

STATEMENT DISCOURS

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STATEMENT BY
THE HONOURABLE ALLAN J. MACEachEN,
DEPUTY PRIME MINISTER AND
SECRETARY OF STATE FOR
EXTERNAL AFFAIRS, ON
EXTERRITORIALITY AND THE
PROPOSED AMENDMENTS TO THE
U.S. EXPORT ADMINISTRATION ACT.
STANDING COMMITTEE ON EXTERNAL
AFFAIRS AND NATIONAL DEFENCE

OTTAWA
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The problem of extraterritoriality has existed for generations. In the past, the issue was peculiar to the bilateral relations of Canada and the United States--for example, in relation to trade with China or Cuba by Canadian subsidiaries of American multinationals. In recent years, it has increasingly taken on a multilateral dimension, as evidenced, for instance, by the Siberian pipeline controversy. This caught the attention of Canada's allies and allowed us to tackle the problem through multilateral as well as bilateral mechanisms. In recent months we have had difficulty bilaterally over the issuance by U.S. courts of subpoenas to Canadian banks operating in third countries.

Where Canada and the U.S.A. share policy objectives, accommodation can often be found. However, where there is disagreement over policy, as may be the case in respect of certain export controls and the question of subpoenas, our respective positions can become difficult to reconcile.

Issues relating to the general question of extraterritoriality have been regularly featured on the agendas for my meetings with Secretary Shultz. Last week our two governments concluded a Memorandum of Understanding in Antitrust Matters setting out cooperative procedures with respect to each other's jurisdiction.

Within the next few days, however, the U.S. Congress will be finalizing legislation for renewal of the Export Administration Act which is the legislative authority by which the United States controls exports for reasons of national security, foreign policy, short supply, or anti-boycott purposes.

Canada and the United States have long cooperated with respect to export controls, as we share a strong common interest in ensuring effective controls for strategic goods. We recognize the need for even closer cooperation in this sensitive area.

There have been instances, however, when the United States has moved unilaterally to restrict exports for its own foreign policy reasons and has attempted to apply such restrictions in an extraterritorial manner. Members of this Committee will recall the difficulties surrounding the United States/Soviet pipeline embargo and its very direct and adverse effects on companies operating in Western Europe and Canada.

I am convinced that, in those cases in which export controls extending beyond strategic materials are proposed, consultations between governments are more

appropriate and more likely to be effective than attempts to enforce the controls through extending jurisdiction.

I would like today to make the following statement of the Government's position on this matter so as to provide our Embassy in Washington with a further basis for representations to the appropriate U.S. authorities involved in finalizing the legislation for renewal of the Export Administration Act and to inform the Canadian public of the Government's concerns respecting this U.S.A. legislation.

The Export Administration Act will expire at the end of March and Congress is now considering successor legislation. Proposals for renewal of the current Act would reassert U.S. authority to control the export activities of foreign subsidiaries of U.S. multinational enterprises and nationals residing abroad, as "persons" subject to U.S. jurisdiction. These proposals also assert the authority to control the export or re-export of U.S. origin goods and technology even if in the possession of foreign licensees or others who are not subject to U.S. jurisdiction. In addition, the Senate bill contains a provision to enforce national security controls in an extraterritorial manner through import controls.

These proposals are of obvious concern to Canada in view of the very significant number of Canadian subsidiaries of U.S. corporations operating in this country. While we have common interest in effective controls for national security reasons, the United States also restricts exports of non-strategic goods with a number of countries for its own foreign policy reasons. On occasion, efforts are made to extend U.S. law to companies and goods in Canada in ways which interfere with the commercial activities of firms operating in Canada, and therefore, which affect adversely Canadian trading and other sovereign interests. This is unacceptable to the Government of Canada.

Corporations which are nationals of Canada and which produce goods and services in Canada are subject only to the laws of Canada in respect of their exports to third countries. Assertions of jurisdiction which displace a government's authority over multi-national enterprises incorporated and operating in Canada are an unacceptable intrusion into the foreign commerce and other sovereign interests of Canada.

In those cases in which export controls extending beyond strategic materials are proposed for foreign policy reasons, I am convinced that consultations with foreign governments are more appropriate and more likely to be

effective than attempts to enforce the controls through extending jurisdiction to foreign subsidiaries or to goods and technology wherever located.

I am therefore hopeful that the U.S. authorities will take these views into account as they review the Export Administration Act.

For more detailed information, please contact:

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