

THE WHITE HOUSE
WASHINGTON

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April 14, 1964

MEMORANDUM FOR THE PRESIDENT

This folder deals with the tough problem of decisions on export licenses for the Soviet Union which will come before the National Security Council at noon on April 16.

The administrative heart of this problem is that responsibility is shared by departments which have sharply different views, and that in the last three years no one short of the President has had authority to make clear-cut decisions. The Secretary of Commerce has the immediate statutory responsibility, but the instinct of Luther Hodges was often different from that of others, and it became necessary to appeal individual cases over and over again to President Kennedy. The President in turn preferred to take it case by case, and indeed no blanket instruction could possibly be issued that does not leave individual cases open for individual judgment.

The difficulty is that each sale of nonstrategic items involves a balance of the value to the Soviet Union as against the commercial value to the United States. And each of these estimates in turn is affected by whether one thinks that peaceful trade with the Russians, in and of itself, is a good thing. In any given case, one can always predict the reaction of any individual more from his basic attitudes than from the evidence presented. The close cases are always open to subjective judgment.

Ideally, we ought to have a general review and reach a new basic and solid policy, but this is not the year for that, and nobody really thinks that we can put ourselves in the position to have basic negotiation with the Russians in the next few months. Therefore, the real question is how to handle a relatively small number of controversial items between now and November.

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Authority NSC 68 7/11/77
By rmg, NARS, Date 8/4/77

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My suggestion is (1) that you listen to argument in the NSC from State, Commerce, Agriculture and Defense, (2) that you then state your own basic attitude, and (3) that you announce that you expect to summarize these basic views in an appropriate memorandum, which will also indicate the procedure which you wish to have followed in meeting these general rules.

M.G.B.

McGeorge Bundy

P.S. My own judgment, for what it is worth, is that the right way to deal with these cases is to approve industrial licenses much more broadly than Commerce wishes to do. I do not agree with the argument of Agriculture that a few advanced technical tools will solve an otherwise insoluble problem. I do not agree that we can or should try to negotiate political ^{concessions} ~~cases~~ in return for straight commercial deals, and I think our manufacturers should be required to bargain for their own licensing agreements, if necessary (though they won't get much). Except in the field of strategic goods, there is nearly always an alternative supplier somewhere in the Free World, and I think our restrictive practices hurt us without hurting the Soviet Union. I have heard you speak of your general support for peaceful trade, and I think these are cases in which that principle can safely be allowed to govern.

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TAB A - Cabinet Positions

TAB B - Pending Cases

TAB C - Kennedy Position

TAB D - Eisenhower Policy

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A.

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The summary positions of the Departments involved are:

A. Department of Commerce

The case of the sale to the USSR of five beet harvesters can properly be resolved only after a determination of our more general policy regarding exports of agricultural machinery, equipment, plants and technology to the Soviet bloc. This policy in turn depends on our attitude toward any exports of anything that will contribute significantly to the economic potential of the bloc.

The relevant 1962 amendment to the Export Control Act provides for:

" . . . denial of any request or application for authority to export articles, materials, or supplies, including technical data, from the United States, its Territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President shall determine that such export makes a significant contribution to the military or economic potential of such nation or nations which would prove detrimental to the national security and welfare of the United States. "

The U.S. should not permit the export to the USSR of a 6-row beet harvester unless we have negotiated with the USSR a quid pro quo of a national interest character over and above the price to the exporter on this and other items of agricultural machinery.

The U.S. should not export to the Soviet bloc our advanced agricultural machinery and our advanced technology and equipment to produce items such as fertilizers unless the Soviet bloc gives us a quid pro quo of a national interest character over and above the prices set by the exporters.

B. Department of Agriculture

In the present state of political and ideological warfare waged by economic means, anything that strengthens the economic potential of the opponent is unjustified unless accompanied by a corresponding strengthening of our own position.

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Authority YAS/la 7/11/77
By mmg, NAKS, Date 8/4/77

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(Whatever strengthening of the economic potential of the Soviet bloc may result from wheat imports is more than counter-balanced by the strengthening position of the U.S. that results from increased foreign exchange and the diminishing of surpluses.)

With regard to exports that can readily be purchased elsewhere, licenses should be approved, since a denial would merely deny to U.S. exporters business that would otherwise go to other nations and would therefore not prevent a significant contribution to economic potential.

With regard to exports of complicated, sophisticated and advanced machinery, plants and technology that cannot readily be obtained from other sources, and which would contribute to economic potential, licenses should be denied. (Any liberalization of our export licensing policy should be accompanied by the negotiation of an appropriate quid pro quo in our national interest.

C. Department of State

We believe that 6-row beet harvesters, and agricultural equipment generally, should be approved for sale to the Soviet Union and to other countries of the European Soviet bloc. We believe, moreover, that such approval should be on the same basis as other peaceful non-strategic exports to the Soviet bloc without attaching special new conditions.

Such action would accord with President Kennedy's decision in May 1963 on an almost identical case (forage harvesters) in which the same argument for quid pro quo conditions was advanced.

The attachment of quid pro quo conditions would be tantamount to denials. It seems highly doubtful that a quid pro quo could be obtained from the Soviet Union for an agreement to sell \$150,000 worth of machinery.

To attempt to obtain concessions beyond the sales price would simply mean "no sale" because concessions of a national interest character cannot be extracted from the Russians on a piecemeal basis. If we tried to do so, they would certainly assume that we

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were shifting to a much tighter policy of restricting non-strategic trade, a position that would seriously detract from the beneficial atmosphere resulting from the wheat sales.

The State Department considers that advantages of a national interest character might, however, properly be sought in a general negotiation with the USSR on economic matters after the election and after due consultation with the Congress.

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EXPORT CONTROL REVIEW BOARD

Minutes of Meeting

January 20, 1964

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Authority Comman 5-18-77, USDA 10-21-77, OSD 11-2-77, SEC 10-21-77
By isp, NARS, Date 7-17-79

Secretary Freeman stated that approval of the beet harvester machinery would mean opening the flood gates for mass production from U.S. prototypes of agricultural machinery at a time when a key Soviet problem is getting the crops out of the field at the proper time. The Soviets have declared economic war on us, but, as per the CIA report, the serious agricultural problem is a major factor in the slowdown of their whole economy. It is not in the U.S. interest to speed the recovery of the agricultural sector of the economy with advanced-design agricultural machinery and contribute to their capability to conduct an ideological war with economic weapons and to support communist oriented economies in developing nations. This particular beet harvester is far advanced over anything else available, being able to handle 1,200 tons of beets in a ten-hour period compared to an average at the most of 120 tons currently being handled in Soviet areas (a maximum of 210 tons in one area and a minimum of 75 tons with most areas recorded in the range of 75 to 120 tons).

Secretaries Hodges and Vance indicated that they would approve of shipping such machines if we could get something back over and above the price paid. Secretary Rusk argued that the quid pro quo lay in the turning of the Soviet economy into production of consumer goods, which an expansion of agricultural production would do. He argued further that we were not in a posture of economic warfare with the Soviets and that denial of such equipment implied that we were. He questioned what we would do about fertilizer plants if we denied such equipment as the beet harvesters. Secretary Freeman saw a distinction between (1) the beet harvesters which were technologically advanced, could not be procured anywhere else, and would be used as a prototype; and (2) such machines and/or plants as are readily available from other countries in the world to do precisely the same job. For example, our denial of some types of fertilizer plants would not prevent the Russians from acquiring them. On the other hand, if they get certain advanced-design machines from the U.S., they might succeed in their drive to improve agricultural production if they get a break in the weather.

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Secretary Vance inquired as to whether it would not be better to keep machinery away from the Soviets if it was important to keep consumer pressure on the economy. Secretary Rusk replied that we should be cooperative in helping the Soviets to move resources from the military to the consumer field rather than keeping pressure on the Soviets at all points. Also agriculture was not going to be the strategic area in any nuclear exchange nor was it an appropriate area for economic warfare. In addition, since we had already denied a petroleum refinery, to follow it with a denial of a beet harvester would in his view signal an economic warfare approach on our part. The U.S. would also be in a position of having to deny more items than our Allies do for some time to come and therefore shouldn't be in a position of denying more items than we need to.

Secretary Hodges agreed that it would be desirable to ship these items but only if we could obtain a quid pro quo for this and other advanced agricultural machinery. Secretary Rusk asked what quid pro quo would be requested, to which it was replied that agreements on copyrights, patents, or use of technology gained from prototypes would provide a means of protecting advanced technology and demonstrate to the country that we were in fact obtaining a quid pro quo of relaxed economic relations. Secretary Rusk stated that insisting on a quid pro quo would itself signal that we were thinking in terms of economic warfare and that he saw no reasons for the Russians to want to offer a quid pro quo over and above the sales price. In fact they have stated that they would not pay anything more than the going price for fertilizer plants and other items which they can obtain readily in the free world.

Secretary Freeman argued that agriculture might be a more important area in which to slow down on our contribution to the Soviet economy since they may have more difficulties there than in the petroleum field. He insisted that we carefully examine the question of where we wished to maintain pressure and where we would like to relax. His interpretation of Secretary Rusk's view was that it was "good" to assist the Soviets in developing agriculture whereas, it was not good to assist them in an area such as petroleum. Secretary Rusk replied that we should certainly not aid the Soviets in any area, such as would be the result of 15 years credit as proposed by the U.K., but we should not shy away from normal trade. He stressed that the issue before the ECRB was essentially that of economic warfare and how best it might be waged, to which Secretary Freeman agreed. Secretary Rusk then pointed out that we had sold hybrid

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seeds and other items, which would assist in the agricultural field, to which Secretary Freeman replied that even so there was a need for mechanized equipment which would assist them in getting the crops harvested at the right time so that they would not rot in the fields.

