

CHAPTER VII

The East-West Trade Policy of the United States

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The East-West Trade Policy of the United States

The present state of U.S. trade policy toward Communist nations reflects the ambivalence and dissension which, for the past three decades, have characterized U.S. posture toward the Eastern bloc. Much of the basic structure of present programs was designed at the height of the cold war, when suspicions about the capabilities and intentions of the Communist world ran very deep. The early legislation was intended to impose a virtual trade embargo on these countries. Since that time, however, three major changes have occurred: **1) the United States has lost much of its leverage with its Western trading partners and is now unable to impose a unified trading posture within the Western bloc; 2) it is no longer possible to treat Communist nations as a monolithic bloc; and 3) there has been an overall improvement of relations with the Eastern world. Together, these developments have led to a series of alterations in the basic policy of the United States, beginning with the Export Administration Act of 1969. This policy, however, is implemented through an administrative structure which was fashioned some 30 years ago. The product of years of incremental modification, this system embraces a cumbersome and sometimes confusing set of procedures that reflect diverse and frequently conflicting interests.**

U.S. policy that has a direct impact on trade with the East can be divided into three categories:

- 1. export-licensing controls that govern the export of products or technologies appearing on a list of controlled commodities, and nuclear equipment and nuclear fuels;**
- 2. controls over export and import facilities that regulate the use of credits, loan guarantees, or other incentives for trade with certain categories of nations; and**
- 3. control over tariffs that allows the United States to levy higher rates of duties on imports from countries to whom "most-favored-nation" (MFN) status has not been granted.**

Apart from these measures, there is a range of possible legislation which if adopted could facilitate trade with the Communist world. This includes tax, patent, and antitrust law. There appears to have been little interest in Congress in reformulating U.S. tax, patent, and antitrust policy in ways that might expedite East-West transactions. These issues are touched on elsewhere in this report (see chapters II and III).

EXPORT-LICENSING CONTROLS

LAWS AND AMENDMENTS

The Export Control Act of 1949

The decision to exert strict peacetime controls over U.S. exports to certain countries in the name of national security marked the advent of the modern era of U.S. foreign and national security policy. Export controls as such were no innovation. The Trading With the Enemy Act of 1917, for instance, had granted the President power to impose such controls in time of war or, with the consent of Congress, national emergency. But until the end of World War II and the beginning of the cold war, the idea of continuing national security controls over trade on a regular peacetime basis was unprecedented. Such a notion was premised on the thesis that trade and other economic transactions constituted a "weapon" of considerable potential impact; and that technology was an increasingly important determinant of national power. The development of nuclear weapons provided a potent example of the military significance of technology.

The Export Control Act emphasized the danger to U.S. national security of the unrestricted export of materials without regard to their potential military significance and declared it to be the policy of the United States to "exercise the necessary vigilance" over exports to ensure this security. Its purpose was to deny militarily useful exports to the Soviet Union and its allies. The effect of the Export Control Act was to make exporting a privilege and not a right, and it signaled a policy in which national security considerations took precedence over the economic advantages of foreign trade.

The Act was broadly worded. It empowered the President to prohibit or curtail the export of "any articles, materials, or supplies, including technical data, except under such rules and regulations as he shall prescribe," (sec. 3(a)). Any materials or technology could come under the purview of the Act, so long as the President determined

that their export would contribute to the military potential of any country threatening the national security of the United States. Thus, the language of the Act was clearly consistent with the control of items with only indirect military utility. The President was authorized to delegate the power to determine which articles to control to the appropriate executive departments and Federal agencies concerned with the domestic and foreign policy aspects of trade.

Theoretically, the Export Control Act extended equally to all countries. As it was administered, however, licenses were usually easily obtainable for exports to Western nations and, from the start, Communist destinations were singled out for the proscription of exports. The early list of controlled commodities was long and comprehensive and the Act was rigidly enough interpreted that items of economic, as well as military significance, came under its purview.¹ Responsibility for the administration of export controls was lodged in the Office of Export Control of the Department of Commerce, which had already operated similar controls to ensure the availability of supplies during World War II. These controls came to extend to three categories of items: exports of commodities and technical data; reexports of U.S.-originated commodities and technical data from one foreign country to another; and U.S.-originated parts and components used in a foreign country to manufacture a foreign end product for export. Despite the basic changes in policy over the next 30 years (see below), the apparatus that grew to administer these controls has survived nearly intact to the present.

