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FOIA

F01-113

MCDERMOTT,
JOHN

1

ID	Doc Type	Document Description	No of	Doc Date	Restrictions
24568	MEMO	LOU MICHAEL TO COLIN POWELL, RE: RESULTS OF A SIMULATION OF US RESPONSE TO IRANIAN TERRORISM <i>D 10/21/2011 F2001-113/1</i>	4	10/6/1987	B1
24569	MEMO	CAP WEINBERGER TO [FRANK CARLUCCI], RE: MATERIAL RELATING TO AN EMBARGO ON IRANIAN TRADE DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	1	10/9/1987	<i>open 2/4/2009 3K</i>
52254	MEMO	DAVID CHU TO THE SECRETARY OF DEFENSE, RE: UNITED STATES TRADE WITH IRAN - INFORMATION MEMORANDUM DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	4	10/2/1987	
52255	MEMO	DAVID CHU TO THE SECRETARY OF DEFENSE, RE: EFFECTIVENESS OF POSSIBLE UNILATERAL U.S. PROHIBITION ON TRADE WITH IRAN - INFORMATION MEMORANDUM DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	3	10/5/1987	
52256	MEMO	DAVID CHU TO THE SECRETARY OF DEFENSE, RE: EXITING STATUTORY AUTHORITY FOR IRAN TRADE SANCTIONS - INFORMATION MEMORANDUM DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	4	10/6/1987	<i>4</i>

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52257	PAPER	STATE DEPARTMENT POSITION ON TRADE SANCTIONS AGAINST IRAN DOCUMENT PENDING REVIEW IN ACCORDANCE WITH E.O. 13233	1	ND	<i>open</i> <i>8/4/2009</i> <i>gk</i>

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MCDERMOTT,
JOHN

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f. Jean
c ID 8707562

RECEIVED 13 OCT 87 15

TO CARLUCCI

FROM WEINBERGER, C

DOC DATE 09 OCT 87

KEYWORDS: IRAN

IMPORT CONTROLS

OIL

SUBJECT: MATERIALS RELATING TO EMBARGO ON IRANIAN TRADE

ACTION: PREPARE MEMO FOR CARLUCCI DUE: 16 OCT 87 STATUS S FILES PA

FOR ACTION

FOR CONCURRENCE

FOR INFO

BURNS

TAHIR-KHELI

KELLY, B

COBB

DANZANSKY

OAKLEY

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SENSITIVE

THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

A.

9 OCT 1987

Frank

MEMORANDUM FOR THE ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS

SUBJECT: Materials Relating to an Embargo on Iranian Trade

As we consider the possibility of embargoing Iranian trade, I thought you might find it helpful to have copies of the following background papers prepared by my staff.

Permit me to summarize their content briefly.

Tab I outlines the nature of US-Iran trade. As you're aware, the principal import is petroleum. The fact that it would presumably require only a small discount by the Iranians to sell the oil elsewhere limits the effect that a prohibition of imports to the US of Iranian crude oil would have on Iranian revenues. (Furthermore, even with the recent increase in imports, the US accounted for only 13 percent of Iran's sales to OECD countries.)

On the other hand, because Iran supplies only a small fraction of US petroleum imports, no one could argue there is any significant injury to the US economy from an import embargo.

Tab II discusses whether an embargo could be enforced. Our conclusion is that a prohibition on imports of crude oil could be enforced, as could a prohibition on other imports from Iran. Ensuring that petroleum products imported from third countries did not derive from Iranian crude would be difficult. The enforcement of a prohibition on US exports to Iran would fall somewhere in between, for reasons with which you are familiar.

Tab III summarizes the President's existing statutory authority to impose an embargo on imports and/or exports. We believe such authority is available, and could allow the President to act virtually immediately without waiting for new legislation from the Congress.

Step

Attachments

Frank
As per memo, Re Congress would seem appears to
address imports only.

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SENSITIVE



OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-1800

B.

October 2, 1987

DIRECTOR
PROGRAM ANALYSIS
AND EVALUATION

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: United States Trade With Iran--INFORMATION MEMORANDUM

This memorandum provides a first installment of materials we have assembled in response to the questions you asked relating to the Senate's adoption of an amendment to the DoD Authorization Act that would prohibit imports from Iran.

Covered here are basic data on U.S. trade with Iran in oil and other goods. These data provide a first cut at an answer to one of your questions: Would an embargo of trade with Iran make any difference?

We have work under way on another of the questions you asked: Could an embargo on trade with Iran be enforced?

We are also looking into related questions about the statutory authority of the President to prohibit trade with Iran absent the provision of the Authorization Act; we are studying past U.S. experience with embargoes; and we are reviewing the report to Mr. Carlucci of a State-led interagency group convened by the NSC to consider trade restrictions and other non-military sanctions on Iran. This work is being carried out in consultation with other elements of OSD. I anticipate that the work will be completed by Monday.

How much substance is there to reports that oil imports from Iran have increased drastically?"

The short answer to this question is "Some," but the reports should be placed in context.

Of basic importance to understanding the situation is the recent increase in Iran's oil production, reversing the 1979-81 decline in which Iran's oil production fell from 3.2 million barrels per day (mmbd) (1979) to a low of 1.4 mmbd (1981). The decline reflected the disorganization of Iran's economic life by its revolution and its war with Iraq. Production has fluctuated since then. It averaged 1.9 mmbd in 1986 and then, early in 1987, Iran succeeded in increasing its production to 2.6 mmbd.

