let me be specific. One, the main question is how do you make sanctions work better. Getting back to Mr. Donohue's point, the first thing you do is you do not cheapen the currency. I mean, we have just overused sanctions to death. They are not taken as seriously as they should.

Secondly, and this goes to Senator Lugar's legislation. We need to do a much better job of targeting sanctions.

Senator you mentioned earlier today about the need to go after leaders, go after people that really deserve to be sanctioned and not go after the poor and the folks that can't afford sanctions. That is really what Senator Lugar's legislation is all about.

Thirdly, we have got to hold somebody accountable. When we put a policy in place, someone needs to be accountable. Usually, that is the President, but if the President is going to be accountable, the President also needs waiver authority so he has the room to maneuver around some pretty tricky situation.

The next point is that we have got to recognize that you cannot conduct foreign policy on the cheap. We need a first-class foreign service. We need top-notch intelligence capabilities. We need to know that we have carrots as well as sticks, and all those areas have been cut in recent years. And there needs to be a recognition that engagement is a powerful force for change.

Let me just say—and I realize we may have different views on China. I have been there a couple of times, and I do not profess to be an expert, but the latest human rights report when it talked about China, it said average citizens go about their daily lives with more personal freedom than ever before. Now, that is a long time.

They also continue to enjoy a higher disposable income, looser economic controls, greater freedom of movement, increased access to outside sources of information, greater room for individual choice, and more diversity in cultural life. Now, that is what they say about China.

Senator HUTCHINSON. Mr. Lane? Mr. Lane?

Mr. LANE. I had the opportunity to be in Cuba in March. None of that can be said about Cuba.

Senator HUTCHINSON. My time is up, and I do just want to say this. I read the whole report.

Mr. LANE. There is other parts, I know.

Senator HUTCHINSON. That is a very, very selective comment from that report, which was in the whole, very, very critical of the human rights conditions in China today.

No one is saying we should not engage China. You cannot isolate China. I certainly would not, but I would also say that what China wants today, what the Chinese regime wants today is the benefits of capitalism while keeping the iron fist of repression on their people, and that we cannot just say if we can sell more Caterpillars, we can increase trade, it is automatically going to lead to freedom and human rights improvements in China. It is not an automatic, and the fact that China today insists upon continuing to prevent their people from the free access of information is evidenced by the arrest of the CBS reporter last week, and the repression of any who would even seek to form an opposition political party.

The repression on the Internet, preventing the free-flow of ideas through the Internet in China, that demonstrates to me that the

government is still very, very intent on maintaining that iron fist of control, while reaping the economic benefits of trade with the United States.

And with that, thank you. Thank you very much. I think it has been helpful to me. It was a very lively conversation.

Thank you, Mr. Chairman.

Senator BIDEN. Senator Warner?

**STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM
THE COMMONWEALTH OF VIRGINIA**

Senator WARNER. Thank you, Mr. Chairman.

Again, I express appreciation for your participation in this very important subject, and I will go to one extremely narrow part of this whole general issue and just give you a question and the same question to each, and you can share with me and the Committee your thoughts.

Food and medicine. One of the advantages of this series of hearings is that I detect there is a consensus that it is really an area which should be left out of the sanction philosophy, food and medicine. Do you share that? Are there any circumstances that you think food and medicine should be included? Do you have any views on whether in history when they have been included that they have really added any teeth to a sanction?

Why don't we just start with you, Mr. Donohue.

Mr. DONOHUE. Thank you, Senator.

Generally speaking, I believe to include food and medicine is to act, and a contrary view to our philosophy that we have been talking about, which is a philosophy of care for others.

Second, I have not seen—I have seen a number of examples where you have contrary views. We are arranging for the Iraqis to have food and medicine and some amount of fuel. These are people we have been in a major war with, who have killed Americans.

On the other hand, Cuba, because of great passion, we have included food and medicine in our sanctions, and by the way, we have been at this Cuban thing since John Kennedy. And as I said to your colleagues before you came in, everybody else has already adjudicated and resolved all their claims against Cuba. People come and go, trade all over the place with Cuba, and we continue to take a very old view about that matter.

There is some enlightened activity in recent weeks and months, and I hope that we can move forward on that.