Secretary Hodges stressed the desirability of insisting on a non-reproduction covenant from the Soviets in the purchase of advanced equipment and an agreement covering patent and other rights. Secretary Rusk asserted that U.S. exporters had in the past insisted upon that themselves, but Secretary Hodges urged that the Government itself insist on such arrangements.

Secretary Rusk again stressed that our policy was not economic warfare but rather should be economic competition, which we faced from all countries. Secretary Freeman indicated there was a difference when the economic competition seeks to disrupt rather than to excel, if the aim is political destruction rather than monetary gain.

Secretary Vance returned to the discussion of the diversion of resources and asked whether State Department's position was that resources put into agriculture would cut the volume of resources dedicated to the military. Secretary Rusk said that the main objective was to develop a stake on the part of the Soviets in good relations with us, which could be based on an improvement in their standard of living and which in turn would necessitate the opening of trade relations and a continued high level of trade with the West. In this way the Soviets would have a stake in maintaining peace.

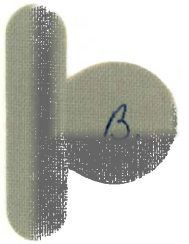
The Board reached a consensus that these were issues on which the President should focus on since he had not previously discussed this range of problems and policies with the Cabinet, and it agreed therefore to present them to the President after members return from Japan.

The positions which would be taken before the President by the four Cabinet members were:

Secretary Rusk for approval of the shipment on general policy grounds. Secretary Freeman against the export unless a quid pro quo is obtained over and above selling price which correspondingly contributes to the strength of the U.S. Secretaries Hodges and Vance for approval dependent on obtaining an appropriate quid pro quo over and above selling price.

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List of Pending Bloc Applications Relating
to
Fertilizer Plants and Agricultural Equipment

<u>Date Received</u>	<u>Case No.</u>	<u>Commodity</u>	<u>Quantity</u>	<u>Country</u>	<u>Value</u>
8/20/63	879434	Tractor-driven beet harvesters	5	USSR	\$150,762.00
8/8/63	805884	Dry bean harvester	1	USSR	5,405.25
8/20/63	879435	Dry bean harvester	5	USSR	19,730.00
12/30/63	929214) through) 929217;) 929696) through) 929703)	Equipment for an alfalfa dehydra- tion plant, and forage harvesters	--	Rumania	330,000.00
11/15/63	808134	Field wafering machine	1	Czechoslovakia	8,750.00
1/6/64	931434	Tech. data for a complete fertilizer plant	--	USSR	Unknown
1/8/64	932755	Tech. data for a phosphoric acid plant	--	USSR	Unknown
2/5/64	866543	Quotation tech. data for a compound fer- tilizer plant (time extension of an existing license)	--	USSR	Unknown

DECLASSIFIED
Authority E.O. 11652 SEC. 5(A) and (D)
By STB, NARS, Date 2/18/77

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GROUP 4
Downgraded at 3 year
intervals; declassified
after 12 years

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List of Pending Bloc Applications Relating
to
Fertilizer Plants and Agricultural Equipment

<u>Date Received</u>	<u>Case No.</u>	<u>Commodity</u>	<u>Quantity</u>	<u>Country</u>	<u>Value</u>
2/10/64	946990	Tech. data for urea section of a fertilizer plant	--	Rumania	Unknown
2/10/64	946989*	Tech. data for phosphoric acid and triple super-phosphate fertilizer plant	--	USSR	Unknown
2/24/64	951945*	Tech. data for contact sulfuric acid plant	--	USSR	Unknown
2/24/64	952994*	Tech. data for two ammonium sulfate draft tube baffle crystallizers	--	USSR	Unknown
2/7/64	946099*	Tech. data for complete fertilizer complex, including acetylene, ammonia, nitric acid, ammonium nitrate, and urea plants	--	Poland	Unknown
2/19/64	950791*	Tech. data for two phosphoric acid evaporators complete with fluorine recovery systems	--	USSR	Unknown

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List of Pending Bloc Applications Relating
to
Fertilizer Plants and Agricultural Equipment

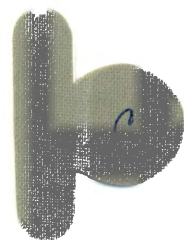
<u>Date Received</u>	<u>Case No.</u>	<u>Commodity</u>	<u>Quantity</u>	<u>Country</u>	<u>Value</u>
2/19/64	950790*	Tech. data for one phosphoric acid evaporator complete with fluo-rine recovery system	--	Bulgaria	Unknown
2/27/64	954515*	Tech. data for a synthesis gas section of an ammonia plant	--	Poland	Unknown
1/30/64	942657*	Tech. data for an Electrostatic Desulfurization Plant	--	Hungary	Unknown
3/12/64	961153*	Tech. data for an ammonia plant	--	USSR	Unknown
3/9/64	868340*	Tech. data for a steam reforming catalyst for a synthesis gas plant in production of ammonia. (Amendment request changing data for increased production)	--	Hungary	Unknown

*Not yet discussed in O.C.

Prepared in the Soviet Bloc Controls Section, Policy Planning Division, OEC/BIC
March 18, 1964

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September 19, 1963

MEMORANDUM FOR THE EXPORT CONTROL REVIEW BOARD

The Secretary of Commerce
The Secretary of State
The Secretary of Defense

1. I have reviewed the report of the Export Control Review Board and its recommendations for action in response to my request of the 16th of May. In general, I approve these recommendations, but in giving this approval I should like to have it understood that I am strongly in favor of pressing forward more energetically than this report and its recommendations imply, in our trade with the Soviet and Eastern Bloc. The course of events of the last two months, including particularly the test ban agreement and the evidence of greater trade by our allies with the Soviet and Eastern Bloc, persuade me that we must not be left behind. I believe also that one person within the Government should have central responsibility for setting this program into action, and after further consultation I expect to designate such a person. I should be glad to have prompt advice from each of you on this point.

My more specific comments follow.

2. I agree that the Board should, through the appropriate agencies, go forward with the studies suggested in the first, fourth, fifth and sixth recommendations. Further, the studies and other staff work described in the seventh recommendation should be undertaken under the leadership of the Department of State, with the collaboration of the Department of Commerce and the Department of Defense. These preparations, which are essentially contingency activities, should remain on the staff level for the present.

3. I approve the second and third recommendations. In giving effect to these recommendations, the judgment of the Secretary of State on the political situation in the satellites and the state of bilateral relations with the Soviet Union should be given special weight by the Board.

The spirit of the third recommendation with respect to satellites should apply not only to the preparation of guidelines but to the disposition of current licensing issues by the Board and the agencies under its direction.

/s/ John F. Kennedy

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Authority Commerce 5-18-77, OSD 11-2-77 & State 10-21-77
By isf, NARS, Date 7-17-79

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THE DEPARTMENT OF COMMERCE
WASHINGTON, D. C.

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August 15, 1963

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MEMORANDUM FOR

The President

From:

Export Control Review Board

Concerning:

East-West Trade Policy

Attached for your consideration are actions which we recommend for your approval leading to an expansion of our trade with the Soviet Bloc. Some of the recommendations involve further research and analysis on the part of our Departments; one calls for discussions with our Allies to attempt to hold them in line.

Recommendation No. 6 involves changes in existing legislation and, therefore, an approach to Congress relative to trade discrimination toward the Bloc, Most Favored Nation Treatment and repeal of the Johnson Act.

(signed) Luther H. Hodges
Luther H. Hodges, Chairman

(signed) Dean Rusk
Dean Rusk, Secretary of State

(signed) Robert S. McNamara
Robert S. McNamara
Secretary of Defense

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Authority Commer. 5-18-77, Sec. 10-21-77

By ijg, NARS, Date 7-17-79

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FINAL DRAFT
August 9, 1963

MEMORANDUM FOR THE PRESIDENT

FROM: Export Control Review Board Chairman
SUBJECT: East-West Trade

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Authority Comm. 5-18-77; Stat. 10-21-77 + OSD
By ms, NARS, Date 7-17-79 11-2-77

Your memorandum of May 16th directed us to examine two questions relating to U.S. trade with the USSR:

"1. Do we now deal with the Soviet Union on the export of technically-advanced machinery and equipment in a manner which adequately protects U. S. interests? Where a national security issue is presented, we of course deny an export license. There are, however, many cases in which no clear security issue arises and yet we know that the Soviets are using American machinery and equipment as a basis for copying our technology. Are we being adequately compensated in these sales?

"Is there any method of organizing these transactions which would secure a better quid pro quo than the present method of leaving it to the individual seller to secure the best price he can in the transaction, in the light of the fact the Soviet Union does not ordinarily respect the patent and copyright arrangements on which we rely in our commercial transactions with other nations?