It is virtually certain that, in an effort to finance its war with Iraq, Iran has attempted to export most of its added oil production. We do not know the price at which Iran sells its oil. We do know, however, that Iran has not, in practice, accepted OPEC production limits, and that it is almost certainly undercutting the OPEC price by the (presumably small) amount necessary to sell all of the oil it produces for export.

The bulk of Iran's oil is sold to OECD countries. It is not surprising, then, to find that Iran's increased production and a policy of offering its oil at below the OPEC price led to increased imports from Iran by several OECD countries, including the United States. During the first seven months of calendar 1987, the best data we have so far indicate that imports of Iranian crude oil into the continental U.S. and U.S. territories averaged 250 thousand barrels per day, which is 178 percent above the 1986 average of 90 thousand barrels per day. (See the table at Tab A.) Increased purchases from Iran were also registered by the United Kingdom, Italy, Japan, and smaller European countries. (See the table at Tab B.)

Listed at Tab C is a breakdown by importing company of U.S. oil imports from Iran in 1986 and the first seven months of 1987. These data are fully consistent with the notion that we are seeing episodic purchases made in response to favorable prices. We are continuing to look into particular factors that may have been behind the increased imports from Iran, but on the face of the matter, the two factors noted here--increased Iranian production and a somewhat lower price--are sufficient to explain the increase in oil imports from Iran.

Press accounts emphasized the apparently very large increase in oil imports from Iran last July, and this was also given prominent mention in Senate consideration of the amendment to prohibit imports from Iran. In particular, it was stated that Iran has become the second largest supplier of U.S. oil imports. The table at Tab A shows a very large increase in oil imports from Iran last July. The apparent increase in that month, however, is to a large extent explained by an irrationality in the way the import data are compiled by the Customs Bureau.

The data published by the Customs Bureau reflect the month in which the Bureau records an import, which is not necessarily the month in which the import is actually landed in the U.S. The recording lags are such that it is quite possible that the figure reported by Customs for a given month includes imports actually landed in several previous months. Unpublished data compiled by the Energy Information Administration (EIA) of the Department of Energy from various sources suggest that the figure for U.S. imports from Iran in July 1987 is grossly overstated for precisely that reason.

Commentators may make varying statements about the oil import picture because they are using different data sources. There are significant definitional differences among these sources. For example, some sources of data report only imports into CONUS, while others include imports into U.S. territories (the Virgin Islands represent an important port of entry for crude oil). There are also complexities related to the distinction between crude oil and refined petroleum products and problems in properly accounting for transshipments of oil imported into the U.S. and U.S. territories.

How important to the U.S. and to Iran are U.S. oil imports from Iran?

The increase in oil imports from Iran has not been large in absolute terms. Press reports (and statements by Senators in support of the Senate amendment) overstate the extent to which U.S. oil imports are supplied by Iran. Even with its increased sales in 1987, Iran remains a minor factor in US oil imports.

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3

The table at Tab D shows the sources of U.S. gross imports of crude oil and refined petroleum products in 1986 and the first seven months of 1987. In 1986, Iran accounted for 1.4 percent of U.S. oil imports and did not rank in the top ten suppliers of oil imports to the U.S. For the first seven months of 1987, Iran's share increased to 4.0 percent, but Iran ranked ninth in the list of suppliers.

Small as it is, Iran's share of U.S. oil imports overstates Iran's importance to the U.S. as a source of oil. In the words of one of the experts we contacted "... the world is awash in oil..." Consequently, U.S. firms would have no difficulty in replacing oil imported from Iran with oil from other sources. It is very likely that these imports would be obtained at the OPEC price (adjusted by the usual discounts and premiums reflecting the grade of the oil.)

Basically the same logic holds for Iran. According to the best estimates available to us, Iran makes about 80 percent of its oil exports to OECD countries. Of this, the U.S. accounted for about 13 percent during the first quarter of 1987. If the U.S. prohibited oil imports from Iran, Iran would have to find a market in other OECD countries and Third World nations for oil that otherwise would be sold to the U.S. To do that, Iran almost certainly would have to offer some additional price concessions, and other producers might find it easier to sell oil in the U.S. and other OECD countries at the OPEC price.

We have not seen careful analyses of how large these effects might be. Looking simply at fact that the quantities of oil involved are small relative to the total market, it seems obvious that the effects would be minimal. Iran would suffer some inconvenience, but probably only a very small loss of revenue.

How important to the United States and Iran is trade with Iran in other commodities ?

Even counting oil, trade with Iran is of very little economic consequence to the U.S. Trade in commodities other than oil is small in value and of no importance at all to the U.S. economy as a whole.

The main items other than oil imported by the U.S. from Iran are rugs, pistachios, and works of art. Imports of these and all other goods (except oil) from Iran in 1986 had a total value of about \$100 million. (See the table at Tab E.) It is obvious that rugs, pistachios, and art works are not economically vital commodities and, while Iranian rugs and art works may be in some sense unique, there are other sources for rugs and art works, and large quantities of pistachios are produced in California.

The overall pattern of Iran's exports is similar to that of its exports to the U.S. In 1985 (the most recent year for which comprehensive data are available) oil accounted for about 98 percent of Iran's exports. Iran exports only very small amounts of manufactured goods; most of the 2 percent of its exports that is not oil is accounted for by textiles (including rugs), pistachio nuts, and hides and skins.

