U. S. Exports: Strategic Technology Controls

[The following is an official summary of U.S. policy and recent events regarding the control of strategic technology. This report was originally published in the July 29, 1991 issue of the *U.S. Department of State Dispatch*, pp. 551, 552.]

BACKGROUND

The export of strategically significant technology to former Warsaw Pact and certain other countries is controlled in order to deny them access to technology that would increase their military effectiveness. Because modern weapons depend on many advanced supporting technologies that have both civilian and military ("dual-use") applications, some commercial technology transfers could undermine U.S. national security. Consequently, under the Export Administration Act (EAA), the Commerce Department must issue a license before any such dual-use technology or equipment can be exported from the United States to a potential adversary. U.S. officials must ensure that transfers of dual-use technology do not occur under the guise of civilian projects.

The U.S., acting alone, cannot effectively control strategic technology because it is not the sole source of many of these products. International cooperation, therefore, is required.

COCOM

The Coordinating Committee for Multilateral Export Controls (COCOM), established in 1949, is important in facilitating multilateral cooperation to control strategic goods and technology. Its 17 members are Australia, Belgium, Canada, Denmark, France, Germany, Greece, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Turkey, UK, and the United States. COCOM is not based on a treaty or executive agreement. It operates by informal agreement and according to the rule of unanimity. COCOM agreements are implemented by each member on a national basis. COCOM has no formal relationship to NATO.

A permanent COCOM secretariat is located in Paris. All 17 member countries are represented by permanent delegates. These representatives are joined routinely by teams of technical experts and policy-level personnel from their countries during substantive meetings and negotiations on new or revised export controls.

MAJOR FUNCTIONS OF COCOM

Member countries cooperate in three major areas:

- Publishing national control lists of embargoed equipment (the lists are grouped into three categories—dual-use, atomic energy use, and direct military use) and enacting effective export control systems;

- Considering proposed exports of specific embargoed items from member countries to proscribed countries, and

- Harmonizing national licensing practices for strategic exports and coordinating export control enforcement activities.

DEVELOPMENTS AT MAY 1991 MEETING

Since 1981, a series of high-level COCOM meetings has set policy guidelines to ensure COCOM's effectiveness. At the meeting on May 23, 1991, COCOM members adopted a completely new list of controls on dual-use goods and technologies. This International Industrial List (IIL) is designed to cover only the most strategic goods and technologies. The agreement concluded an intensive year-long negotiation initiated in response to President Bush's May 1990 call for a comprehensive modernization of COCOM to reflect the changing strategic environment brought about by the dramatic developments in Eastern Europe and the Soviet Union.

The new IIL will go into effect on September 1, 1991. It is more than 50 percent shorter than the dual-use Industrial List that it replaces. The new computer controls, for example, should cut U.S. export license requests for such goods by about 70 percent.

The IIL will ensure that COCOM does not block legitimate civil trade. At the same time, it will continue to protect truly strategic technologies that, if acquired by the proscribed countries, would qualitatively undermine the West's strategic technological edge that is crucial to our security.

General features of the IIL include: limiting of coverage to the specific items cited in the list; alignment of control parameters with current industry technical standards; decontrol of readily available "off-the-shelf" items in everyday commerce; and improved harmonization with the standard international customs nomenclature system.

To ensure that COCOM's new controls truly constitute a "higher fence around fewer items," all member governments agreed to implement equal and effective control enforcement provisions, the so-called Common Standard, by January 1, 1992.

The IIL also provides wide-ranging favorable export licensing treatment for East European countries that represent a lesser strategic threat—Poland, Czechoslovakia, and Hungary. This preferential access was agreed to at the June 1990 high-level meeting and enacted early in 1991. These countries have established Western-style export control systems and agreed not to transfer COCOM-controlled technology to prohibited destinations. They now receive a presumption of approval for all but a few controlled dual-use items. In addition, the May 1991 high-level meeting expanded this preferential treatment by allowing all telecommunications equipment (except encryption gear) to go to these countries at national discretion, without prior COCOM review.

RELATIONS WITH NON-COCOM COUNTRIES

COCOM tries to inhibit the export or re-export of embargoed commodities from non-COCOM countries to the countries of concern. The U.S. deals with this problem in part by requiring licenses to re-export U.S.-origin embargoed products. COCOM members discuss cooperation on export controls formally and informally with a number of non-COCOM countries. Some non-member countries have adopted control systems similar to those of COCOM; in return, they receive certain licensing benefits.