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Excluded from automatic downgrading
and declassification

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"2. Should we reconsider the whole of our trade with the Soviet Union in the light of trade between Western Europe and the Soviet Union and its European satellites? Considering the character and volume of that trade, would a generally less restrictive policy be more in keeping with the interests of the United States? How much possibility is there for a significant broadening of trade that is consistent with our security interests? Would this possibility be such as to justify a general negotiation on trade and commercial matters with the Soviet Union?"

On the basis of the analysis attached, we make the following recommendations. It should be particularly noted that the recommendations bearing on possible policy changes with respect to U. S.-Soviet trade should be negotiated and undertaken only in the context of an easing of East-West tensions over a broad front.

1. Given the fact that it is still unclear whether the U.S. Government could organize arrangements which would permit us higher compensation for technology sold to nations under Communist control without incurring greater costs than advantages from the effort, a study should be made to provide adequate information and analysis, especially in the following areas:

The ability to obtain precise identification of advanced technology within industry and the status of its dissemination (published or unpublished).

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The ability to maintain a roster of changes in techniques and the manner in which they are transferable.

The feasibility and effectiveness of unilateral controls over technology, especially when they may be frustrated merely by publication.

Feasibility of obtaining sufficient information on the comparative standings of U.S. and European industry on specific techniques, since the relevant comparison of technologies, given a difference in treatment under control by the U.S. and its Western Allies, is not between the U.S. and Russia but between the U.S. and the Allies which are making such technology available.

The advantages and disadvantages of restricting exports of such technology to non-Communist countries to prevent frustration of U.S. controls and feasibility and desirability of restricting the sale of commodities made with such technology, for the same reason.

Determining pricing and quid pro quo arrangements which would assure adequate commercial and national returns from permissible trade with the bloc.

Proposed Action: The Export Control Review Board should, as a matter of urgency, analyze the possibilities and problems inherent in an effort to organize the sale of technology to nations under Communist control and make policy recommendations: This study should develop clear criteria for "adequate compensation" in the field of technology; determine whether or not present prices

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meet those criteria; examine the feasibility of acquiring in the government the requisite information in particular fields; weigh the likelihood of cooperation from other nations; and assess the political and economic benefits and costs of such a program, both within the United States and in our relations with other nations.

Approved _____

Disapproved _____

2. Given a continuation of political and other tensions between the U.S. and the USSR similar to those which have existed in the recent past, no significant change should be made in our export control policy with the USSR -- either over goods or technical data. Some rationalization of controls between the Department of Commerce and the Treasury in the field of technology is in order. And we should avoid licensing decisions inconsistent with the present negotiating situation. There is, however, little to be gained from a serious extension of the controls or a serious relaxation of them on a unilateral basis.

Proposed Action: The Department of Commerce should keep existing procedures under review through the ACEP structure to make sure that individual licensing decisions are not made in a manner so as to weaken a future negotiating posture for the U.S. and so as to reflect the prevailing state of relations with the USSR.

Approved _____

Disapproved _____

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3. As an immediate response and when the political circumstances are judged appropriate, we should use the discretionary authority in existing export licensing and other legislation to respond effectively to overtures from any of the satellite governments with which we have relations including the possibility of bilateral agreements. In this context, we should seek some specific response in the areas of patent and copyright protection, tourism, etc., without the need for legislation.

Proposed Action: In the light of the rapidly changing conditions in Eastern Europe, Export Control Review Board should prepare guidelines for a less restrictive, step-by-step expansion in trade with individual nations of Eastern Europe, within the present legal structure.

Approved _____

Disapproved _____

4. If a significant movement toward a relaxation of tensions with the USSR gets under way, the U.S. should be willing to take all necessary steps to remove obstacles to trade, except trade in items of direct strategic importance (COCOM items), if such action would gain equally constructive moves on the part of the USSR. We should be prepared to treat our trade control policy as a useful and uniquely appropriate negotiating instrument in discussions with the USSR directed toward resolving outstanding issues. We should view the present unilateral policy as amendable in circumstances that promise a break in the cold war stalemate, to be substituted for by a system of bilaterals.

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Proposed Action: The Export Control Review Board should prepare, on an urgent basis, a contingency plan for negotiating a bilateral trade agreement with the USSR. It should explore the coverage of such an agreement. It should also explore what is necessary for protection of industrial property and copyrights, and should consider whether any other means to secure better returns for the sale of technology are feasible.

Approved _____

Disapproved _____

5. In view of the possibility that the protection of the national interest in East-West trade may require a stronger institutional base than that now available, and that government purchasing may be necessary to keep a better balance in the accounts with bloc countries, consideration should be given to the desirability of establishing a form of U.S. Commercial Corporation, including its advantages in the event of need to exercise preclusive buying.

Proposed Action: The Export Control Review Board should promptly study whether U.S. national interests in a period of expanded East-West trade could be adequately protected by either a step-by-step or bilateral agreements approach and whether it is necessary also to constitute a U.S. Commercial Corporation.

Approved _____

Disapproved _____

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6. The Administration should be prepared as the situation justifies, to seek Congressional enactment of a new East-West Trade Act. Such legislation should be based on a full and frank examination with the Congress of all the relevant issues and would presuppose the existence of evidence that the USSR was in process of significant movement toward reducing the dangers and strains of the cold war. Such legislation should provide the President with all the administrative authority he needs to use trade as an effective political instrument for dealing with the USSR and its satellites.

Proposed Action: The Departments of State and Commerce should establish a working group to determine the necessary content of such an Act and to develop data for use in Congressional consideration of the Act.

Approved _____

Disapproved _____

7. We should make advance preparations for a discussion with our Allies of the implications that a change in U.S. policy would have on the multilateral system of controls and the possible need we may face to modify its overtly discriminatory form without damage to our ability to maintain collective surveillance and the control of strategic commodities as multilaterally defined. In keeping with the objective of using trade more effectively for political purposes, we should aim at a closer understanding with the allies, whereby we would collectively restrict or cut off trade as a response to Soviet-initiated crises. We would, of course, make clear that

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the proposed changes in U.S. arrangements involve no alteration in our policy towards Cuba and Communist China. In addition, we must assess the impact of any change in U.S. East-West trade policy on Latin America and other third countries and prepare to cushion reactions adverse to U.S. interests.

Proposed Action: The Department of State should examine problems arising from relations with our Allies and third countries in this sphere. It should explore the feasibility of modifying the COCOM system but preserve the substance of mutual security protection.

Approved _____

Disapproved _____

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ANALYSIS

1. With respect to the sale of technology, whether in the form of "know-how" or embedded in prototype machinery or equipment, the question of "adequate" compensation may be summarized as follows:

(a) In an open society such as ours "adequate compensation" for technology is reckoned into the sales price of the article or specifications by the private producer; the buyer is precluded from using the technology in other than agreed ways by patent and other laws within the Free World and by licensing agreements. The same restrictions are not available for the licensor or seller in the bloc. He can be covered by patents in the Soviet Union, if he chooses to file in Moscow, but knowledge of violation is difficult to obtain, justice is uncertain in event of litigation, and the advantages of filing are shadowed by the need for disclosure, which may have been a reason for not patenting the know-how even in the Western countries. And protection of non-patented technology is uncertain since the USSR is not a participant in any of the multilateral agreements governing treatment of either industrial property (patents, industrial designs, trademarks, etc.) or copyrights. In filing for a patent foreigners receive national treatment in the USSR. Nevertheless, this leaves them subject to the following less than satisfactory arrangements: (1) assurances against infringement are inadequate; (2) compensation for use is

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unilaterally determined by the Soviet authorities; (3) costs of filing are higher than in Western countries and procedures cumbersome. The seller can attempt to take account of these factors by charging higher prices in the Soviet market, but his ability to do so may be limited by competitive factors.

(b) The Soviet Union thus benefits to some extent from the asymmetry of protection of technology. To a degree it may, therefore, "pirate" technology (as it "pirates" books) *by buying and copying machinery or by using technology purchased to erect one plant to build others, including some in third countries. It may also control the sale of its own technology more easily than such sales may be controlled by the US or by other private enterprise societies.

(c) An attempt by the US to get a somewhat higher price for its technology, or key components of its machinery exports raises problems of: (i) government knowledge and control over domestic technology; (ii) government control over sales by foreign subsidiaries of US companies, and by foreign purchasers of US equipment; and (iii) willingness of our allies to make cooperative arrangements to exact a higher-than-market price for such technology.

*In the case of books, the "pirating" works two ways. We, as well as the Russians, pay no royalties on the publications of the other.

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(d) It is virtually certain that our allies would not join us in a concerted effort to broaden the control over the sale of technology. An analysis should be made of areas where a strong adverse impact may be achieved through cooperation or unilateral action. But efforts to control the sale of US technology by US subsidiaries abroad, or to prevent resales by foreign purchasers, could conceivably damage US commercial interests far beyond any likely returns; and the effort to gain comprehensive knowledge and control of US technology could prove disruptive in our own society.

(e) The advantages and leverage we could gain in this field are still unknown as are the costs of the effort. The matter is worth further study. Since there is a widespread view in the Congress that we are being substantially cheated in bilateral trade with the USSR involving technology, it is especially important that whatever action we finally take be fully supported by "cost-benefit" analysis. For example, there can be benefit in selling Western technology in that it locks the bloc, as in the automotive field, into obsolescent design and processes.

(f) Finally, on the question of treatment of technology, it is agreed that efforts should be made, in any bilateral trade negotiation with the USSR, to balance the present inequities by

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the institution of improved procedures to protect patentable US products, design data and industrial property rights, including acceptable arbitration and court procedures.

