

July 7, 2008

The Honorable Condoleezza Rice
Secretary of State
United States Department of State
Harry S. Truman Building
2201 C Street, NW, Room 7226
Washington, DC 20520

Re: Extraterritorial Application of U.S. Sanctions

Dear Madam Secretary:

The Advisory Committee on International Economic Policy has reviewed the history of applying U.S. sanctions to foreign companies, including past efforts to sanction foreign subsidiaries of U.S. companies. The majority of the Committee's members are concerned with recent attempts by Congress to mandate the extraterritorial application of U.S. sanctions given the adverse consequences for U.S. foreign policy and global businesses, and ask that the State Department become more engaged with Congress to emphasize the problems associated with such efforts.

We are deeply concerned with the serious threats posed by countries subject to U.S. sanctions such as Iran and North Korea and understand the desire to impose restrictions on foreign companies from doing business with these countries. However, unilateral attempts by the United States to apply sanctions to foreign companies, including foreign subsidiaries of U.S. companies, detract from truly multilateral efforts and make it less likely that we will obtain the cooperation of our allies and UN Security Council partners.

In many cases, attempts to apply U.S. sanctions extraterritorially also place legitimate and law abiding businesses between a rock and a hard place by forcing them to comply with conflicting laws. In some cases, countries have passed blocking statutes which specifically prohibit companies located in those countries from complying with extraterritorial U.S. sanctions. Foreign governments have also relied on already-existing laws, such as anti-discrimination statutes, to fine or otherwise punish local companies who attempt to comply with the extraterritorial requirements of U.S. sanctions. Either way, a company is put in the impossible position of complying with laws which are in direct conflict with one another.

Efforts by Congress to impose U.S. sanctions on foreign companies would constitute a significant deviation from U.S. policy, which has been consistent since the failure of a similar approach by the Reagan Administration.

Current policy is an outgrowth of past experience:

- In 1982, following the Soviet invasion of Afghanistan and the declaration of martial law in Poland, the United States sought to ban participation in the Siberian gas pipeline project by European subsidiaries of U.S. companies. In response to U.S. sanctions, the

United Kingdom, France, the Netherlands, and other countries applied blocking statutes which required the subsidiaries to honor existing contracts and disobey the U.S. sanctions. As a result, subsidiaries and their parents found themselves in the impossible position of not being able to obey both U.S. and applicable foreign law at the same time. Under considerable pressure from European governments, the Reagan Administration withdrew the extraterritorial measures on November 7, 1982, to avert adverse rulings in multiple pending legal cases in both U.S. and overseas courts. Beginning with the regulations implementing sanctions on Libya in 1986, the United States has repeatedly limited investment and trade prohibitions to U.S.-based companies.

- In 1996, the European Community brought a WTO case against extraterritorial U.S. sanctions involving Cuba and the Helms-Burton Act. This case was suspended by a political compromise in 1998, though Helms-Burton remains in effect and has proven an irritant in U.S.-Canadian relations.
- In 1998, Japan and the EU began WTO proceedings against the United States in response to a Massachusetts law that prohibited government procurement contracts to any U.S. or foreign company doing business in or with Burma, which was suspended only after the law was declared unconstitutional by the Supreme Court.
- In 2006, the Government of Mexico fined a Sheraton-branded hotel in Mexico City after it expelled Cuban officials in compliance with U.S. extraterritorial sanctions against Cuba. In 2007, Hilton hotels in Norway and the United Kingdom refused to book delegations of Cubans at its hotels, which led to demonstrations in both countries. In Norway, Oslo's Anti-Racist Center filed a police complaint against the hotel and one of Hilton's employees.
- Also in 2007, Austria filed charges against the Austrian bank BAWAG for violating EU regulations aimed at prohibiting compliance with U.S. sanctions on Cuba.

In spite of this overwhelmingly negative history, and despite already existing broad authority under the International Emergency Economic Powers Act, there have been a number of attempts in recent years to impose U.S. sanctions extraterritorially on foreign subsidiaries of U.S. companies. Two examples of legislative language, taken from an amendment to the National Defense Authorization Act for FY 2006 and the Iran Counter-proliferation Act of 2007, are attached to this letter.