There are times when the anger of our Nation is such that we will do things that seem appropriate, even military force, and I am sure there are times when the anger of all of our fellow citizens are such that multilateral sanctions might in the occasion of somebody that was conducting ongoing hostilities where food and medicine might be excluded from an enemy, but I do not think we can very well go out and preach our values and then say, by the way, we are mad at you, the head of this country or the head of their military or the head of their whatever, but we are going to deny your citizens food and medicine. It is a bit of a conflict.

Senator WARNER. I share that view.

And on Cuba, as you know, I have made an effort with Senator Dodd to see whether or not we can get that relieved.

I think we would have joined the community of nations on Cuba had they not done that murderous act of shooting down that aircraft, and that is just history. You need not go into that.

Mr. DONOHUE. Senator, I understand that things like that impede progress.

Senator WARNER. Mr. Sprague?

Mr. SPRAGUE. Yes. I would agree with Tom that naturally there are going to be times when the Nation will be so outraged over certain acts that we will do anything, and food and fiber and medicine would be one of those things that would help bring the people of that nation back to their senses or something like that.

I think as a humanitarian, even in those situations, we are probably causing more damage to the goodwill of this country than we are helping by doing that.

Naturally, we are very prejudiced in the agricultural industry. We definitely think that food should be always on the table, and if we can present that to the nations, it should be there.

Senator WARNER. Thank you.

Mr. Lane?

Mr. LANE. Senator, unless we are about ready to go to war, I cannot think of any reason why you would want to target civilian populations by denying food and medicine. If the Senate does only one thing between now and the end of this Congress, we should lift the food and medicine embargo on Cuba. It makes us look mean-spirited, and all it does is it helps reinforce an authoritative regime.

Senator WARNER. I share that view.

I thank the panel.

Mr. Chairman?

STATEMENT OF HON. JOSEPH R. BIDEN, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Thank you very much.

Gentlemen, I have one question, if the panel does not mind. Is efficacy the ultimate test? In other words, are there any circumstances where we would impose a sanction unilaterally knowing full well it will not be effective, that they will be able to get the product somewhere else?

Let me give you an example. During the days of apartheid, in addition to general sanctions we debated, sometimes imposed, sometimes did not, there were certain restrictions, for example, not just on technology, like we worry about with Iran and Korea, North Korea, but, for example, when there are the transfer of materials that allowed the police to better and more efficiently do their job, knowing they could very well get tear gas from wherever. I am making that up. I do not recall whether or not specifically tear gas was a part of it.

Are there times when we should, just as a matter of principle, not participate in enabling a government to engage in activities that are clearly contrary to our value system? That is my question. Even though we know they are not going to be effective.

Mr. DONOHUE. May I go, sir?

Senator BIDEN. Please, Mr. Donohue.

Mr. DONOHUE. I believe there are occasions that the national indignation and the national will needs to be stated, and in matters

such as the example you gave of allowing people to export instruments of pain or imprisonment, I believe the Congress has a position to take an aggressive posture on that.

I believe it ought not to be on 70 nations. I believe it ought to be done and allowed and very vigorous indignation when we do it, and we ought to make it stick. We ought to make it stick with our own companies, and we ought to make it stick with our trading partners. I think we could have a much better chance of doing that if it was an occasional action.

Senator BIDEN. That is a very important that I did not raise, and I know you both want to answer the same question, but if I may, there was discussion in the first panel about secondary boycotts. There was discussion about imposing sanctions on those who do not go along with our sanctions. That was not my question, but now that you have raised it, in the case where we, in fact, were to curtail the shipment of products that could be used by a totalitarian government for a specific purpose—I am making it up—tear gas, for example, say we could not export tear gas, and France and Germany decided they can buy it from us or some other country, all of the importuning in the world does not work in many cases, no matter what Mr. Lane hopes for in terms of aggressive diplomacy on our part.

We have found that many of our closest friends are incredibly resistant. I often say to my friend from the chairman of the Agriculture Committee, France does not have a foreign policy. They have a farm policy, as do most of our—I mean that sincerely. And that is not fair to France. They clearly have a foreign policy. I will get a thousand letters from my distant French relatives.

Senator WARNER. The farmers can shut that policy down quickly.

Senator BIDEN. Yes.