2. With respect to the advantages and disadvantages of past United States policy on controls over trade with the bloc, there is a clear disagreement within the Executive Branch: some would argue that the denial or radical limitation of U. S. trade has slowed communist economic development and reduced the volume of resources available for security and other purposes; others would argue that Soviet and Eastern European economic capabilities plus the availability of Western European and Japanese trade have made US trade policy an irrelevant or trivial factor in Soviet and Eastern European economic development and military capability. There is no disagreement that US had become deeply committed before its own people and the world to a trading posture, with strong political and psychological overtones, which would be difficult if not impossible to alter without some substantial change in Soviet relations to the West. Specifically:

(a) There is no doubt that the economy of the United States has not benefited to any appreciable extent from the flow of trade permitted with the bloc. The total exports from the United States to bloc countries in 1962 amounted to about \$125 million, of which \$62 million consisted of PL 480 agricultural commodities shipped to Poland. These exports

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contrast with imports of about \$82 million in various goods from the bloc, all of which could have been obtained from other sources. In the same year, Western European countries sold \$2.2 billion to the bloc countries, and a surplus with the bloc was met by some gold sales by Russia.

(b) A sharp disagreement arises in the assessment of the indirect benefits to the US of keeping the volume of trade so low, through slowing down the expansion of key areas of the Soviet economies. That the control policy was more effective in the years immediately after World War II as compared to the present is undoubtedly correct; but this still does not indicate how effective it has been in either period in preventing Soviet achievements in key areas. It has been increasingly possible for the bloc to shift resources and re-order priorities to offset the controls, but the lack of certain capital imports required the Soviet Union to shift resources to their design and manufacture earlier than they would otherwise have chosen to do.

We have had insufficient information on the activities in the bloc which would help assess the effects of export controls imposed by the United States, but in any event, a precise assessment of the impact of what was not done is always difficult.

(c) The effects of the US control system have been substantially altered also by the growing ability and willingness

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of the other industrial members of the free world to sell anything not on the COCOM list. Nor is any distinction made by them as between equipment or plants and the technology behind them. (However, it must be recognized that espoused public policy and actual business practice are often distinct: that is, European companies are wary of letting competitors in any country have access to their latest developments.) Thus, pressure mounts on our own control system through the fact that identical items or near-substitutes are available from Western Europe and Japan.

(d) In sum, it must be admitted that the economic effect on the bloc of the US control system is marginal; that the significance or exact amount of it cannot be known; and that the effect has been declining. Equally, a large increase in the volume of US trade is unlikely with the removal of controls, but their maintenance places US industry at a disadvantage in meeting longer run competition in bloc countries, if and when trade volumes do increase significantly with the West. There is no way now of telling how large the trade might eventually become, even within this decade, but it seems unlikely that US exports to the bloc would rise annually to more than \$300 million (though orders might be placed for larger sums on a sporadic basis) within the next few years in the absence of controls other than under COCOM.

(e) If the United States were to relax its controls in accord only with the COCOM list, side-effects would probably occur:

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an increasing pressure among European countries to contract the COMCOM list itself; some concern on the part of Europeans over the loss of a "protected" market in the bloc; and a relaxation of the pressure currently imposed by the US on third countries not to trade with the bloc. While none of these elements should be determining in the decision to de-control under appropriate political conditions, the first and third should be assessed and adequate measures prepared to cushion a response adverse to US interests.

(f) In addition, some improvement in the economic posture would occur from a system of bilateral trade pacts with the USSR and the European satellites for two reasons: first, they would provide in Eastern Europe a means for increasing the degree of economic involvement and dependence on the West for those countries exhibiting a desire to strengthen their independence; second, they would provide us with a flow of trade to diminish, in response to hostile political behavior. At the moment, our stance does not provide an effective "carrot" and our "stick"--whatever its size may have been in the past--is shrinking.

3. In contrast to the lack of evidence as to economic effects of the controls, the political and psychological importance of our controls is admittedly substantial. This importance, however, is solely the product of static cold-war conditions.

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(a) We have maintained, virtually in isolation, a trade posture of limited economic warfare. This posture has been a symbol of our resolve to resist Communist military, political and psychological pressures. We have sought to induce non-Communist states to hold trade to a minimum, not only on grounds of denying help to build Communist power, but on grounds that increased trade would carry real and immediate danger to free world participants in that trade. Abandonment of these controls, except in the context of constructive change in Soviet policy, would thus be difficult to explain before our own people and the world.

Since the political and psychological significance of the control system is attested by the Soviet desire to have them removed, it provides us the opportunity to obtain from the bloc some constructive change that will enable us to explain the dismantling of the controls to Congress and the public.

(b) Thus, in a situation of changed political atmosphere, we could move from a less effective to a more effective East-West trade policy; and from all signs the USSR would be willing to pay something for this change. Their continued interest and pressure on this point was underlined in Governor Harriman's conversations with Khrushchev. Thus, while we could not expect the USSR to proceed far in negotiations looking toward detente without some satisfaction on this issue, the present control system is one of

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the few commodities the US can afford to give up which would be saleable to the USSR. Moreover, the "concession" which the US would be making could be contracted or revoked at will, since the rate of flow under a bilateral trade pact would be within our control. Once a new start had been made on trade, the US would be able to employ on a continuing basis the potentialities of trade as an instrument of political bargaining and of meaningful communications with the USSR.

4. The change in the political atmosphere needed to justify a shift from our present control system to a bi-lateral trading system is evidently a matter of political judgment at the highest level. On the one hand, there would need to be concrete evidence of Soviet interest in generally improved relations with the US and of Soviet willingness to take, on the basis of mutual concessions, the specific steps necessary to effect this improvement. On the other hand, the situation should be such as to indicate that discussion of the trade issue would be a logical and fruitful, perhaps necessary, means of adding significant momentum to the forward movement that had been gotten under way.

5. In addition to a general improvement in the political atmosphere, the US could expect to secure through a relaxation of its trade controls, a relaxation of restrictions the Soviet Union itself maintains over the movement of goods, persons and ideas. We would have, in this connection, two broad requirements: (a) the establishment of

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conditions that would minimize obstacles to trade and commerce stemming from our different economic systems, and (b) improvements in opportunities for reciprocal exchange of persons and information, both in the support of commerce and generally. Specific matters that we could insist upon would include: a settlement of Lend-Lease obligations on terms necessary to meet essential legal requirements; better industrial property and copyright protection; improved opportunities for US commercial missions, exhibits and representation in the USSR; broadened cultural exchange; greater opportunities for reciprocal exchanges in the area of public information; reduction of impediments to tourism; greater freedom of movement of US representatives in the USSR; and reciprocal establishment of Consulates in major cities.

6. A change in our trade policy that would be meaningful in negotiations with the USSR would at some stage require the abandonment of the special discriminatory elements in our control system. Apart from relaxing restrictions on exports, it would eventually be necessary to eliminate restrictions on commercial credits, to grant most-favored-nation tariff treatment, to remove restrictions on the importation of certain Soviet products. We would, of course, retain the means to deny, as is customary with all states, items of direct military significance or under COCOM embargo.

To effect these changes in our policy, new legislation would be required. This would need to be in the form of a new "East-West Trade

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Act" granting the President the administrative authority required to use trade as an effective political instrument for dealing with the USSR.

7. Should it develop to our advantage to consider new trade arrangements with the East, there are two routes to take: one involving a prompt phased relaxation of our control system for specific actions enumerated in #5 above--a method which may be applicable to the satellites, but not the USSR. The other is one covering all aspects of our mutual interests including #6 above. The former has the advantage of quickness: the latter that of completeness and thereby possible maximization of US bargaining power. The USSR is unlikely to grant the advantages we seek without the removal of present discriminatory US legislation.

(a) In the step-by-step approach, the United States would offer to the separate satellite countries, as political circumstances may dictate, a prior approval of items from a "shopping list", such as has been offered in the past by the Rumanians. This would be attractive to the bloc country because we could provide certainty, and guarantee a more relaxed set of criteria in permitting shipments than in the past. On their part, the bloc country would be requested to establish or provide for any one or combination of the desired policies mentioned in #5 above. Within a framework of political guidance this approach would be instituted by representations by the Secretary of Commerce to bloc Ambassadors that "shopping lists" would be examined and that a

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negotiation on approvals would be entertained if the bloc country were willing to offer some of the desired items in #5.

The advantage of this approach is that we can begin promptly to offer the opening of trade as soon as the political climate seems propitious in any one of the satellites; and there is no need for fresh legislation. A disadvantage is that our total offer is unknown to the bloc partner and there may be great caution on its part as to: (1) whether we will stick by our bargain for very long; (2) whether other countries will obtain differentially favorable treatment under separate negotiations; and (3), whether the items in #5 would ever be offered. A further disadvantage is that the competitive ability to obtain similar items in trade with Western Europe weakens our ability to insist on something beyond commercial returns for relaxed criteria in licensing of specific items.

(b) The other approach is through a full-scale negotiation of a bilateral trade agreement, such as has been negotiated by the Western European countries. This is an umbrella arrangement which still provides for substantial power to control but also reduces the necessity for surveillance over a large area of economic and commercial and tourist relations.