The most recent examples above suggest a growing willingness on the part of U.S. allies, wherever located, to resist the application of U.S. sanctions vigorously and through increasingly innovative means. Unfortunately, calls by Congress to impose new extraterritorial sanctions are growing at the same time that resistance to such measures is increasing. Without a clear position and vigorous action by the Administration, the Committee is concerned that one of these proposals will pass the Congress.


Given the harmful consequences to U.S. foreign policy and to global businesses, we urge you and the President to articulate a robust and forceful response to legislators and interest groups

about how this type of legislation would undermine cooperation with our allies, contravene international law and subject global companies to impossible and conflicting mandates.

Thank you for your consideration of these comments.

Sincerely,


Theodore W. Kassinger
Chairman
Advisory Committee on International
Economic Policy


William Reinsch
Chairman
Subcommittee on Economic
Sanctions

Iran Counter-proliferation Act of 2007 (110th Congress)

SEC. 8. LIABILITY OF PARENT COMPANIES FOR VIOLATIONS OF SANCTIONS BY FOREIGN ENTITIES.

(a) In General- In any case in which an entity engages in an act outside the United States that, if committed in the United States or by a United States person, would violate the provisions of Executive Order 12959 (60 Fed. Reg. 89) or Executive Order 13059 (62 Fed. Reg. 162), or any other prohibition on transactions with respect to Iran imposed under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the parent company of the entity shall be subject to the penalties for the act to the same extent as if the parent company had engaged in the act.

(b) Applicability- Subsection (a) shall not apply to a parent company of an entity on which the President imposed a penalty for a violation described in subsection (a) that was in effect on the date of the enactment of this Act if the parent company divests or terminates its business with such entity not later than 90 days after such date of enactment.

(c) Definitions- In this section:

(1) ENTITY- The term 'entity' means a partnership, association, trust, joint venture, corporation, or other organization.

(2) PARENT COMPANY- The term 'parent company' means an entity that is a United States person and—

(A) the entity owns, directly or indirectly, more than 50 percent of the equity interest by vote or value in another entity;

(B) board members or employees of the entity hold a majority of board seats of another entity; or

(C) the entity otherwise controls or is able to control the actions, policies, or personnel decisions of another entity.

(3) UNITED STATES PERSON- The term 'United States person' means--

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States; and

(B) an entity that is organized under the laws of the United States, any State or territory thereof, or the District of Columbia, if natural persons described in subparagraph (A) own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such entity.

National Defense Authorization Act for FY2006 (2005 / 109th Congress)

SA 1351:

At the end of the bill, add the following:

TITLE XXXIV--FINANCING OF TERRORISM

SEC. 3401. SHORT TITLE.

This title may be cited as the ``Stop Business with Terrorists Act of 2005".

SEC. 3402. DEFINITIONS.

In this title:

(1) **CONTROL IN FACT.**--The term ``control in fact", with respect to a corporation or other legal entity, includes--

(A) in the case of--

(i) a corporation, ownership or control (by vote or value) of at least 50 percent of the capital structure of the corporation; and

(ii) any other kind of legal entity, ownership or control of interests representing at least 50 percent of the capital structure of the entity; or

(B) control of the day-to-day operations of a corporation or entity.

(2) **PERSON SUBJECT TO THE JURISDICTION OF THE UNITED STATES.**--The term ``person subject to the jurisdiction of the United States" means--

(A) an individual, wherever located, who is a citizen or resident of the United States;

(B) a person actually within the United States;

(C) a corporation, partnership, association, or other organization or entity organized under the laws of the United States, or of any State, territory, possession, or district of the United States;

(D) a corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled in fact by a person or entity described in subparagraph (A) or (C); and

(E) a successor, subunit, or subsidiary of an entity described in subparagraph (C) or (D).

(3) **FOREIGN PERSON.**--The term ``foreign person" means--

(A) an individual who is an alien;

(B) a corporation, partnership, association, or any other organization or entity that is organized under the laws of a foreign country or has its principal place of business in a foreign country;

(C) a foreign governmental entity operating as a business enterprise; and

(D) a successor, subunit, or subsidiary of an entity described in subparagraph (B) or (C).

