
U.S. Export Control Policy Adapts To a Changing World

By

**Christopher G. Hankin,
Deputy Assistant Secretary of State
for International Trade Controls**

[The following is a reprint of a statement presented in testimony before the Subcommittee on International Economic Policy and Trade of the House Foreign Affairs Committee, in Washington, DC, on September 24, 1991.]

This Administration has recognized and responded to the need for U.S. export control policy to adapt to changes in the world. This has been true both in the context of our strategic controls and our foreign policy controls. We have been in the fortunate situation where statute has been flexible and has permitted us to act and adapt as appropriate to these changes. We have been able to provide world leadership in strengthening export controls on countries of proliferation concern. And we have been able to provide leadership in COCOM [Coordinating Committee for Multilateral Export Controls] in responding to the welcome changes that have occurred in the Soviet Union and in East/Central Europe.

There is no reason to believe that further changes, and the need for further responsive U.S. leadership in the multilateral forums, will not continue.

The Administration, therefore, strongly supports re-authorization of an export administration act that would continue this flexibility in statute.

As the Subcommittee is aware, we committed ourselves 2 weeks ago to a dialogue with the committee's staff in hopes that a bill could be written and reported with Administration support. We entered those discussions in good faith, and those discussions continue.

Perhaps as we proceed we should consider a two-track approach: a fairly simple extension of the Export Administration Act for now, and a commitment to work together from a clean slate on a new, forward-looking statute. We need a less cumbersome and less complicated statute. What we write should be responsive to the challenges ahead. It must allow us flexibility to adapt to changes in the world, some of which we will like and others which we will not.

Even, as is often the case, our views on policy coincide, it is probably best that statutory micro-management be avoided. A provision that appears harmless today may not be so next Spring. The Trade Act of 1988, for instance, mandated U.S. decontrol of items within 4 months of a U.S. submittal to COCOM, regardless of COCOM's determination. It apparently was inconceivable back then that our COCOM partners would wish more time than this to consider a U.S. decontrol proposal. Yet, in 1990, this is exactly what transpired, and, as a result, the United States was forced to violate COCOM rules. We should ensure against a recurrence. International cooperation with our allies is the only means of effectively enforcing our strategic and non-proliferation trade controls. Care should be taken to ensure that statute will not possibly: (a) force the United States to violate any of its international export control obligations; or (b) impede the United States from reacting quickly to world events.

Your letter of invitation [to testify before your committee] raised several issues.

The new core list of dual-use items controlled by COCOM constitutes a vast liberalization of strategic trade restrictions. The new list, which we implemented September 1, 1991, contains only those goods and technologies that we judge essential to maintaining the technological lead that is critical to our national security. It is noteworthy that the United States and our COCOM partners have also greatly liberalized in practice our treatment of requests for licenses of controlled items to the Soviet Union. Currently, we are approving, subject to safeguards when appropriate, nearly all requests for licenses to the USSR. Last year, for example, only 3 out of 261 (1.15%) General Exceptions Requests and 3 of 601 (0.05%) De Minimis applications were formally denied in COCOM. Particularly noteworthy, none of the 174 favorable consideration cases was denied.

The Administration is committed to supporting the Soviet Union's integration into the world economy and Soviet market reform. While we still have national security concerns, which cannot be prudently ignored given Soviet military capabilities, COCOM's remaining high-technology restrictions will not impede the modernization and restructuring of the Soviet economy. COCOM restrictions are really very peripheral to the problems affecting Soviet economic progress. Frankly, the problems are caused by the lack of markets, not COCOM controls; it will be the introduction of markets, not the import of sophisticated, expensive high technology that will solve those problems.

In the energy sector, which is key to the Soviet Union's ability to generate foreign exchange, few restrictions remain on equipment used in the production, refining, or transporting of oil and gas. Advanced computers, work stations, and seismic equipment for exploration remain controlled, but licenses for their export to the USSR are being approved under the general exceptions procedures. These procedures aim to ensure that the sophisticated technology shipped will not be diverted to military end-uses. It should be noted that U.S. oil and gas firms have a much larger presence in the Soviet Union than do firms from our COCOM allies. In power generation, COCOM has decontrolled industrial diesel generators and most of the technology involved in their production.

In the computer industry, most personal computers, some minicomputers, and nearly all mass market software have been decontrolled by COCOM. As I have already noted, even more sophisticated mainframes that are still subject to control have been licensed for oil and gas projects. They have also been approved for projects aimed at enhancing the safety of Soviet nuclear power plants. The relaxation on computer sales, coupled with newly available telecommunications equipment, will enable the Soviets to develop a sophisticated banking and financial sector that is crucial to doing business with the West.

In transportation, commercial aircraft are now free from control. We expect that this will enhance the prospects for sales in the Soviet Union and Eastern Europe, where the United States has already successfully marketed aircraft. The decontrol of FAA (Federal Aviation Administration)-certified jet engines and avionics used on commercial aircraft will allow the development of new aircraft using Soviet airframes and Western high technology products.

In the marine field, hovercraft and surface effect ships that can be used as ferries were decontrolled. This will aid in the movement of goods and people across the Baltic Sea and similar bodies of water.

Also in transportation, the restrictions on air traffic control (ATC) systems were eased, thereby making modern civil ATC systems available to the Soviets. Such systems will significantly improve the safety of air travel within as well as to and from the USSR.