Among the points to be included in a bilateral agreement would be the following:

- (1) A list of goods which would normally be

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exportable from the United States up to quota amounts in dollar terms.

(2) Provision for limitation of U. S. exports should the Soviets attempt to buy more of a given item than provided in the quota and thus "unbalance" the trade; or should the Soviets take an unbalanced package of goods (e.g., if they were taking only the plants and industrial equipment permitted and not adequately expanding their trade in consumer goods or agricultural or other items as fixed by quotas.)

(3) A list of goods we will be willing to purchase if commercial sales can be negotiated, including offers of technological advances made by bloc countries and especially the export of gold, either as a commodity or a means of balancing the accounts.

(4) A settlement of lend lease and other outstanding debts by the Soviets. Such a settlement might involve both monetary and other quid pro quo, including the furnishing to the US of equipment, materials, and technology.

(5) Handling of normal commercial credits. Such provisions may either be for short term (i.e, six months or less) credits or, if conditions warrant, the administration could undertake to recommend revision in the Johnson Act to permit longer term credits.

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(6) Soviet extension to U.S. artists and authors of effective copyright protection, with reciprocal U.S. commitment.

(7) Soviet extension of effective patent rights to U.S. inventors. Such rights, to be of any practical value, must be substantially increased over those which the Soviets currently declare are available for foreign inventors.

(8) Establishment of appropriate techniques for commercial arbitration as currently practiced by western countries.

(9) An anti-dumping agreement relating to price floors and participation in international commodity agreements.

(10) Authorization for U.S. and/or bloc nations to act as sales and service representatives of U.S. firms in the bloc and for a greater freedom of access to bloc markets than is currently available to U.S. merchants.

(11) Establishment of U.S. consulates in the bloc countries concerned in order to carry out limited trade promotion activities.

(12) Extension of MFN treatment to the bloc country under appropriate circumstances, and provided that real reciprocity is involved.

(13) Relaxation of restrictions by bloc countries over commercial travelers and tourists to the U.S. as well as U.S. travelers and tourists in the bloc.

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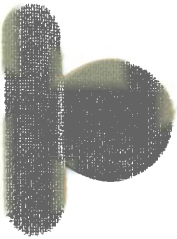
These bilateral agreements are normally negotiated yearly or every 2 or 3 years, with the commodity quotas changed to reflect the pattern of recent trade and the future desires of the parties.

8. Depending on the government's final judgment concerning transactions involving technology; the assessment of whether it would be to our advantage to import from the Bloc for U.S. stockpiles; and its general assessment of whether consideration should be given to the reestablishment of the US Commercial Corporation, which was set up during the 1930's to trade for the US Government.

9. The negotiation of a bilateral agreement would significantly reduce current problems in licensing controls. Appraisals of the strategic and other significance of items and the effect of denial would still be required, but they would be done prior to negotiation of an agreement and be reflected in the quotas. Thus, the time required for licensing and the manpower needed would be significantly reduced.

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U. S. ECONOMIC DEFENSE POLICY

(NSC 5704/1; NSC Actions Nos. 1677, 1780. NSC 5704/3 adopted by NSC Action No. 1780; approved by the President on September 16, 1957; and referred to the Secretaries of State and Commerce for coordination through existing interdepartmental mechanisms, with a first progress report to be submitted to the NSC, through the CFEP, in three months, and subsequent progress reports to be submitted at least every six months. NSC 5704/3 supersedes NSC 5704/1. SECRET)

GENERAL POLICY

1. The continued threats* to the security of the Free World posed by the Sino-Soviet bloc warrant the application against the bloc of such economic defense measures by the United States and by the Free World as will retard the growth of the war potential of the bloc and reduce its unity. Our attitude and program must be one which will not increase the possibility of war, but rather one which will keep open paths which might lead to a sounder basis for peace. During this period, the courses we take should be based upon the assumption that interference in the trade between the Free World and the Sino-Soviet bloc should take place only where a clear advantage to the Free World would accrue from such interference. They should also be based upon the assumption that the maintenance of personal, cultural, and commercial contacts between the Free World and the European Soviet bloc may have positive advantages during this period of tension and watchfulness.

2. The economic defense program should be framed and administered with full recognition of the fact that the economic defense system of the Free World is part of the larger system of military and political alliances and, like them, depends upon the cooperative efforts of the free nations. The United States should participate in Free-World collective arrangements in the field of trade controls. Accordingly, in determining the economic defense measures which the United States should adopt and those to be urged on other nations, the impact upon the existing system of economic defense as a whole, and upon the Free-World military and political alliances, should be taken into account. Similarly, in multilateral military and political discussions, consideration should be given to the impact of their courses of action upon and support to be derived from the economic defense program. Political conditions generally, and economic conditions in some individual countries, may make substantial intensification of multilateral controls with respect to the Sino-Soviet bloc impractical for the foreseeable future, in the absence of a marked worsening of international tensions.

3. The United States should maintain such unilateral controls as will have a significant effect on the growth of the war potential of the Sino-Soviet bloc or will effectively support other U. S. policies or fulfill U. S. legislative requirements.

* The nature and duration of the threat are described in NSC 5707/8, June 3, 1957, (TS) and JIC 636/4, August 24, 1956 (SECRET).

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Authority NSC 646/113/107
By MBA, NARS, Date 7/1/77

4. The problems posed for our allies by trade controls should be given appropriate weight in determining the controls which the United States should advocate that the Free World exercise in its economic relations with the Sino-Soviet bloc. Extensions or reductions of the multilateral controls should be proposed or supported, whenever justified by new technology, new intelligence or altered evaluation of the significance of particular imports to the Sino-Soviet bloc.

5. The Controls should be so applied as to support U. S. policy with respect to encouraging and assisting bloc satellites to achieve and maintain national self-determination and independence.

6. The United States should avoid, and seek to have other friendly countries avoid, becoming excessively dependent on the Sino-Soviet bloc as a market or as a source of supply.

7. So long as it is considered to be in the U. S. interest, there should continue to be applied against Communist China* more severe controls than are applied against the remainder of the Soviet bloc. At such time as it is judged to be in the U. S. interest to do so, the controls toward Communist China should be revised.

8. In recognition of the continuing threat of Communist China to the Free World which may be more fully accepted by some individual countries than by multilateral bodies, the United States should continue, wherever clearly feasible and desirable from a foreign policy standpoint, to encourage individual Free-World countries to maintain unilateral trade controls toward Communist China at a more restrictive level than the multilateral controls.

COURSES OF ACTION

9. Seek to maintain a multilateral security trade control structure and control measures developed thereunder, making appropriate and timely adjustments in those measures to reflect changes in the vulnerabilities within the Sino-Soviet bloc as a whole and within its members, or to improve cooperation and increase effectiveness; and continue our efforts for better understanding and support of the multilateral control objectives, criteria and procedures essential to an effective economic defense program.

10. Seek to maintain and, as necessary, extend the bilateral arrangements with Free-World countries (non-CG countries) to obtain support for multilaterally agreed controls.

11. Maintain toward the European Soviet bloc U. S. export controls over multilaterally agreed items and over such other materials, equipment, technology and services as can be so unilaterally controlled by the United States as to achieve a worthwhile adverse impact on the war potential of the European Soviet bloc, or can effectively serve other U. S. policy objectives judged by the U. S. control authorities to warrant the use of unilateral controls; and

* Communist China as used throughout this paper includes North Korea.

take all appropriate measures as will effectively enforce these controls and prevent their frustration.

12. Approve, as a general rule, for shipment from the United States to the European Soviet bloc, commodities not controlled under paragraph 11 above, and, where appropriate, remove the requirement of specific licenses for such shipments to the entire European Soviet bloc.

13. Make appropriate and timely unilateral adjustments and seek appropriate multilateral adjustment in the scope and severity of controls maintained toward selected European satellites of the USSR, as feasible, to encourage and support progress toward national self-determination and independence.

14. Enhance the utility of evaluated intelligence pertaining to economic defense programs.

15. Seek the adoption of effective measures to enforce the agreed scope and severity of the multilateral controls and increase the scope and effectiveness of multilateral exchanges and cooperation in the enforcement field.

16. Seek a close association with NATO and other security alliances and, where feasible, obtain their consideration and advice on appropriate economic security problems.

17. Seek agreement to utilize the multilateral control structure for studies and exchanges of views regarding all Sino-Soviet trade practices which appear to be inimical to the Free World.

18. Encourage Free-World countries to resist Sino-Soviet economic penetration and to avoid excessive dependence on trade with the Sino-Soviet bloc; foster the development of necessary markets and sources of supply within the Free World.

19. Administer current U. S. programs, such as economic development, military and other governmental procurement, defense support, stockpiling disposal of surplus goods and properties, and similar activities, in such a way as to take into appropriate account the objectives of the economic defense program.

20. Maintain the current level of U. S. unilateral export, import and financial controls applied against Communist China* and take all appropriate actions effectively to enforce these controls toward Communist China and to prevent their frustration.

21. Seek bilaterally to encourage individual Free-World countries, wherever clearly feasible and desirable from a foreign policy standpoint, to maintain unilateral controls toward Communist China at a more restrictive level than the multilateral controls.

* U. S. economic defense policy with respect to North Vietnam is contained in paragraph 88 of NSC 6012, which reads as follows:

"88. Apply as necessary to achieve U. S. objectives, restrictions on U. S. exports and shipping and on foreign assets similar to those already in effect for Communist China and North Korea."