SEC. 3403. CLARIFICATION OF SANCTIONS.

(a) Prohibitions on Engaging in Transactions With Foreign Persons.--

(1) **IN GENERAL.**--In the case of a person subject to the jurisdiction of the United States that is prohibited as described in subsection (b) from engaging in a transaction with a foreign person, that prohibition shall also apply to--

(A) each subsidiary and affiliate, wherever organized or doing business, of the person prohibited from engaging in such a transaction; and

(B) any other entity, wherever organized or doing business, that is controlled in fact by that person.

(2) **PROHIBITION ON CONTROL.**--A person subject to the jurisdiction of the United States that is prohibited as described in subsection (b) from engaging in a transaction with a foreign person shall also be prohibited from controlling in fact any foreign person that is engaged in such a transaction whether or not that foreign person is subject to the jurisdiction of the United States.

*(b) IEEPA Sanctions.--*Subsection (a) applies in any case in which--

(1) the President takes action under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the Trading with the Enemy Act (50 U.S.C. App.) to prohibit a person subject to the jurisdiction of the United States from engaging in a transaction with a foreign person; or

(2) the Secretary of State has determined that the government of a country that has jurisdiction over a foreign person has repeatedly provided support for acts of international terrorism under section 6(j) of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), or any other provision of law, and because of that determination a person subject to the jurisdiction of the United States is prohibited from engaging in transactions with that foreign person.

(c) Cessation of Applicability by Divestiture or Termination of Business.--

(1) **IN GENERAL.**--In any case in which the President has taken action described in subsection (b) and such action is in effect on the date of enactment of this Act, the provisions of this section shall not apply to a person subject of the jurisdiction of the United States if such person divests or terminates its business with the government or person identified by such action within 1 year after the date of enactment of this Act.

(2) **ACTIONS AFTER DATE OF ENACTMENT.**--In any case in which the President takes action described in subsection (b) on or after the date of enactment of this Act, the provisions of this section shall not apply to a person subject to the jurisdiction of the United States if such person divests or terminates its business with the government or person identified by such action within 1 year after the date of such action.

(d) *Publication in Federal Register.*--Not later than 90 days after the date of enactment of this Act, the President shall publish in the Federal Register a list of persons with respect to whom there is in effect a sanction described in subsection (b) and shall publish notice of any change to that list in a timely manner.

SEC. 3404. NOTIFICATION OF CONGRESS OF TERMINATION OF INVESTIGATION BY OFFICE OF FOREIGN ASSETS CONTROL.

(a) *Requirement for Notification.*--The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

“SEC. 42. NOTIFICATION OF CONGRESS OF TERMINATION OF INVESTIGATION BY OFFICE OF FOREIGN ASSETS CONTROL.

“The Director of the Office of Foreign Assets Control shall notify Congress upon the termination of any investigation by the Office of Foreign Assets Control of the Department of the Treasury if any sanction is imposed by the Director of such office as a result of the investigation.”.

(b) *Clerical Amendment.*--The table of contents in subsection (b) of such Act is amended by adding at the end the following new item:

“Sec..42..Notification of Congress of termination of investigation by Office of Foreign Assets Control.”.

SEC. 3405. ANNUAL REPORTING.

(a) *Sense of Congress.*--It is the sense of the Congress that investors and the public should be informed of activities engaged in by a person that may threaten the national security, foreign policy, or economy of the United States, so that investors and the public can use the information in their investment decisions.

(b) *Regulations.*--

(1) **IN GENERAL.**--Not later than 120 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue regulations that require any person subject to the annual reporting requirements of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) to disclose in that person's annual reports--

(A) any ownership stake of at least 10 percent (or less if the Commission deems appropriate) in a foreign person that is engaging

in a transaction prohibited under section 3403(a) of this title or that would be prohibited if such person were a person subject to the jurisdiction of the United States; and

(B) the nature and value of any such transaction.

(2) **PERSON DESCRIBED.**--A person described in this section is an issuer of securities, as that term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is subject to the jurisdiction of the United States and to the annual reporting requirements of section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m).