But the farm policy is significant. I am being very serious when I say are there circumstances where we should connect the dots where we engage in a secondary boycott? For example, the French or the Italians or whomever decides that the very product we want to curtail selling because it is directly and identifiably contrary to our value system, the way in which it is being used by the particular government, and they do not do it. Should we engage them as well and say okay, we are going to cut off markets to you?

Mr. DONOHUE. Well, Senator, first, we do agree that there are times the country has to make a statement.

Senator BIDEN. Well, no, we do not because you said if. You had a little addendum. You said if. We should use our full force to then bring pressure on our allies not to sell the product.

Mr. DONOHUE. No, I did not quite go that far.

Senator BIDEN. Okay, I am sorry.

Mr. DONOHUE. We need to try to make it stick, and that means within our own country, we recognize when we do that, that what we are doing is making a statement.

If we went through a daisy chain and the French violated what we would hope would be their support for us and then the Germans did it and then the Italians did it and then the Spanish did it and then the Chinese did it, pretty soon, who are we going to trade with?

I think, Senator, what I am saying is that there are times that this country ought to make a statement and act on its own behavior.

I think we have to be very careful of secondary boycotts. First of all—

Senator BIDEN. I agree.

Mr. DONOHUE [continuing]. As a country—

Senator BIDEN. I agree.

Mr. DONOHUE [continuing]. We get very, very angry with our friends slapping secondary boycotts on us, and you know what we would tell them to do with it? And I think that we need to be practical.

Generally speaking, unilateral sanctions do not work. We cannot find a list of ones that do out of the 70 countries that we have under sanction.

I believe there are times when this country needs to speak its mind on important and emotional issues. I am not sure we then need to go out—and by the way, there are military exceptions and so on—

Senator BIDEN. Right.

Mr. DONOHUE [continuing]. We need then to go out and start putting secondary boycotts on our friends all around the world as the daisy chain moves.

Senator BIDEN. I just wanted to make sure that is not what you are saying.

Let me conclude, and then I will ask for some comment. I will conclude what I was pursuing here.

Senator Hutchinson and I probably are on close to opposite ends of the spectrum on matters relating to sanctions policy, at least on the issues that we engage on the floor. He and I have been on opposite sides of the argument, and I respect his view.

But one of the points that the Senator makes, I think, should not be lost here, and that is why I asked the question about efficacy.

In my view, there are occasions when notwithstanding the fact that the sanction will have no material impact on the country we are sanctioning because other countries will immediately fill the vacuum, that notwithstanding that, I can picture occasions when it is appropriate and necessary for the United States as a matter of principle to impose a sanction that we know will not work if we define work as meaning ending the practice for which we are sanctioning.

And the example that comes to mind is the debates during the Apartheid debate, where there were arguments about sanctions on the South African government at the time by refusing to allow the sale of certain products that were used as instrumentalities of repression, knowing that we were not able to stop other countries from doing that.

So that was the specific question. I do not want to leave this debate with all of you being—I happen to be philosophically where the three of you are in terms of my votes and my initiatives and my actions, but I do not think we should—quite frankly, Mr. Donohue, I am trying to be your press guy here.

I do not think you should be put in the position of speaking for the Chamber, at least not the Business Roundtable from my State

where it kind of lives. I do not think we should be put in the position where the business community is viewed as saying that unless we can prove it is efficacious, there is no circumstance under which we should engage in the sanction.

Mr. DONOHUE. Senator, I could use a lot of help in the press, and I appreciate that point.

Senator BIDEN. I was not being facetious. I mean that sincerely.

Mr. DONOHUE. No, I know, but I am serious, and I do appreciate your—we agree on this. I believe there are times we need to speak our mind, and I think it is very, very difficult to take them down the daisy chain. I appreciate your engaging us in this conversation.

Senator BIDEN. Does anyone else have a question?

Senator WARNER. I have another quick point. Thank you, Mr. Chairman.

Gentlemen, I am in a conference now where one of the issues revolves around which department the executive branch should have sort of the final say as it relates to particularly items which have potential military value. I do not think you need any more facts to know exactly from whence I am coming on this question, but I will ask Mr. Donohue, and if others feel they want to add in, fine.

Do you find there is a great deal of importance, whether it is Commerce, State, or Defense that has sort of the upper hand in the final say?