Liberalization of Multilateral Controls

The best interests of the United States will be served by liberalizing the multilateral security controls on trade with the Sino-Soviet bloc; thereby facilitating accord with our allies and agreement on the maintenance of an effective multilateral security trade control system. Such system should continue controls on munitions and atomic energy items and on other items having a clear military application or involving advanced technology of strategy significance not available to the Sino-Soviet bloc. (NSC Action No. 1865-b, approved March 3, 1958)

Trade by Foreign Subsidiaries of U. S. Corporations with Communist China

It may be desirable in the national interest to make exceptions for friendly foreign countries with respect to trade with Communist China by foreign subsidiaries of U. S. corporations abroad (paragraph 20, NSC 5704/3). Such exceptions should normally be limited to situations (a) which are important to the economy of the friendly foreign country, and (b) in which an indigenous company (not U. S.-controlled) is unable to fill the order. The NSC understands, however, that the licenses issued will be kept to a minimum. (NSC Action No. 2042-c, approved February 3, 1959)

Implementation of Economic Defense Policy

Existing policy on the subject (NSC 5704/3) should be continued without change at this time; but the implementation of this policy should be kept under continuing scrutiny by all interested departments and agencies to ensure that it serves the purposes of retarding the growth of the war potential of the Sino-Soviet bloc and reducing its unity. (NSC Action No. 2304-b, approved October 5, 1960)*

* In taking this action the Council also noted that, with respect to paragraph 11 of NSC 5704/3, U. S. export controls over such materials, equipment, technology and services as can be unilaterally controlled by the United States may be imposed not only to achieve a worthwhile adverse impact on the war potential of the European Soviet Bloc, but also to serve other U. S. policy objectives, especially with regard to technology and services. (NSC Action No. 2304-b)

Executive Order 10945

ADMINISTRATION OF THE EXPORT CONTROL ACT OF 1949

By virtue of the authority vested in me by the Export Control Act of 1949, as amended, and as President of the United States, it is ordered as follows:

SECTION 1. The power, authority, and discretion conferred upon the President by the provisions of the Export Control Act of 1949 (63 Stat. 7), as amended (50 U.S.C. App. 2021-2032), are hereby delegated to the Secretary of Commerce, with power of successive redelegation.

Sec. 2. There is hereby established the Export Control Review Board (hereinafter referred to as the Board). The Board shall be composed of the Secretary of Commerce, who shall be the Chairman of the Board, the Secretary of State, and the Secretary of Defense. No alternate Board members shall be designated, but the acting head of any department may serve in lieu of the head of the department concerned. The Board may invite the heads of Government agencies, other than the departments represented by the Board members, to participate in the activities of the Board when matters of interest to such agencies are under consideration.

Sec. 3. The Secretary of Commerce may from time to time refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as he shall select. The Secretary of Commerce shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or of the head of any other Government department or agency having an interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, and the domestic economy, and shall make recommendations thereon to the Secretary of Commerce.

Sec. 4. The President may at any time (a) prescribe rules and regulations applicable to the power, authority, and discretion referred to in section 1 of this order, and (b) communicate to the Secretary of Commerce such specific directives applicable thereto as the President shall determine. The Secretary of Commerce shall from time to time report to the President upon the administration of the Export Control Act of 1949, as amended, and, as he may deem necessary, may refer to the President recommendations made by the Board under section 3 of this order. Neither the provisions of this section nor those of section 3 shall be construed as limiting the provisions of section 1 of this order.

Sec. 5 (a) All provisions relating to export control that are contained in the following and are now effective are hereby superseded:

- (1) Proclamation No. 2413² of July 2, 1940
- (2) Executive Order No. 8900² of September 15, 1941
- (3) Executive Order No. 8982² of December 17, 1941
- (4) Executive Order No. 9361⁴ of July 15, 1943

(5) Executive Order No. 9380⁴ of September 25, 1943

(6) Executive Order No. 9630⁴ of September 27, 1945

(7) Executive Order No. 9910⁴ of January 3, 1948

(b) Except to the extent that they are inconsistent with this order, all outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action made, issued, or otherwise taken under, or continued in force by, the Export Control Act of 1949, as amended, shall remain in full force and effect until amended, modified, or terminated by proper authority.

JOHN F. KENNEDY

**THE WHITE HOUSE,
May 24, 1961**

BRIEF DESCRIPTIONS OF THE
LAWS AND EXPORT CONTROL FUNCTIONS OF FEDERAL AGENCIES

A. Export Control Act of 1949 (63 Stat. 7)

This act declares the policy of the U.S. to use export controls to:

1. protect the domestic economy from excessive drain of scarce materials;
2. further our foreign policy and to aid in fulfilling its international responsibilities;
3. exercise necessary vigilance over exports from the standpoint of their significance to the national security of the U.S.;
4. formulate and apply such controls to the maximum extent possible in cooperation with our allies, and to formulate a unified trading policy in their dealings with the Communist-dominated nations;
5. utilize its economic resources and advantages in trade with Communist-dominated nations to further the national security and foreign policy objectives of the U.S.

"The President may delegate the power, authority, and discretion conferred upon him by this act, to such departments, agencies, or officials of the Government as he may deem appropriate." This delegation has been made to the Secretary of Commerce.

B. Mutual Security Act of 1954 (Sec. 414; 68 Stat. 848)

This act authorizes the President to control both export and import traffic in arms, ammunition, implements of war, and related technical data, by any party other than a U.S. Government agency. The President has authority to designate what articles shall be made subject to this control, and to require those who have any dealings with regulated articles to register and comply with control regulations.

Authority conferred on the President has been delegated to the Secretary of State, with a directive requiring the Secretary to confer with other interested agencies in enforcement of the measure.

C. Mutual Defense Assistance Control Act of 1951 (65 Stat. 644)

This measure, known as the Battle Act, is by law administered by the Department of State. It requires countries which are recipients of American aid to support our policies regarding export of both military and nonmilitary materials to nations hostile toward the United States, including, specifically, the U.S.S.R., and all countries under its domination.

Under the terms of the act, two lists are maintained by State; one, the A list, consists of arms and implements of war, including atomic energy materials; the other, the B list, consists of nonmilitary items which nevertheless have strategic significance and might affect the security of the U.S.

Aid received from the U.S. by any country must automatically be terminated if it is found that such country is exporting any A list items to nations deemed to be threatening the security of the U.S.; and aid shall be similarly terminated for any exportation of a B list item to proscribed recipients unless the President determines that unusual circumstances require an exception.

State administers this act, assigned by law to the official responsible for U.S. foreign aid, who is the Assistant Secretary of State for Economic Affairs. The act requires its administrator to confer with other interested agencies. This requirement is served by the Economic Defense Advisory Committee (EDAC) in State. The full membership of EDAC includes representatives of 11 agencies; most of its functions are performed by an Executive Committee composed of top staff from State, Commerce, Defense, and Treasury, AEC and CIA. The Executive Committee carries out its assignments through two Working Groups, one concerned with policies affecting international export controls, and the other responsible for applications and enforcement.

D. International Control of Strategic Items

The Consultative Group, a voluntary international organization set up in January 1950, coordinates the export controls of the 15 countries comprising the principal industrial powers of the free world. (Consultative Group membership parallels the membership of NATO, excluding Iceland and with the addition of Japan.) The basic objective of the Consultative Group is to deny all strategic items to countries in the Sino-Soviet bloc. Through mutual agreement, this Group maintains a list of strategic items referred to as the Cocom list. No item on the list can be exported to any country in the Sino-Soviet bloc except through unanimous agreement of all members of the Group. The Cocom list is currently reviewed annually. The Consultative Group also maintains what is known as a watch list of items which are not subject to control but which are of sufficient significance to merit scrutiny in cases involving unusually large shipments.

The Consultative Group operates through the Coordinating Committee (Cocom), which maintains the list and administers the restrictions. Representation to Cocom is provided by State, and other departments participate through their representatives on the EDAC.

E. Atomic Energy Act of 1954 (68 Stat. 921)

This act, which vests control over all items and materials relating to atomic energy in the Atomic Energy Commission, empowers the AEC to control such items and materials by licensing, including licensing of exports and imports, on the broad discretionary basis of determining in each case whether issuance of a license will constitute an unreasonable risk to the common defense and security, or to the health and safety of the public.

AEC is also given plenary power to establish advisory boards as it may desire to consult, in policy and administrative matters, including administration of its controls over exportation of materials and facilities.

F. Trading with the Enemy Act of 1917 (40 Stat. 411)

This act conferred on the President virtually unlimited power to regulate, "through any agency that he may designate, or otherwise," all transactions in foreign exchange or with any foreign country or foreign national, during periods when the country is at war or during which the President has declared a state of national emergency. Regulatory power under this section is vested in the Secretary of the Treasury, and the requisite finding of a national emergency has remained in force since December 16, 1950.

Treasury has two sets of regulations which have some relation to export control: (1) Foreign Assets Control Regulations, and (2) Transaction Control Regulations.