SENSITIVE

4

In 1986, the U.S. exported \$33.9 million worth of goods to Iran. This, of course, was a tiny fraction of our total exports.

Most of our exports to Iran were in categories related to oil drilling. The largest single category was parts of oil and gas field drilling machines, which accounted for \$7.9 million (23 percent) of our exports to Iran. Nonpiston engines ran second, with export value of \$3.8 million, or 11 percent of the total. Accounting for less than 5 percent each are measuring and control instruments, television and radio parts, parts for road vehicles and tractors, oil and gas field wire line and downhole equipment, electronic tubes, and parts and attachments for pumps for liquids.

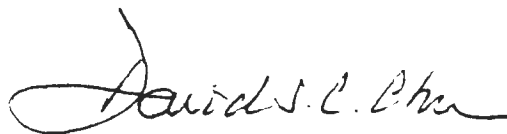
There is a presumption that Iran could obtain most of the goods it purchased from the U.S. from suppliers in other nations. We will attempt to verify the extent to which this is the case, especially for oil drilling equipment and parts.

On the basis of fairly detailed data for 1985, we can say that Iran's imports are spread quite broadly among many countries. The four countries with the largest shares of Iran's imports in 1985--West Germany, Japan, the U.K., and Italy--account for about 42 percent of the total. (See the table at Tab F.) Only a very small fraction of Iran's imports--on the order of two-tenths of one percent--are from the U.S.

What can be concluded from the trade data?

These data suggest that a unilateral prohibition by the U.S. of imports from Iran, or of both imports and exports, would not have large economic effects on either the U.S. or Iran. In fact, a unilateral U.S. embargo on trade with Iran would almost certainly have only trivial economic effects for the U.S.

If imports from Iran were prohibited, Iran would seek a market for the oil that it had sold in the U.S. This would not be impossible or, in all likelihood, even very difficult. The key point is that any supplier willing to take a price below what OPEC charges can sell effectively unlimited quantities of oil.



David S. C. Chu

Attachments:
as stated

SENSITIVE

A

1

U.S. AND TERRITORY CRUDE OIL AND PRODUCT IMPORTS FROM IRAN

(Thousand Barrels per Day)

	Puerto Rico ¹	Virgin Islands ²	Fifty States ¹	Total U.S.
1986	0	71	19	90
1987				
January	0	155	0	155
February	0	139	30	169
March	0	0	73	73
April	17	73	47	137
May	33	206	75	314
June	17	96	155	268
July	17	366	237	620
7 Month Average	12	149	89	250

¹United States oil imports for the 50 States and Puerto Rico are reported on the EIA's "Monthly Imports Report" (Form EIA-814).

²Import statistics for the Virgin Islands are assembled by the Bureau of Census from Form IA-145. These data have been processed by EIA from Bureau of Census computer tapes and may not reflect revisions.

Contact:

W. Calvin Kilgore
EIA
586-1130

The table on the following page was provided by the U.S. Department of Energy, Energy Information Administration (EIA). It reportedly has been used by EIA, in substantially the form presented here, since early September 1987 to respond to questions from the Congress and various federal agencies concerning U.S. imports from Iran. It appears to constitute the most complete and accurate publicly available information on this topic.

The data reported in the table for CONUS and Puerto Rico are collected by EIA; the data for the Virgin Islands are collected by the U.S. Customs Bureau. As is discussed in the text of the memorandum above, the Customs Bureau does not necessarily record an oil import to the Virgin Islands as occurring in the month in which the oil is actually landed. For that reason, little significance can be attached to apparent month-to-month changes in oil imports landed in the Virgin Islands.

MAJOR OECD PURCHASES OF IRANIAN OIL

	1986		1st Quarter 1987	
	Thousands of barrels per day	% of OECD purchases from Iran ¹	Thousands of barrels per day	% of OECD purchases from Iran ¹
U.S. and Territories ²	90	10.5	131	12.9
United Kingdom	10	1.2	31	3.0
France	66	7.7	43	8.2
West Germany	41	4.8	8	.8
Italy	137	16.0	174	17.1
Other Europe	263	30.6	294	28.9
Japan	223	26.0	298	29.2
Canada	<u>30</u>	<u>3.5</u>	<u>---</u>	<u>---</u>
TOTAL	859	100	1019	100

¹ Totals do not add to 100% due to rounding.

² Derivation of the figures shown for the U.S. requires some manipulation of the data published in the source given below. The necessary computations were done by DoD staff with advice from personnel of the Energy Information Administration.

Source: U.S. Department of Energy, Energy Information Administration,
"International Petroleum Statistics Report," September 25, 1987.

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The table on the following page was supplied by the U.S. Department of Energy, Energy Information Administration (EIA). The table includes both data collected by EIA and data collected by the Customs Bureau. Although publicly available, the data is not regularly published.

Some explanation about the treatment of the Virgin Islands is required. The data for the Virgin Islands is collected by the Customs Bureau. No breakdown by company of oil imports into the Virgin Islands is provided by the Customs Bureau. The only refinery in the Virgin Islands, however, is owned by Amerada Hess, and it is very likely that imports from Iran into the Virgin Islands are purchases by Hess.