Mr. DONOHUE. Senator, if we had a clear definition—and I am not going to ask you about the subject, although I happen to have a working knowledge of some of that. If we had a clear definition of what gave military advantage in a significant way to people we do not want to have it, first, I think the President has that responsibility, and second, then I think that could be found in the Defense Department or it could be found any place you wanted to put it.

The big problem is what is the clear definition and what is the agenda of the departments. They all have three separate philosophies. Defense wants to make and sell and protect, and those conflict. Commerce wants to sell and export, and State wants to talk about—and I say that with great respect.

I think this is a problem that when we come down to a question of national defense, that whether it is the national security guys or the President that has to adjudicate between those three departments—because they have all got an ax to grind—if you give it to Commerce, Defense is still going to be very active in defining what it is and what the threat is. If you give it to defense or to commerce, State is still going to be in charge of discussing this and negotiating it with foreign governments. If you give it just to State, Commerce and Defense are going to be yelling.

You have a very difficult choice. The definition is the issue, and national leadership at the Presidential level is going to have to resolve those issues between those departments.

Senator WARNER. Good answer. So it does make a particular difference, so long as the President of the United States can exercise the final question.

Mr. DONOHUE. That is right, and as long as each of the three parties are heard on their view on the matter. That is how these inter-working groups and national security agents, the National Se-

curity Council and others, work on behalf of the President, to bring him matters to decide.

Senator WARNER. Understood.

I thank the Chair and the members.

Senator HUTCHINSON. Mr. Chairman, I just wanted to thank you for the fair way in which you have conducted the hearing. I do not think we are that far apart in our view of trade, nor do I think I and the panel are that far apart in our view of the value of trade or the ineffectiveness of a lot of our sanctions policy.

But I want to add—because I think your point on the efficacy not always being the standard was very, very important—that the case of Apartheid in South Africa maybe is a good example. For us taking a principal stand, though it may not have economically brought about the change we desired, the fact we took—there is a power in moral principle, and that that in itself had a beneficial effect, and perhaps made a big difference in bringing about the desired change; that that can happen in foreign policy, and that the symbolic value of the sanctions, there is that value, apart from being able to quantitatively prove that it will economically bring about the desired change.

Senator HUTCHINSON. And the less often you do it, the more effect it will have.

Mr. LANE. Senator?

Senator BIDEN. A closing statement, Mr. Lane?

Mr. LANE. Oh, I will make this real closing. Just two comments, one regarding South Africa. Senator Lugar and, if I recall, Senator Kassebaum played probably a total role in the South Africa debate as any two Senators during the mid-1980's.

If you ever wanted an example where you had targeted sanctions, where you had a deliberative process, where you built multilateral support for a common position, it was the way the U.S. conducted our policy during the South African debate. That, in many ways, should be the model. It did not happen overnight. It took a long time to build international consensus.

Secondly, the worst thing you can do with international sanctions is to pass a sanction to make a statement and then walk away. Multilateral cooperation, I do not want to sound Pollyannish here, but it is hard. It is very hard, and you do not get credit for an effective foreign policy that prevents bad things from happening, but in the same token, if you pass a sanction and then move onto more noble pursuits, it is sometimes far worse than having no action at all.

Mr. SPRAGUE. And I think there is no question that we want to be the leader in world policy. This country has that responsibility, and that is going to take a lot of hard decision sometime, and we have to do some things that maybe we would not agree with totally, but to be the leader and to show the world that we are the leader, we have to take those tough steps.

I think that is the part that has made this country great. We have deliberated on those issues. It has not been made by one person or one department. It is deliberated and the knowledge is passed around the country so that our people can help make that decision, and that is what we need to continue to make sure happens.

Senator BIDEN. Gentlemen, thank you very much.

One of the reasons why this is becoming a more urgent discussion is the economic future of all our folks is out there. The idea that we can guarantee their economic security by having open and free access of American markets ain't where it is. So it is the good news and the bad news.

I appreciate your testimony and thank you all for coming, and I appreciate Senator Lugar allowing me to actually chair a hearing.

Senator LUGAR. You did very well.

Senator BIDEN. It felt good. Thank you very much.

[Whereupon, at 4:56 p.m., the Task Force adjourned.]