¹U.S. House of Representatives, *Investigation and Study of the Administration Operation and Enforcement of the Export Control Act of 1949, and Related Acts*, 87th Cong., 1st sess., October and December 1961. See also R. J. Carrick, *East-West Technology Transfer in Perspective*, Policy Papers in International Affairs (Berkeley, Calif.: University of California, 1978), p. 25.

The Mutual Defense Assistance Control Act of 1951

The Export Control Act represented the unilateral response of the United States to the Communist threat that confronted the free world in the aftermath of World War II. It was clear, however, that if a policy of virtual trade embargo was to succeed for long the cooperation of America's allies was vital. The need for the United States to solicit this cooperation had become apparent at least as early as 1947 when Congress discussed the use of U.S. foreign aid as a lever to ensure allied accord in limiting exports to the Soviet bloc. In both the Economic Cooperation Act and Foreign Assistance Act of 1948, aid was tied to trade. In the former, the prospect of U.S. aid was used to encourage cooperation; the latter Act made the Marshall plan hostage to restraint in exports to the East. These were not popular policies in Japan or in Western Europe, which not only had different perceptions of the nature of the Communist threat, but which also had relied much more extensively than the United States on trade with Eastern Europe.

The United States first attempted to enforce a united Allied approach to trade with the Communist bloc in October 1951, with the passage of the Mutual Defense Assistance Control Act or Battle Act (Public Law 87-195). The Battle Act had a dual thrust. First, it reaffirmed the objectives of the Export Control Act by clearly stating a policy in which trade was to be used as a weapon against the Soviet Union and its satellites. This is apparent in title II, which declared it to be U.S. policy to regulate the export of commodities other than arms, ammunition, implements of war, etc, "to oppose and offset by nonmilitary action acts which threaten the security of the United States and the peace of the World" (sec. 201).

Even more important, however, the Battle Act formally announced the intention of the United States to seek multilateral cooperation in the implementation of this policy. It created sanctions through which such cooperation might be enjoined and provided a leg-

islative mandate for active U.S. participation in multilateral organizations designed to realize the embargo. Title I of the Act empowered the President of the United States to terminate all forms of military, economic, and financial assistance to any nation that knowingly permitted the sale of U.S. embargoed goods to a prohibited destination; i.e., to any country "threatening the security of the United States." These embargoed goods included arms, ammunition, implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items of strategic significance used in the production of arms, ammunition, and implements of war (sec. 101). Moreover, Congress stipulated that the United States negotiate with those countries receiving its aid "to undertake a program controlling exports of items (other than arms, etc.) . . . which should be controlled to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination" (sec. 202).

Allied response to the Battle Act was never enthusiastic. As a 1969 House Banking Committee report noted,

From the outset, few West European or Japanese statesmen or businessmen shared the underlying assumption, or for that matter, the ultimate objective of the embargo. Only under the most intense pressure and coercion did Europe and Japan accede to this restrictive policy A chain of legislation followed stipulating that nations receiving U.S. aid had to conform to rules laid down by the United States concerning exports to Communist countries. The threats of these laws to cut off American aid became the main bargaining weapon with which Western European governments were brought to cooperate in the embargo policy.

Allied differences with the United States rested both on policy and economic interests. Europeans simply could not accept the view that denying trade would put an end to communism or even curtail the Communist countries' development. In more pragmatic terms, trade with Eastern Europe was a

matter of no small consequence to our West European partners ...²

At this time, however, U.S. economic and military aid far outweighed such trade in economic importance to Western Europe. Thus, although export controls there and in Japan would never be as severe as those in the United States, America's allies did evince some willingness to join in a coordinated trade policy. This can be seen in the founding in 1950 of the Coordinating Committee for Multilateral Export Controls, or CoCom. CoCom, which remains a functioning body today, is an informal multilateral organization made up of the United States and its principal allies. It attempts to coordinate the national export controls of its members into a unified policy that limits strategic trade with the Communist bloc. The history and operations of CoCom are discussed in chapter VIII.

The 1960's – The Beginnings of Moderation

By the early 1960's, pressure from Europe and from some parts of the U.S. business community led to a major reevaluation of U.S. export policy. Discussion in the United States over the shape and future of export controls began to emphasize a search for a proper balance between the economic benefits of expanded trade with the East and the threat to U.S. national security posed by this trade. The history of export controls since the 1960's has been a gradual movement from an exclusive emphasis on the security aspects of trade toward relaxation of controls. There was, however, no major change in policy during the 1960's.