The top part of the table shows oil imports into CONUS, Hawaii, Puerto Rico, and other U.S. territories except the Virgin Islands, broken down by importing company. The total for the U.S. is the sum of the entries for these companies plus the amount shown for oil imports from Iran plus imports into the Virgin Islands.

Imports of Iranian Crude Oil
into the U.S. by Company
(Thousand Barrels per Day)

Company Name	Year 1985	Year 1986	Jan-Jul 1987
Apex Oil Co.	1.12	5.64	--
Ashland Oil Co.	10.36	--	--
Atlantic Richfield Co.	--	3.16	12.86
Coastal Corp.	--	--	7.55
Clark Oil	--	--	2.33
Fina Oil & Chem Co.	--	3.13	22.92
Phillips 66	1.12	5.64	--
Seahorse Marina, Inc.	--	s	--
Solomon Inc.	12.10	4.80	4.90
Southland Corp.	--	1.09	--
Sun Oil Co. (1)	1.42	--	12.17
Tenneco Oil	--	--	1.73
Texaco Oil	1.29	--	7.33
Transworld Oil USA, Inc.	1.20	--	--
U.S. Steel	--	1.56	29.15
Virgin Islands	39.48	71.22	148.46
Total U.S. (2)	68.08	90.61	249.41
Fifty States	27.18	19.39	88.77

(1) Imports into Puerto Rico

(2) Totals May Not Add Due To Independent Rounding

(s) Less than 1000 b/d

— Sources: Energy Information Administration
Census Bureau

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CRUDE OIL AND PRODUCT IMPORTS INTO THE U.S.
 RANKED BY COUNTRY OF ORIGIN:
 January-July 1987 and Year 1986
 (Thousand Barrels Per Day)

Country	Jan.	Feb.	Mar.	April	1987			7-Month Avg.	1986 Avg.
					May	June	July		
Venezuela	899	827	703	739	878	832	912	827	822
Canada	777	762	720	808	865	899	889	818	806
Mexico	683	688	699	667	569	654	665	661	734
S. Arabia	873	772	427	452	519	780	754	652	685
Nigeria	313	276	312	529	537	546	787	474	441
U. Kingdom	419	236	330	485	409	377	343	372	352
Indonesia	285	420	308	245	306	269	281	300	343
Algeria	165	323	301	310	196	247	326	267	277
Iran	155	169	73	137	314	268	620	250	90
All Other	1,654	1,585	1,628	1,485	1,528	1,921	2,133	1,706	1,773
Total	6,223	6,058	5,501	5,857	6,121	6,793	7,710	6,327	6,323

Note: The U.S. includes the 50 States and U.S. Territories and Possessions.

Source: U.S. Department of Energy, Energy Information Administration:
 Unpublished data.

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TABLE

IMPORTS FROM IRAN TO THE U.S.

	1986 \$ Millions	Percent	1985 \$ Millions	Percent
Rugs	51.7	9.1	32.2	4.4
Pistachios	14.1	2.5	36.6	5.0
Art Works	6.1	1.1	5.4	.7
Other	28.9	5.1	46.0	6.3
Subtotal	100.8	17.7	120.2	16.6
Petroleum	468.2	82.3	605.1	83.4
TOTAL	569.0	100.0	725.3	100.0

Source: U.S. Department of Commerce, Bureau of the Census, U.S. General Imports, FT155/1986 December and Annual, Volume 2.

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Main Origins of Imports to Iran, 1985

<u>Country</u>	<u>Percent of Total</u>
West Germany	16.3
Japan	13.4
United Kingdom	6.7
Italy	6.0
Turkey	5.9
USSR	4.5
Singapore	3.9
Spain	2.8
Argentina	2.8
Netherlands	2.7
Brazil	2.1
Kuwait	2.0
All others	<u>30.9</u>
TOTAL	100.0

Source: Economist Intelligence Unit, Country Report: Iran, No. 3, 1987.

Tab
II

SENSITIVE



OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-1800

C.
October 5, 1987

DIRECTOR
PROGRAM ANALYSIS
AND EVALUATION

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Effectiveness of Possible Unilateral U.S. Prohibitions on Trade with Iran--INFORMATION MEMORANDUM

This second memorandum on U.S.-Iran trade responds to one of the questions you asked concerning possible unilateral U.S. sanctions: Could a prohibition of imports from Iran, or prohibitions of imports from and exports to Iran, be enforced?

My conclusions on this question are as follows:

- o A prohibition of imports of crude oil from Iran could be enforced.
- o Prohibition of imports of petroleum products (e.g., gasoline) refined from Iranian oil would be ineffective or only of limited effectiveness.
- o A prohibition of imports from Iran of products other than oil probably could be made reasonably effective.
- o A prohibition on exports to Iran could be made partially effective.

The main reasons for these conclusions are summarized in the remainder of this memorandum.

A prohibition on crude oil imports from Iran could be effectively enforced.

It is our understanding that the country from which any given shipment of crude oil originated can be readily and conclusively determined by chemical analysis. A prohibition on imports of oil from Iran would be fairly easy to police, then, because the origin of any suspect shipment could be quickly established. The incentive to attempt to circumvent the prohibition would be small, since it is reasonable to assume that Iranian crude currently sells at only a small discount to the OPEC price (adjusted for the grade of the oil).

The ban on imports of crude oil from Libya, in effect since at least March 1982, apparently has been completely effective in this sense: to the best of our knowledge, no crude oil from Libya has entered the U.S.