MUNITIONS CONTROLS

Commercial export of arms and other defense articles and services is controlled in the U.S. by the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR). Export licenses must be obtained from the State Department's Office of Defense Trade Control (formerly the Office of Munitions Control), (telephone: (703) 875-6644). Licensing decisions for munitions exports are based on compliance with the ITAR and U.S. arms control, national security, and foreign policy considerations.

U. S. Exports: Foreign Policy Controls

[The following is an official summary of foreign policy control on U.S. exports. This report was originally published in the July 29, 1991 issue of the *U.S. Department of State Dispatch*, p. 550.]

BACKGROUND

Exports are a vital part of the U.S. economy. They provide jobs and enable the U.S. to import goods to meet domestic demand. The U.S. imposes certain controls, however, to ensure that exports are consistent with U.S. foreign policy. Most controls apply to equipment and technology of importance to the economy of the importing country. They affect less than 5 percent of the value of current U.S. exports.

These foreign policy controls are applied worldwide and/or to specific countries under the authority of the 1979 Export Administration Act (EAA).

CONTROLS

Terrorism Equipment. Using the authority of EAA Section 6(j), the Secretary of State has designated Cuba, Iran, Iraq, North Korea, Libya, and Syria as countries that repeatedly have provided support for international terrorism. Broad, country-specific export controls are in place for these countries.

Crime Control Equipment. These controls regulate the export worldwide of crime control and detection instruments and equipment and related technology, except to NATO member countries and to Japan, Australia, and New Zealand. Generally, licenses are issued unless the United States has human rights concerns about the government of the importing country.

Regional Stability. Exports of equipment used to manufacture military arms and equipment and some military transportation equipment are reviewed to ensure that such exports would not contribute to the destabilization of the region or country of destination.

Anti-Apartheid. The United States prohibits the export to South Africa of all military and police equipment, computers to apartheid-enforcing government agencies, facilities for nuclear production and utilization, and all items covered by the UN mandatory arms embargo. (The Department of the Treasury prohibits U.S. importation of 13 product categories from South Africa, including all agricultural produce and products, iron, steel, uranium, and gold in all forms.)

Missile Technology. The United States assists other countries in the peaceful uses and exploration of space but seeks to halt the development of weapons-delivery systems. On a worldwide basis, the U.S. controls the export of dual-use equipment and materials that are commercial in nature but also useful in the development of missile systems.

Chemical/Biological Weapons. Licenses are required worldwide (except for the NATO members, plus Australia, Austria, Ireland, Japan, New Zealand, and Switzerland) for the export of 50 chemical precursors useful in the production of chemical weapons and the export of a broad range of bacteria, fungi, protozoa, toxins, viruses, and viroids. All are prohibited to Iran, Iraq, Libya, and Syria. Licenses are required for exports to specified regions and states of certain dual-use equipment that might be relevant to chemical or biological weapons programs.

Nuclear Controls. The United States assists other countries in the use of atomic energy for peaceful purposes, but also seeks to halt the spread of nuclear weapons. Thus, the U.S. controls exports of goods or technology that, if misused by the recipient country, could contribute to the production of nuclear explosive devices. The Atomic Energy Act of 1954, as amended by the 1978 Nuclear Non-Proliferation Act, establishes the controls. Before permitting an export, the U.S. Government reviews the item's proposed use, determines whether the government of the purchasing country has signed the nuclear Non-Proliferation Treaty, and assesses whether the U.S. has acceptable assurances that the item, or nuclear material produced from it, will not be diverted to develop nuclear weapons.

Short Supply. Controls occasionally are necessary to protect the domestic economy from an excessive drain on scarce materials. Congress has legislated restrictions on the export of crude oil and natural gas, refined petroleum and gas products, helium, ammonia, unprocessed Western red cedar logs, and horses for export by sea (to prevent unauthorized slaughter abroad).

Supercomputers. For foreign policy reasons, the U.S. requires the individual licensing of supercomputer exports worldwide.

TREASURY DEPARTMENT CONTROLS

The Treasury Department embargoes most trade and financial transactions with Cambodia, Cuba, Iraq, North Korea, Libya, and Vietnam. It also controls some financial transactions with South Africa and regulates certain imports from Iran and South Africa.

GUIDANCE FOR EXPORTERS

Exporters should consult the U.S. Export Administration regulations (copies are available from the U.S. Government Printing Office, telephone: (202) 783-5238—stock no. 903-014-00000-8) and the Commerce Department's Office of Export Licensing, Exporter Counseling Division (telephone: (202) 577-4811).

For information on the Treasury Department's trade and financial controls on Cambodia, Cuba, Iran, North Korea, Libya, South Africa, and Vietnam, exporters should call the Office of Foreign Assets Control, U.S. Department of the Treasury, 202-566-2701.