The Foreign Assets Control Regulations, in effect since 1950, amount to a total economic embargo of Communist China and North Korea by prohibiting except by license all financial or commercial transactions with those countries or their nationals by persons subject to jurisdiction of the U.S. However, control of exports from the U.S. to these areas is actually exercised by the Department of Commerce, since the Treasury Foreign Assets Control Regulations contain a general license permitting any export directly to those areas which is licensed by Commerce. Since inception of these Regulations the only licensed exports from the U.S. to Communist China and North Korea have been publications, human remains for burial, and personal effects of nationals of those countries returning to their homeland.

In 1953, at request of EDAC, Treasury issued its Transaction Control Regulations as a part of the U.S. effort to strengthen international controls of strategic commodities. These regulations prohibit, unless licensed, any person within the U.S. from purchasing or selling, or arranging for purchase or sale to Soviet-bloc countries of internationally controlled strategic commodities located outside the U.S. The prohibition prevents domestic American corporations from engaging in such transactions through their foreign subsidiaries and affiliates.

G. Miscellaneous Special Acts - U.S. Shipping Act of 1961 (40 Stat. 901); Narcotic Drugs Import and Export Act (35 Stat. 615); Marihuana Tax Act of 1937 (68A Stat. 560); Gold Reserve Act (48 Stat. 337); Natural Gas Act (52 Stat. 822); Tobacco Seed and Plant Exportation Act (54 Stat. 231).

THE WHITE HOUSE
WASHINGTON

April 13, 1964

MEMORANDUM FOR THE PRESIDENT

You asked me to check with the Department of Defense on the proposal submitted by Dr. Eli Ginzberg, through Eric Goldman, for a re-examination of the draft. I have talked to Bob McNamara, who tells me that a major study on these points is now under way under the general supervision of Norman Paul, and under the immediate management of Mr. William Gorham. The study was originally expected to take two years, but Bob McNamara has insisted that it be completed by the spring of 1965. The terms of reference are very broad and inclusive, and when I read Bob the headnotes of Professor Ginzberg's memorandum, he told me that we could certainly expect the study to cover all this ground and more besides.

I shall suggest to Norman Paul that in the course of this study his group should take care to expose themselves to the opinions of Dr. Ginzberg and other nongovernmental experts, but with this safeguard I think we are in a good position to make it plain, if the issue arises in the campaign, that we are on top of it.

In short, there is general agreement with Professor Ginzberg's view that the matter urgently needs study and that it ought to be taken out of the campaign. What we ought to consider in the context of the right opportunity is whether you should discuss the studies of the Defense Department yourself. *I will keep an eye on this side of it,*

McG. B.
McG. B.

April 14, 1964

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Suggested remarks for 11:00 a. m. ceremony April 15

I have prepared some words for your use at the White House ceremonies scheduled for tomorrow to launch a fund-raising campaign for moving a destroyed London church to Fulton, Missouri as a memorial to Sir Winston Churchill.

Several people, including the British Ambassador, have expressed reservations about the project and have suggested that we "not go too strong" on this occasion because: (1) this is largely a local effort which if overplayed could work at cross-purposes with a national campaign for a Churchill memorial scheduled to get underway next November on Churchill's 90th birthday; (2) Sir Winston may look askance at a memorial launched while he is very much alive.

In addition, there is a Soviet factor here since Fulton, Missouri, conjures up images of the cold war.

Therefore, in drafting remarks for your use, I have focussed largely on the living Churchill, avoiding any reference to the memorials and selected out of Churchill's Fulton speech a portion which does not have cold war trappings and is consistent with your own public statements on the East-West issue.

McG. B.

Suggested remarks

I am honored that you asked me to participate in this ceremony launching a project dedicated to a great national leader, a great world statesman and, above all, a great human being, Sir Winston Churchill.

Sir Winston's place in the history of freedom is assured. During the war he symbolized the heroic resistance and defiance of free men to tyranny. And in his own lifetime he has come to embody, as perhaps no other living leader has, a statesmanship that serves all men's desires for peace with freedom and dignity.

His address at Westminster College in Missouri in March of 1946 was not only prophetic but timeless. With the incandescent quality that is distinctly his, Sir Winston said: "If we adhere faithfully to the Charter of the United Nations and walk forward in sedate and sober strength, seeking no one's land or treasure, seeking to lay no arbitrary control upon the thoughts of men; if all British moral and material forces and convictions are joined with your own in fraternal association, the highroads of the future will be clear, not only for us, but for all, not only for our time, but for a century to come." This counsel is still sound today.

The project to transfer from London the remains of the Church of St. Mary Aldermanbury and reconstruct and rededicate it in the heartland of the United States is as Sir Winston Churchill himself said, "an imaginative concept," demonstrating in a tangible and unmistakable way the deep affection, esteem and respect which this great man has in this country. And as the President of the United States and a fellow citizen of Sir Winston, I am pleased and proud that you who are gathered here today have had the foresight, imagination and energy to undertake this admirable and worthwhile project as a tribute to one of the greatest world leaders of our time.

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April 14, 1964

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McGB.

April 14, 1964

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THE WHITE HOUSE
WASHINGTON

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April 13, 1964

MEMORANDUM FOR THE PRESIDENT

SUBJECT: General Billotte's Proposals

You asked for a memorandum outlining the message which General Billotte delivered to you with General de Gaulle's approval.

Billotte's concrete proposal is that the United States and France should cooperate on tank production in two ways:

1. By U.S. production on lines of two current French models, the AMX 13 and AMX 30, which are agreed to be excellent present-day tanks and which Billotte believes U.S. producers could make and sell for 25% less than the French. Billotte's notion is that such U.S.-produced tanks of French design could find large markets under U.S. Military Assistance programs. (On this point McNamara is doubtful.)

2. France should join the U.S. and Germany in cooperative design and production of the battle tank of the next generation, now in the development phase. The U.S. has proposed such cooperation in the past, and McNamara would be glad to have it now.

General Billotte supported his presentation, both with you and with Secretary McNamara, by saying that in his judgment the French defense authorities have been narrow-minded and uncooperative, and that he has General de Gaulle's personal approval for these proposals.

The result of Secretary McNamara's conversation with Billotte is that Billotte is to take Secretary McNamara's expression of lively active interest back to General de Gaulle and come back to us with proposals for a next step in the discussions.

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McGeorge Bundy

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E.O. 12958, Sec. 3.5
NSC Memo, 1/30/95, State Dept. Guidelines
By *ju*, NARA, Date 10-14-98

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April 13, 1964

MEMORANDUM FOR

THE HONORABLE NORMAN PAUL

The President has had from Dr. Eli Ginzberg of Columbia an informal comment to the following effect:

"The current operation of the draft is decidedly unsatisfactory; some young men are forced to serve but an increasing proportion of those who are eligible are never called for service. The Department of Defense has informally confirmed that only two out of five young men now reaching 18 will ever serve.

"The public is becoming increasingly concerned about this inequity; witness the recent series of articles in the New York World Telegram, the four-page interview in the U. S. News and World Report, and other newspaper and magazine criticism.

"Congress also is concerned; witness the recent hearings before the Senate Subcommittee on Manpower and Employment, the minority views in the 1964 Joint Economic Report of the Joint Economic Committee, and the bills introduced by Senator Keating and others to establish a Commission to review the matter.

"In my opinion, the draft could easily become a campaign issue or at least an irritant in the campaign.

"I believe that it would be both good politics and in the national interest for the President to take the initiative and announce that he is asking his newly constituted Commission on Manpower to review the entire matter, after which he will forward recommendations to Congress.

"I suggest that he specifically ask the Committee to consider these questions:

1. Is it possible that the draft can actually be eliminated now or in the near future?
2. Would it be desirable to make voluntary service more

attractive by offering educational and training benefits in proportion to years of service?

3. Should military service be broadened to include assignments to essential civilian work, for instance in connection with the poverty program?

4. Can the requirements of the Armed Services for men with certain crucial skills - in electronics, medicine, communications, etc. - be more effectively met by subsidizing their training prior to their military service, so that they can spend most of their time on duty in operational assignments rather than in training?

5. If the draft must be continued, and if all who are eligible are not needed to meet the requirements, how can a higher degree of equity in selection be introduced?"

We are informing Dr. Ginsberg that these matters are being carefully studied in the work being carried out by Mr. William Gorham under your supervision, but it occurs to me that it might be sound at the appropriate stage for someone in this enterprise to be in touch with Dr. Ginsberg directly. My impression of great civilian authorities is that it helps in more than one way to consult with them, although I do not know Professor Ginsberg personally.

McGeorge Bundy

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April 13, 1964

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McG. B.

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April 13, 1964

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Your Meeting with the General Advisory Committee of the Arms Control and Disarmament Agency - Tuesday, Apr. 13

Present will be the following: John J. McCloy; The Reverend Edward A. Conway; John Cowles; Dr. George B. Kistiakowsky; Dean McGee; Ralph McGill, Herman Phleger; General Thomas D. White; Dr. Herbert York. Also present will be William Foster, Jacob D. Beam and Dr. Herbert Scoville from the Arms Control Agency.

My suggestion is that you might begin by stating your own commitment to this cause, as shown in your record, and especially in your pressure for the five-point package presented in January in Geneva as follows:

1. Agreements to stop the spread of nuclear weapons;
2. Observation posts as a safeguard against miscalculation or surprise attack;
3. End of the production of fissionable material;
4. Practical measures to ban the threat or use of force to change boundaries;
5. An exploration of the freezing of numbers and kinds of strategic nuclear vehicles.