SENSITIVE

A prohibition on imports of petroleum products refined from Iranian crude oil would be ineffective, or of limited effectiveness.

European refineries probably would be the main avenue through which petroleum products refined from Iranian crude oil would enter the United States. The country of origin of the crude oil from which a shipment of some petroleum product was refined generally cannot be determined by chemical analysis. Moreover, it is very difficult to track the movements of crude oil through the European pipeline network.

Currently most U.S. imports of refined petroleum products are from Canada and Mexico; only small amounts are imported from European countries. This situation presumably could change, however, if the U.S. prohibited imports of crude oil from Iran.

A prohibition of imports from Iran of products other than oil probably could be made reasonably effective.

This conclusion reflects the opinion of the people involved in the administration of export controls with whom we spoke. I see no reason to doubt this conclusion, although there clearly can be problems with establishing a particular good's country of origin and, consequently, there would probably be some "leakage" around a general prohibition on imports from Iran.

As I noted in a previous memorandum on patterns of U.S. trade with Iran, in 1986 the value of U.S. imports other than crude oil from Iran was about \$100 million. The main items imported from Iran are rugs, pistachio nuts, and works of art.

The Administration has restricted or banned imports from Nicaragua, South Africa, and Libya; previous administrations have placed similar embargoes on other countries, including Cuba, Vietnam, and Iran.

A prohibition on exports to Iran could be made partially effective.

The main problem with enforcing a prohibition on exports to Iran lies in the possibility of arranging a sale through a third country or, in practice, through middle men located in several countries. Even a rigorous system of end-user certificates--which would be impractical for the full range of goods for which Iran might be in the market--could not be expected to solve this problem entirely.

It is our understanding from those who administer existing export controls that U.S. firms, particularly large U.S. firms, typically make good faith efforts to comply; and suspect shipments can, of course, be inspected at the border. In the opinion of those with whom we spoke, a general prohibition of any exports to Iran would be partially effective. They pointed out to us that the black market prices of goods in question tend to rise sharply in the country to which export of these goods is prohibited. To the extent that this is in fact the case, it is compelling evidence that export prohibitions do have a noticeable effect.

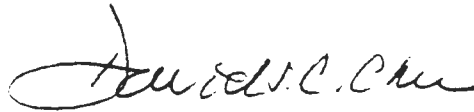
Exports to Cuba, Vietnam, Cambodia, and North Korea are currently embargoed. Partial embargoes are in effect for several other countries, including South Africa, Iraq, Yemen, and Afghanistan.

Allied Position on Trade Sanctions

For the most part, our allies have not joined in U.S. trade embargoes, and as a general rule they do not currently restrict trade with Iran. One notable exception is France, which in July 1987 asked French companies not to buy Iranian goods. These are voluntary controls; no legal prohibitions on imports from Iran were imposed. This policy was not precipitated by events in the Persian Gulf, but rather by a situation involving a non-diplomatic employee of the Iranian embassy in Paris who was suspected of involvement in acts of terrorism.

Existing Presidential Authority to Restrict Trade with Iran and the Relationship of Trade Sanctions to International Obligations

We will have additional material for you on this topic shortly.



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Director
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SENSITIVE



OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-1800

D.

October 6, 1987

DIRECTOR
PROGRAM ANALYSIS
AND EVALUATION

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Existing Statutory Authority for Iran Trade Sanctions--
INFORMATION MEMORANDUM

This third memorandum on U.S.-Iran trade provides background information bearing on the use of trade sanctions--in particular, whether imposition of sanctions must await the 1988 Defense Authorization Act, in which the Senate calls for an import embargo. The first and longer section of the memorandum reports on statutes already enacted that the President could use to impose trade restrictions against a particular country for purposes of foreign policy. A short second section reports on some of the implications of trade sanctions for matters of international law.

The legal opinions given in this memorandum were provided by the DoD General Counsel's office, which also assisted us in gathering information on existing trade statutes. We also spoke with staff from the Office of the Deputy Undersecretary for Trade Security Policy, and from the Departments of State, Treasury, and Commerce.

EXISTING STATUTORY AUTHORITY FOR TRADE SANCTIONS AGAINST IRAN

No new statutory authority is needed to impose trade sanctions against Iran; existing statutes authorize the President to impose virtually any type of trade or economic sanction for foreign policy purposes, by means of an Executive Order and Executive Branch regulation.

Three existing statutes provide authority that the President could use to impose trade sanctions on Iran:

- o Section 505 of the International Security and Development Cooperation Act of 1985 (ISDCA).
- o Title II of the International Economic Emergency Powers Act of 1977 (IEEPA).
- o Section 6 of the Export Administration Act of 1979 (EAA).

Fact sheets on these statutes are provided at Tabs A, B and C

Three other statutes have been used to authorize trade embargoes, but only in circumstances that are not relevant to the current situation. Background information on these statutes is provided at Tab D.

Comparison of Existing Statutes

None of the three existing statutes that authorize the President to impose trade sanctions against Iran is clearly superior to the other two. The advantages of each statute are summarized in the following table and set forth in more detail in Tabs A through C.

