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# Sanctions

By  
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[The following is a reprint of Under Secretary Stuart E. Eizenstat testimony before the Lott Bipartisan Senate Task Force on Sanctions, Washington D.C. on 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.

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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 European Union (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 world wide, 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

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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 holdout 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 EU, 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 oilfield. We also carefully examined ILSA's six sanctions and concluded that sanctions would not be effective in stopping the South Pars deal.

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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 U.S.-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.

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

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do not wish for unnecessary harm to fall upon the civilian populations of either country—particularly the poor and less fortunate 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 bench marks 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**

In deed, 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.

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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 a laicity. 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

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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 U.S. to unilaterally deny key economic benefits to a target country is sharply limited. There are few products or services for which the U.S. 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

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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.

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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:

- constraints on Congress;

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- enhanced waiver authority;
  - constraints on the President;
  - guidelines for humanitarian assistance and
  - 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

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disregard the procedural rules applicable to it. None the less, we see these provisions as an important baseline for congressional consideration of sanctions legislation.

### **A National Interest Waiver**

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 18<sup>th</sup> 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

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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**

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 maybe 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

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regimes absent compelling circumstances. We were pleased to note the recent Senate action in the FY99 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 maybe 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

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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 principal 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 maybe 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.