In the manufacturing sector, COCOM has relaxed restrictions on machine tools, electronics, and industrial process controls, which are critical to producing high-quality products in quantity. As a result, the marketability of Soviet manufactures in the West can improve, thereby increasing exports and generating badly needed hard currency. The primary difficulties for the Soviet civil manufacturing sector, however, have nothing to do with technology availability.

In telecommunications, political control from the center used to be one of the principal obstacles to the development of Soviet telecommunications links with the West. With that major obstacle overcome, the USSR will be able to undertake a vast improvement in communications with the West, fostering growth in business as well as personal ties.

In connection with an international telecommunications gateway project, COCOM allows the installation of sophisticated, modern systems. The Soviets will have excess capacity in international links well into the 21st century.

As for domestic systems, we still have serious national security concerns with allowing the export of state-of-art fiber optics. Nevertheless, telecommunications equipment which now can be exported to the USSR, such as digital circuit and packet switching systems, medium-data-rate transmission systems, and cellular telephone systems, would allow the Soviets to develop and install more modern domestic civil telecommunications systems (public digital voice and data networks) with features and functionality comparable to what is still in widespread use in the West. Soviet citizens could have access to such services as facsimile, cellular telephone, electronic mail, and voice mail, with all the features enjoyed by most users in the West.

We recognize that our commitments to assist the development of markets and democratic institutions in the Soviet Union can be greatly enhanced by improvements in their telephone infrastructure. Balancing our fundamental security needs against these goals is a challenge that COCOM faced prior to the events in August and will review as necessary. As the dust continues to settle in the Soviet Union, our security needs may change, and we will consult with industry and our allies as to whether further adjustments to the telecommunications controls may be warranted. However, we will vehemently oppose any effort by the committee to force liberalization through statute.

EASTERN EUROPE

Since the revolutionary changes that swept through Eastern Europe beginning in late 1989, the United States has been at the forefront of COCOM efforts to liberalize COCOM controls for the newly emerging democracies in that region. Our goal is to remove Poland, Hungary, and Czechoslovakia from the COCOM proscribed destinations list and to enlist their cooperation in controlling high technology and items of proliferation concern. We are also eager for other East European democracies, particularly the Baltic states, to benefit from liberalized treatment in COCOM.

In the Spring of 1990, the United States held three rounds of export control discussions with officials of Poland, Hungary, and Czechoslovakia. As a result of these meetings, the governments of the three countries made written commitments to establish safeguards to protect COCOM controlled technology. By February 1991, the three countries had each implemented an adequate system of safeguards. As the safeguards were being implemented, the United States pushed forcefully in COCOM for liberalized treatment of the three countries. By the end of February, a COCOM special procedure was in effect for Poland, Hungary, and Czechoslovakia. Under the COCOM Special Procedure for Eastern Europe, export licenses for most technology on the COCOM dual-use list are processed in COCOM under favorable consideration procedures.

As a further step toward liberalization, COCOM agreed in May 1991 to allow virtually all telecommunications equipment and technology, including fiber optics, to be exported to Poland, Hungary, and Czechoslovakia at national discretion. The United States strongly supported this measure designed to address the need for rapid development of advanced telecommunications networks in the three countries.

The United States has now proposed specific criteria for removing Poland, Hungary, and Czechoslovakia from the COCOM-proscribed list. The governments of these countries have indicated a willingness to take the necessary steps, including establishment of export controls and enforcement capabilities on indigenously produced high technology and munitions, to meet these criteria. We believe that if the three countries were to meet the conditions set forth in the U.S. proposal, they would not only qualify for removal from the proscribed list but also become eligible for valuable 5(k) trade benefits as COCOM cooperating countries. This outcome is in the interests of these countries as much as it is in our interests.

We believe that continuing to link liberalization of COCOM controls to concrete actions taken by East European governments to build effective export control systems is the best way to achieve this result. In this regard, a provision in [Senate Bill 320] that we have strongly supported would remove the restriction on permitting special licenses to East European countries constituting a lesser strategic threat. Again, a case where micro-management proves a roadblock.

BALTIC STATES

We seek to proceed with Estonia, Latvia, and Lithuania as we have with the other newly emerging democracies in Eastern Europe. The COCOM Special Procedure, which has proved useful in our effort to liberalize controls for Poland, Hungary, and Czechoslovakia, should also be applied to the Baltic states.

The U.S. position in COCOM is to urge members to coordinate an approach to Baltic governments at the earliest opportunity to discuss steps they could take to attain liberalized treatment and eventual removal from the proscribed destinations list. The United States is prepared to send an export control delegation to engage the Baltics on this issue at the earliest opportunity.

INTRA-COCOM TRADE

The United States and its COCOM partners have agreed to eliminate dual-use export licenses among COCOM members by January 1, 1992, except for a short list of items contained in a common "exclusion list." This is concurrent with the timetable by which all members have committed to implementation of the COCOM common standard. The vast majority of COCOM dual-use items will be exported and re-exported without requirement for an individual license among the COCOM member countries. This "license-free zone" may also be extended to cooperating countries, though this will require a separate consultation within COCOM.

We are currently in the process of preparing for October negotiations on the exclusion list. Assuming that all COCOM member countries have met the common standard and share the same international obligations (e.g., adherence to the Missile Technology Control Regime), the items that are placed on the exclusion list will be expected to fall within certain limited categories; e.g., items that have met the requirements of the COCOM targeted technology procedure.