EXISTING STATUTES THAT AUTHORIZE TRADE SANCTIONS			
	<u>ISDCA</u>	<u>EAA</u>	<u>IEEPA</u>
Authorized Actions	Import Controls	Export Controls	Any Trade Sanction
Authorized Purposes	To prevent terrorism	To further foreign policy or prevent terrorism	To counter threat to national security, foreign policy, or the U.S. economy
Declaration of National Emergency Required	No	No	Yes
Formal Rulemaking Required	No	Yes	No
Congressional Consultation Required	"In every possible instance"	Mandatory	"In every possible instance"
Time Needed to Implement	Immediate	3-6 Months	Immediate

Relying on the Export Administration Act is probably ruled out by two factors:

- o The lengthy delays involved in implementing trade sanctions under that authority, which mandates consultation with the Congress and requires formal rulemaking; and
- o The fact that the Export Administration Act does not authorize controls on imports--the objective of the Senate amendment.

If import controls are all that are required, then it would probably be preferable to use the International Security and Development Cooperation Act, since it does not require the President to declare a national emergency.

Although ISDCA has a more limited scope than the other two statutes--it can be invoked only in response to terrorism--the United States has already found Iran to be a country that supports terrorism in connection with export controls under EAA. The same finding presumably could be made to authorize an import embargo under ISDCA.

If broader sanctions are required--for example, controls on exports as well as imports--then the International Economic Emergency Powers Act should be used.

These conclusions are consistent with the findings of the Interagency Iran Trade Sanctions Working Group that reports to the National Security Council (see Tab G). The working group includes representatives from the Defense Technical Security Agency and the Office of the Joint Chiefs of Staff.

IMPLICATIONS OF TRADE SANCTIONS FOR MATTERS OF INTERNATIONAL LAW

Implications for international law fall into broad categories: those relating to claims arising from the 1979 Hostage Crisis, and those relating to general treaty obligations of the United States.

Claims Arising from the 1979 Hostage Crisis

State Department officials reportedly oppose a total embargo on trade with Iran, in part because of the value that the State Department places on maintaining some ties with Iran, and in part because of the use that Iran could make of trade sanctions in ongoing bilateral relations between Iran and the United States.

Chief among the State Department's concerns is the risk that trade sanctions could damage the United States' interests in proceedings before the Iranian Claims Tribunal, which adjudicates financial claims arising from the 1979-1981 hostage crisis. (Tab E presents the State Department's arguments in greater detail; Tab F provides background information on the Iranian Claims Tribunal.) Thus far, the United States has recovered \$1 billion from Iran, while Iran has recovered \$125 million from the United States. The face values of the remaining claims that each country has filed against the other are about equal, although both DoD and State judge the U.S. claims to be much more sound. State Department officials conclude that the United States has more to lose than Iran does from a breakdown in the Tribunal. Treasury Department staff that we spoke with agree with this view; DoD's Trade Security Policy staff do not.

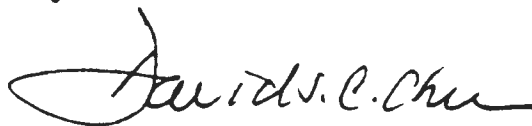
In the opinion of DoD General Counsel, U.S. imposition of trade sanctions in response to recent events that post-date the hostage crisis would not violate the terms of our accord with Iran. It might nevertheless induce Iran to walk out of the Tribunal.

International Treaties

Iran could also charge that trade sanctions violate our bilateral treaty with Iran on amity, economic relations, and consular affairs. There are two reasons, however, why this is unlikely to be a major concern:

- o While the United States considers this treaty still to be in effect, Iran's stated position is that it is effectively terminated. (Iran has not, however, given any formal notice of its intention to abrogate the treaty.)
- o The treaty contains an escape clause allowing the signatories to take whatever actions are necessary to safeguard their national security.

The United States has no other trade agreements with Iran: our reciprocal trade agreement with Iran was abrogated during the 1979-81 hostage crisis, and Iran is not a signatory of GATT.



David S. C. Chu
Director
Program Analysis and Evaluation

Attachments

6 OCT 1987

Coordination:

SN. (signed) L. Niederlechner
D General Counsel

A

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International Security and Development Cooperation Act

Actions authorized:

Ban on imports.

Scope:

Any country that supports terrorism.

Congressional consultation:

Prior consultation "in every possible instance";

Report submitted to Congress immediately upon imposing sanctions; consultations at six month intervals for as long as the sanctions remain in effect.

Implementation:

Import embargoes under ISDCA are imposed by Executive Order and administered by the Treasury Department's Office of Foreign Assets Control.

(Technically, the Executive Order specifies which executive agency will implement the embargo. Past practice--which in principle could change, but in practice would not--has been to have the Treasury Department administer import embargoes.

- o The Office of Foreign Assets Control writes regulations implementing the Executive Order and is responsible for administering the controls, including granting any exemptions.

There is no requirement to publish the regulations or seek public comment. In principle, regulations could be issued immediately after the Executive Order is signed; in practice, drafting and interagency coordination takes a few weeks.

- o The Office of Foreign Assets Control has a small enforcement staff, and additional fieldwork is provided by Customs officer in ports, under the supervision of the "Exodus" office in the Customs Bureau (the same office that administers controls on high-technology exports).
- o According to the Office of Foreign Assets Control, the government has been quite effective at preventing proscribed imports from entering the United States.

Instances Used:

- o E.O. 12538, November 15, 1985 -- Currently in effect. Ban on imports of refined petroleum products from Libya.