The Advisory Committee is deeply concerned ~~that~~ the Disarmament Agency should not be downgraded, and your assurances on this point will be particularly welcome.

(There is an immediate issue here which relates to the salary level of the Director. The Administration-approved Executive Pay Bill has put the Director's salary in Group 8, whereas currently it is in Group 2. Kermit Gordon tells me that this lower classification was approved by

by President Kennedy, but I myself doubt that President Kennedy can have focused on it because his earlier decision to make this office equal to that of the Under Secretary of State was very clear cut. McCloy is likely to ask you privately to move to prevent this downgrading, and I myself hope very much that after you have heard argument from Kermit you will accept McCloy's view -- mainly because I think it would be bad to have the peace people saying that the Johnson Administration had downgraded an agency created in the Kennedy-Johnson Administration.)

Beyond this general introductory expression of support, all that is needed is that you should invite Mr. McCloy to report the findings of his Committee after a day and a half of deliberations and briefing.

McG. B.

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THE WHITE HOUSE
WASHINGTON

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April 9, 1964

MEMORANDUM TO THE PRESIDENT

SUBJECT: Mission for Secretary of State

I talked to my brother about the specific mission which you have in mind for the Secretary of State, and he reports the following. This has been discussed in the Department, with Ball and Manning in favor, with the Far Eastern experts evenly balanced, and with the Secretary so far not deciding to do it.

Bill himself ~~thinks~~ thinks that the considerations are quite evenly balanced. On the one hand, we have had so much high level visiting at Saigon that there is always something to be said for not putting another top level mission in. Moreover, the Secretary has a very strenuous schedule already with the SEATO meeting and a visit to Taiwan.

On the other hand, there is some feeling in the Department that our posture is too McNamara-warlike and that it would be helpful to the Department and to the Secretary for him to spend a day with the Ambassador and with Khahn.

Bill agrees with me that the balance of considerations is tilted quite positively if the picture of this trip is that you have asked the Secretary to make it. We have to be careful not to undercut Bob in this, but I think we can manage that side with an announcement something like the following for George Reedy either tonight or tomorrow:

"The President had a good discussion with the Secretary on Thursday afternoon of the issues which will come up at the SEATO meeting in Manila. The President also requested Secretary Rusk to extend his visit to the Far East to include a visit to Saigon as a follow-up to the recent visit of Secretary McNamara. The President's desire is to take the occasion of the Secretary's visit to the SEATO meeting to ensure continued effective consultation with General Khahn and Ambassador Lodge."

McG. B.

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Authority State Dec 8/15/77
By mg NARS, Date 8/22/77

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April 9, 1964

MEMORANDUM TO THE PRESIDENT

SUBJECT: Resolution on the British-Yemen Air Strike

The disputed resolution on the British-Yemen air strike has three parts. The first condemns reprisals in general as contrary to the Charter. The second deplures the British attack on the fort at Harib on March 28. The third deplures all other actions by any party which led up to the British attack.

Stevenson argues that we must support the resolution because: (1) we have a consistent record of opposition to reprisals and strikes of this sort; (2) this particular strike was out of all proportion to the provocation, although the provocation was real; (3) the impact of abstention will be very severe in the Middle East and in the UN where we need support from many of those who will be most outraged -- especially Africans, Arabs and Asians; (4) Stevenson has already spoken against the British action, with State Department approval, and his own moral position (a matter of deep interest to him) will be affected.

Rusk argues equally strongly the other way: (1) Rab Butler has fought a determined fight against the hard-liners in the British Cabinet to prevent a veto and to secure a British abstention; (2) the provocation is more sustained and serious than Stevenson recognizes; (3) the U. S. itself may have to respond to provocations of a more serious but technically similar sort either in Cuba or in Vietnam; (4) We have other business pending with Sandys which makes this no time for a Suez-type reaction from hard-line British Tories.

My own reluctant but clear recommendation is as follows: (1) we should abstain; (2) we should go in very firmly to Home to say that this is a one-time act of loyalty which we could not repeat in parallel circumstances, because in our view the reaction on which we were not consulted was excessive and imprudent; (3) we should find a way of making it known that we have abstained in order to help prevent a veto, in order to support the wise Butler against the foolish Sandys, and because of an underlying feeling that these resolutions totally miss the real issues involved.

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We should also seek to have the "good British" help us somewhat by explaining that their abstention indicates less of a sense of righteousness than a vote would have done, since they are in fact accepting passage of the motion.

McG. B

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April 6, 1964

MEMORANDUM FOR THE PRESIDENT

This folder deals with the tough problem of decisions on export licenses for the Soviet Union which will come before the National Security Council at noon on April 9.

The administrative heart of this problem is that responsibility is shared by departments which have sharply different views, and that in the last three years no one short of the President has had authority to make clear-cut decisions. The Secretary of Commerce has the immediate statutory responsibility, but the instinct of Luther Hodges was often different from that of others, and it became necessary to appeal individual cases over and over again to President Kennedy. The President in turn preferred to take it case by case, and indeed no blanket instruction could possibly be issued that does not leave individual cases open for individual judgment.

The difficulty is that each sale of nonstrategic items involves a balance of the value to the Soviet Union as against the commercial value to the United States. And each of these estimates in turn is affected by whether one thinks that peaceful trade with the Russians, in and of itself, is a good thing. In any given case, one can always predict the reaction of any individual more from his basic attitudes than from the evidence presented. The close cases are always open to subjective judgment.

Ideally, we ought to have a general review and reach a new basic and solid policy, but this is not the year for that, and nobody really thinks that we can put ourselves in the position to have basic negotiation with the Russians in the next few months. Therefore, the real question is how to handle a relatively small number of controversial items between now and November.

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Authority NSC 68 7/11/77
By MMG, NARS, Date 8/4/77

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My suggestion is (1) that you listen to argument in the NSC from State, Commerce, Agriculture and Defense, (2) that you then state your own basic attitude, and (3) that you announce that you expect to summarize these basic views in an appropriate memorandum, which will also indicate the procedure which you wish to have followed in meeting these general rules.

McGeorge Bundy

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The summary positions of the Departments concerned are:

A. Department of Commerce

The case of the sale to the USSR of five beet harvesters can properly be resolved only after a determination of our more general policy regarding exports of agricultural machinery, equipment, plants and technology to the Soviet bloc. This policy in turn depends on our attitude toward any exports of anything that will contribute significantly to the economic potential of the bloc.

The relevant 1962 amendment to the Export Control Act provides for:

" . . . denial of any request or application for authority to export articles, materials, or supplies, including technical data, from the United States, its Territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President shall determine that such export makes a significant contribution to the military or economic potential of such nation or nations which would prove detrimental to the national security and welfare of the United States. "

The U.S. should not permit the export to the USSR of a 6-row beet harvester unless we have negotiated with the USSR a quid pro quo of a national interest character over and above the price to the exporter on this and other items of agricultural machinery.

The U.S. should not export to the Soviet bloc our advanced agricultural machinery and our advanced technology and equipment to produce items such as fertilizers unless the Soviet bloc gives us a quid pro quo of a national interest character over and above the prices set by the exporters.

B. Department of Agriculture

In the present state of political and ideological warfare waged by economic means, anything that strengthens the economic potential of the opponent is unjustified unless accompanied by a corresponding strengthening of our own position.

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Authority NSC 67/11/77
By AMG, NARS, Date 8/4/77

(Whatever strengthening of the economic potential of the Soviet bloc may result from wheat imports is more than counter-balanced by the strengthening position of the U.S. that results from increased foreign exchange and the diminishing of surpluses.)

With regard to exports that can readily be purchased elsewhere, licenses should be approved, since a denial would merely deny to U.S. exporters business that would otherwise go to other nations and would therefore not prevent a significant contribution to economic potential.

With regard to exports of complicated, sophisticated and advanced machinery, plants and technology that cannot readily be obtained from other sources, and which would contribute to economic potential, licenses should be denied. (Any liberalization of our export licensing policy should be accompanied by the negotiation of an appropriate quid pro quo in our national interest.

C. Department of State

We believe that 6-row beet harvesters, and agricultural equipment generally, should be approved for sale to the Soviet Union and to other countries of the European Soviet bloc. We believe, moreover, that such approval should be on the same basis as other peaceful non-strategic exports to the Soviet bloc without attaching special new conditions.

Such action would accord with President Kennedy's decision in May 1963 on an almost identical case (forage harvesters) in which the same argument for quid pro quo conditions was advanced.

The attachment of quid pro quo conditions would be tantamount to denials. It seems highly doubtful that a quid pro quo could be obtained from the Soviet Union for an agreement to sell \$150,000 worth of machinery.

To attempt to obtain concessions beyond the sales price would simply mean "no sale" because concessions of a national interest character cannot be extracted from the Russians on a piecemeal basis. If we tried to do so, they would certainly assume that we

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were shifting to a much tighter policy of restricting non-strategic trade, a position that would seriously detract from the beneficial atmosphere resulting from the wheat sales.

The State Department considers that advantages of a national interest character might, however, properly be sought in a general negotiation with the USSR on economic matters after the election and after due consultation with the Congress.

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April 6, 1964

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MR. PRESIDENT:

This is a draft reply to the attached letter from Merchant, who has been working part-time on the MLF since January 1963. He is a highly skillful career Ambassador, who retired at his own insistence and who is almost sure to be called on for special diplomatic assignments in the future.

McG. B.