Hazardous Products May Be Exported

The Reagan Administration is considering a plan to free corporations from restrictions or limitations on their ability to export hazardous products from the United States. Under a policy recently proposed by the State Department and the Commerce Department, unsafe or ineffective drugs, medical devices, and biological medical products such as plasma and vaccines made in the United States could be freely sold overseas and in Third World nations. U.S. exporters of toxic chemicals and banned pesticides would no longer be required to inform foreign governments of impending shipments. Buyers of such hazardous goods would no longer have to certify awareness of the products' flaws.

The general purpose of the changes is to strengthen the hand of U.S. firms in foreign markets and "to lessen the regulatory burden" on such firms, according to an internal government memorandum dated 10 May. As such, the policy could present a sweeping victory for the makers of drugs, chemicals, and pesticides, whose representatives in Washington have been lobbying hard for a reversal of existing export limits. It is difficult to say exactly which firms are involved because government officials will not say to whom they have spoken. But it is known that the Chemical Manufacturers Association and the Pharmaceutical Manufacturers Association have been active. Drug firms in particular may benefit substantially from elimination of the 44-year-old bar on the export of banned drugs.

Commerce and State Department officials give several specific reasons for acceding to the demands of these corporations. One is that hazardous drugs and chemicals are freely available from corporations located outside the United States, which puts American firms at a disadvantage. The United States is, for example, the only nation to require that importing nations be notified before restricted or banned pesticides and toxic chemicals are dispatched, according to the policy memorandum. This notification causes "unnecessary losses to the U.S. economy" that would be avoided if the United States merely advised other governments of its regulatory policies and refused all requests for export notification.

A second and inherently contradictory justification for the proposal is that existing export restrictions have several loopholes, permitting easy evasion and making the laws a waste of time in the first place. One loophole cited in the policy memorandum is that U.S. drug firms can establish foreign subsidiaries to make drugs that are not approved in the United States, and then sell these drugs anywhere without restriction. Another loophole is that notifications of hazardous chemical and pesticide exports need not accompany the material to its final destination. Consequently, U.S. firms can evade the intent of the requirement by establishing foreign subsidiaries, shipping the material to them with an accompanying official notice, and then reshipping it from the subsidiary elsewhere, without any official notification.

The significance of these complaints could be determined if either the Commerce Department or the State Department was willing to provide any supporting information or examples. But officials at both agencies are either unwilling or unable to provide such evidence. Several officials at the State Department who have been laboring on the policy change for more than a year said flatly that they were unaware of any specific examples of firms that are unduly penalized by existing controls or that are able to circumvent them easily with production facilities or corporate subsidiaries overseas. Finally, Donald King, the acting deputy assistant secretary of state for environmental affairs, said that "as far as giving any specific examples, the State Department is not really the right place. The Commerce Department was really the lead in this, and you should talk to them."

Officials at the Commerce Department who helped to prepare the new policy say that they will comment only if they are not identified by name. One says that chemical companies, in particular, sometimes "ship to their subsidiaries overseas so as to avoid the requirement for notification of foreign governments." But he was unwilling to say which companies did this, and said that "I doubt you'd get many corporations to admit it openly."

The reason given by the officials for their reluctance to talk about the memorandum is that the new policy has yet to be approved by a Cabinet-level committee on trade matters. From there, it will go before the President, who has not yet become involved. As most of the existing controls are required by legislation, Congress would ultimately have to grant its approval.

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The policy memorandum was signed by Secretary of Commerce Malcolm Baldridge and Assistant Secretary of State Lawrence Eagleburger. The Cabinet review will be coordinated by the Office of U.S. Trade Representative in the White House. Hiram Lawrence, a specialist in the office on exports, says that "from a trade policy evaluation, it looks pretty good."

The policy change will undoubtedly be opposed by the U.S. environmental community. S. Jacob Scherr, an attorney with the Natural Resources Defense Council in Washington, D.C., says, "It is hard to imagine that the government could propose a policy with no real checks on hazardous exports—a policy that would use foreigners as guinea pigs. It's just unbelievable."

Scherr suggests that the proposal could undercut a pending agreement for stricter export controls within the Organization for Economic Cooperation and Development (OECD), a group of 24 Western industrialized nations. A committee of the OECD approved such a policy in April at a meeting in Paris. State Department officials will say only that the OECD policy is still under negotiation.

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