B

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International Economic Emergency Powers Act

- Actions Authorized: Prohibit, regulate, or investigate imports, exports, and foreign exchange, currency, or securities transactions.
- Prohibit, compel, nullify, regulate, investigate, etc. virtually any transaction involving property in which a foreign country or national has an interest.
- Scope: Any "unusual and extraordinary" foreign threat to national security, foreign policy, or the U.S. economy, if the President declares a national emergency.
- Congressional Consultation: Virtually identical to International Security and Development Cooperation Act.
- Implementation: Identical to International Security and Development Cooperation Act.
- Instances Used:
- o E.O. 12543, January 7, 1986 -- Currently in Effect.
Ban on imports from and exports to Libya, contracts with Libya, and travel to Libya. (Ban excludes humanitarian exports and materials destined for news publication or broadcast.)
 - o E.O. 12535, October 1, 1985 -- Currently in Effect.
Ban on importation of South African krugerrands.
 - o E.O. 12532, September 9, 1985 -- Currently in Effect.
Ban on imports of military goods from South Africa, exports of computers to the government of South African, and most loans to South Africa.
 - o E.O. 12513, May 1, 1985 -- Currently in Effect.
Ban on imports from and exports to Nicaragua (except exports to the organized democratic resistance) and on commerce with Nicaraguan vessels and airlines.
 - o E.O. 12211, April 17, 1980 -- Lifted by Algiers Accord.
Ban on **direct or indirect** imports from Iran (emphasis added) unless destined for news publication or broadcast; and on transactions with persons traveling to Iran.

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Section 6 of the Export Administration Act

<u>Actions</u>	Prohibit or curtail exports.
<u>Authorized:</u>	(Limited authority to restrict humanitarian exports.)
<u>Scope:</u>	To the extent necessary "to further significantly the foreign policy of the United States or to fulfill its declared international obligations" or "to encourage other countries to prevent terrorism." (The Act authorizes export controls on other grounds, which are not relevant to the current situation.)
<u>Congressional Consultation:</u>	Mandatory prior consultation with the Congress, with extensive reporting requirements. Annual report to the Congress for as long as the sanctions remain in effect. Prior consultation with affected U.S. industries "in every possible instance;" consultation with other countries "at the earliest appropriate opportunity."
<u>Implementation:</u>	Export controls under the Export Administration Act are directed by the President and administered by the Department of Commerce. - o Commerce Department reports to congressional committees on the nature, purpose, and likely effect of the controls. - o Commerce drafts regulations denying export licenses to exports destined for the embargoed country, and publishes them in the Federal Register. - o Regulations take effect after consultation and rulemaking is completed. - o The Office of Export Administration has a small enforcement staff, and additional fieldwork is provided by Customs officer in ports.
<u>Instances Used:</u>	Total embargoes are currently in effect with respect to Cuba, Vietnam, North Korea, and Cambodia. Almost all exports to Libya, and most exports to Syria are also embargoed. EAA is also used to prohibit exports of specific goods to particular countries: for example, a ban on arms and computer shipments to South Africa. Export controls have also been imposed on Iraq, Yemen, and Afghanistan. (This may not be a comprehensive list of instances that EAA has been used to control exports.)

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OTHER STATUTES AUTHORIZING TRADE SANCTIONS

Three statutes have been used to authorize trade embargoes, but only in circumstances that are not relevant to the current situation:

- o Section 232 of the Trade Expansion Act authorizes the President to restrict imports that "threaten to impair the national security." Its focus, however, is on protecting critical defense industries that are threatened by foreign competition, without regard for the origin of the imports; rather than on instituting embargoes against specific countries for purposes of foreign policy. (When the machine tool industry petitioned recently for import quotas, it cited Section 232.)

Section 232 was used on at least two occasions during the 1970s to authorize foreign policy embargoes against imports from specific countries (embargoes on Iranian and Libyan crude oil), because it enabled the President to embargo imports without declaring a national emergency. The subsequent passage of the International Security and Development Cooperation Act provided statutory authority for an import embargo that also avoids the necessity of declaring a national emergency. Hence Section 232 need not be used to authorize an embargo on imports from Iran.

- o Section 5 of the Trading With the Enemy Act authorizes the President to embargo or otherwise control imports in wartime. Prior to passage of the International Economic Emergency Powers Act, the Trading with the Enemy Act applied to peacetime national emergencies as well; this appears to be the authority that was used to impose an embargo on imports from Cuba following the communist takeover there.
- o Section 38 of the Arms Export Control Act authorizes the President to control imports and exports of defense goods and services.

E



STATE DEPARTMENT POSITION ON TRADE SANCTIONS AGAINST IRAN

The State Department reportedly opposes an embargo on imports, for two reasons.

- o State Department officials place value on maintaining some ties with Iran, so that the United States can restore normal relations if and when Iran begins to follow a more moderate course in international affairs. According to the view that has been attributed to the State Department, the Iranian individuals that the United States deals with on trade are the same people that we will have to deal with in restoring normal relations. Hence the State Department favors maintaining some trade, to keep a foot in the door.
- o State Department officials think that trade sanctions could lead to adverse consequences in the Iranian Claims Tribunal, which adjudicates financial claims arising from actions taken by both countries during the 1979-1981 hostage crisis. (See Tab E on the 1981 Algiers Accord and the Iranian Claims Tribunal.)

