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TO: Bureau of Industry and Security

FROM: National Foreign Trade Council and USA*Engage

DATE: October 1, 2009

SUBJECT: Comment on Effect of Foreign Policy-Base Export Controls

The National Foreign Trade Council (NFTC) is an association of some 300 U.S. companies engaged in international commerce, and USA*Engage is a coalition sponsored by the NFTC to advocate engagement as an alternative to unilateral economic foreign policy sanctions. Both organizations believe that unilateral economic sanctions are ineffective and usually counterproductive. This is especially true of the sanctions programs for Iran and Cuba.

Iran

The Iran Sanctions Act, as amended in 2006, which extends U.S. sanctions on Iran through 2011, is a unilateral extraterritorial measure that attempts to deter investment by non-U.S. firms in Iran's oil and gas sector to reduce funds available for that country's nuclear program. Foreign availability of the vast majority of U.S. products has long rendered unilateral controls on exports almost entirely ineffective. This is also true of Iran's oil and gas sector, although the ISA has reportedly deterred some third country investments. Extraterritorial sanctions directed against third countries are especially counterproductive, often provoking blocking statutes and impeding diplomatic cooperation. This is certainly true in the case of Iran which has commercial relations with most U.S. trading partners and has especially robust two-way trade with Russia, China and Germany. The Iran Sanctions Act requires the President to select two out of a menu of seven sanctions on foreign entities that he determines have invested more than \$20 million in one year in Iran's oil and gas sector. Among these measures are prohibitions on U.S. government procurement and a restriction on imports from the entity. Although sanctions have never been imposed under this provision, efforts are underway in Congress to require the President to use the sanction and, if he waives it, to report the rationale to Congress. This extraterritorial measure is especially counterproductive because the U.S. is seeking cooperation from precisely the countries whose companies that would be targeted (especially the P-5 plus one) to devise effective incentives and disincentives for Iran to regularize its nuclear program.

Cuba

The Cuban embargo is the most dramatic illustration of a failed sanctions program and one which has consistently created friction with U.S. trading partners. A partial embargo, imposed by executive order in 1960, was made nearly total by a subsequent executive

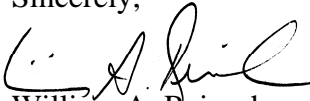
order in 1962 and then codified by the 1992 Cuban Democracy Act. The 1996 Helms-Burton (Libertad) Act made the embargo extraterritorial by authorizing sanctions on foreign corporations doing business in Cuba. This resulted in blocking statutes being enacted by several of Cuba's trading partners including Great Britain, which criminalized compliance, Canada and Mexico. Even so, agricultural trade with Cuba has expanded under the Trade Sanctions Reform Act of 2000, indicating that Cuba provides a promising market for many U.S. exports, although efforts continue to restrict this trade. President Obama's relaxation of restrictions on remittances and family visits by Cuban-Americans does not modify the legal structure of this sanctions program, although legislation continues to be introduced in Congress to end travel restrictions as well as to terminate sanctions.

Conclusion

Iran and Cuba are the most visible examples of the failure of unilateral and extraterritorial sanctions to achieve their stated objectives and of the negative international repercussions of extraterritoriality. When additional sanctions are considered as a foreign policy measure, as they currently are in the case of Iran, we strongly recommend that they be carefully coordinated with the target country's other trading partners, thereby multilateralizing them, and that they do not include extraterritorial measures that the history of existing sanctions has demonstrated are counterproductive.

With respect to Cuba, we believe that repeal of all sanctions on Cuba would have positive consequences for U.S. relations and standing throughout the hemisphere.

Sincerely,



William A. Reinsch
President