In the Algiers Accords that provided for release of the U.S. hostages, the United States agreed to revoke all trade sanctions which were directed against Iran during the crisis. Iran could charge that a U.S. embargo on Iranian imports constitutes a violation of the Accords. The United States could legitimately respond that the embargo is in response to events that post-date and are unrelated to the hostage crisis, but judging from its past rulings, the ruling of the Tribunal on this point would be unpredictable. An embargo might also induce the Tribunal to be less favorable to the United States in its rulings, or cause Iran to walk out of the Tribunal proceedings.

Thus far, the United States has recovered \$1 billion from Iran, while Iran has recovered \$125 million from the United States. The face values of the remaining claims that each country has filed against the other are about equal, although both DoD and State judge the U.S. claims to be much more sound. State Department officials conclude that the United States has more to lose than Iran does from a breakdown in the Tribunal. Treasury Department staff that we spoke with agree with this view; DoD's Trade Security Policy staff do not.

THE 1981 ALGIERS ACCORDS AND THE IRANIAN CLAIMS TRIBUNAL

Economic Sanctions Imposed During the 1979-1981 Hostage Crisis

During the hostage crisis of 1979-1981, three Executive Orders were signed imposing economic sanctions on Iran.

- o E.O. 12170, November 14, 1979, froze Iranian assets in the United States.
- o E.O. 12205, April 7, 1980, banned exports and loans to Iran.
- o E.O. 12211, April 17, 1980, banned direct or indirect imports from Iran and transactions with persons travelling to Iran.

The ban on import sanctions relied on the authority of Section 203 of the International Emergency Economic Powers Act (IEEPA). To invoke that Act, the President had to declare a national emergency based on an "unusual and extraordinary" foreign threat to national security, foreign policy, or the U.S. economy.

Algiers Accords

On March 12, 1981, the United States and Iran signed the Algiers Accords, which:

- o Provided for the return of the American hostages;
- o Lifted U.S. economic sanctions against Iran (except for certain disputed properties);
- o Set up the Iranian Claims Tribunal to adjudicate financial claims by each country against the other.

Because Iran and the United States did not have normal diplomatic relations at the time, they were unable to negotiate bilaterally. Hence the unusual form of the Algiers Accords: declarations made by the Algerian government, and signed by Iran and the United States.

Since the Algiers Accords were signed, some export controls have been reimposed under Section 6 of the Export Administration Act. These sanctions are unrelated to the 1979-1981 hostage crisis, and therefore do not breach the Algiers Accords. No restrictions on imports have been reimposed.

Although the United States lifted all economic sanctions against Iran, it kept the state of national emergency in effect to provide authority for implementing the actions of the Tribunal. At present, that state of emergency is still in effect, but it only authorizes actions associated with the 1979-1981 hostage crisis. A second declaration of national emergency would be needed to authorize IEEPA sanctions in response to recent Iranian actions in the Persian Gulf (or other actions since 1979).

Iranian Claims Tribunal

The Iranian Claims Tribunal consists of nine individuals: three chosen by the United States, three chosen by Iran, and three that the United States and Iran agree upon. (If the United States and Iran cannot agree on a person for this last category, the selection is made by the chief justice of the Netherlands Supreme Court.)

Under the terms of the Algiers Agreement, Iran provided \$1 billion to capitalize an escrow account from which U.S. claims awarded by the Tribunal would be paid. Each time the account is drawn down below \$500 million, Iran is required to replenish the fund to its original capitalization. Iran has replenished the fund seven times since the Accords were signed; the last time was in August, 1987. The current balance is \$500 million; hence any award made by the Tribunal (and there are several in the pipeline, including one large ruling that has not yet had a dollar amount assigned) would trigger a replenishment.

U.S. Claims

Approximately \$1 billion in U.S. claims have been paid since the Accords were signed. The face value of U.S. claims against Iran on which the Tribunal has not issued a judgment total \$20 billion:

- o \$4 billion in claims of large corporations (principally oil companies);
- o \$15 billion in the claims of persons considered by Iran to be dual nationals (primarily Iranian immigrants holding U.S. citizenship or their spouses); and
- o \$1 billion in other private claims, including small claims by some 2800 private citizens.

(These amounts do not include \$1 billion in government-to-government claims.)

Some of the claims may be seriously inflated; on the other hand, they do not include accrued interest.

Iranian Claims

Approximately \$125 million in Iranian claims have been paid since the Accords were signed. Currently outstanding claims of the Iranian government against the U.S. government have a face value roughly \$30 billion. Much of that is claims for the shipment of arms ordered before the overthrow of the Shah. Private Iranian claims are large, but difficult to estimate--some of them do not even specify an amount. In general, the Iranian claims are considered much less solid than U.S. claims, so that little significance can be attached to the relative size of the U.S. and Iranian totals.

G

IRAN TRADE SANCTIONS WORKING GROUP

On August 10, 1987, the National Security Council commissioned an interagency working group, chaired by the State Department, to evaluate options for trade sanctions against Iran. The working group was staffed primarily by the State Department, with additional representatives from the Defense Technical Security Agency and the Treasury and Justice Departments. The working group was originally asked to produce a paper within two days; it submitted its report on August 18; but the report was recalled by the State Department, which did not forward it to the NSC until September 22. The working group has not received any taskings since August 10, and has been inactive for the past six weeks. A meeting of NSC principals had been planned for sometime in September to discuss the working group's report, but no such meeting has been scheduled.