President Kennedy, for example, in his January 30, 1961 State of the Union address, requested greater discretion for using "economic tools . . . to help reestablish historic ties of friendship" between the United States and the Eastern bloc whenever this

was "clearly in the national interest."³ In order to facilitate any resulting trade, Kennedy established by executive order the Export Control Review Board, a cabinet-level body which considered the merit of applications for exports to the Communist world.

Congress, on the other hand, took no initiative to formulate a less restrictive policy. On the contrary, a 1962 amendment to the Export Control Act explicitly broadened the criteria for adding items to the list of controlled commodities by formally including exports of economic as well as military significance under its aegis. The language of the Act was thus altered to read that "unrestricted exports of materials without regard to their military *and economic* significance may adversely affect the national security of the United States." (Emphasis added.) Licenses for any export making a "significant contribution to the military or economic potential" of nations threatening this national security were to be denied. This amendment may not have substantially affected the number and kinds of commodities under control; criteria for inclusion on the list were already broadly interpreted. But the spirit of the amendment implies the declaration of outright economic warfare on the Communist world.

In an attempt perhaps to ameliorate the effect of this declaration, President Johnson in 1965 created a Special Committee on U.S. Trade Relations with East European countries and the Soviet Union. Its task was to explore "all aspects of expanding trade" in support of the President's policy of "building bridges" between the United States and the countries of Eastern Europe and the U.S.S.R.,⁴ a policy which the President reaffirmed in a State of the Union address in which he announced that the Government was "now exploring ways to increase peaceful trade with the countries of Eastern Europe and the Soviet Union."⁵ Immediate

*Hearings on H.R. 4293 to extend and amend the Export Control Act of 1949, Committee on Banking and Currency, 1969, p. 4.

³Department of State, *The Battle Act in New Times*, 15th Report to Congress, p. 5.

⁴Department of State, *The Battle Act Report*, 18th Report to Congress, p. 49.

⁵Ibid.

increases in such trade were not forthcoming, however. The members of the Special Committee—labor, business, and financial leaders—were generally “hardliners” on East-West relations and the committee’s recommendations did little to encourage expansion. Although the committee recommended that the President be given discretionary authority to grant or withdraw MFN tariff treatment to and from individual Communist countries when he determined this to be in the national interest, it also felt that trade with Communist countries should neither be subsidized nor receive artificial encouragement.⁶ No basic alterations were proposed to the system of export controls, but it was suggested that the role of the Department of Defense (DOD) be expanded and that it, rather than the Department of Commerce, become the primary agency responsible for identifying strategic goods.

The Export Administration Act of 1969

By the time of the first Nixon Administration, however, the policy of “economic warfare” had come under increasing attack. The economic leverage on which the Battle Act relied had been greatly diminished by the rapid reconstruction of the Japanese and West European economies and the consequent reduction of their need for U.S. aid. The Battle Act, in fact, had never been invoked to enforce sanctions. This by no means indicated that the export controls of all nations receiving U.S. aid were as stringent as those of the United States, or that America’s allies were willing to pursue policies of economic embargo. Often, the executive used its waiver authority under the Battle Act to countenance European exports to the East that otherwise would have violated the law. During the mid-1950’s Western European exports to the Warsaw Pact nations increased while the amount of American aid to Western Europe decreased (see chapter VIII). Furthermore, American manufacturers had begun to complain that over-

ly restrictive legislation placed them at a competitive disadvantage with Japan and the countries of Western Europe, whose trade with the Soviet Union, the People’s Republic of China (PRC), and Eastern Europe was expanding.

Congress was responsive to these pressures. In the face of the national weariness with the cold war and changing perceptions of superpower relations, a burgeoning balance of payments deficit, and recognition of the growing commercial value of an East-West trade in which the United States was not participating, the initiative to liberalize export controls began to come from Congress. This resulted in the passage of the Export Administration Act of 1969 (Public Law 91-184). This Act symbolized the attempt to achieve a new emphasis for export controls—away from a restrictive and strategic embargo toward a careful expansion of exports.

This is not to say that the Export Administration Act had the wholehearted support of a unanimous Congress. On the contrary, the controversies that surrounded its passage are significant, for the disagreements that surfaced in 1969 over the future of export controls have yet to be resolved. They reflect differing perceptions of the nature of the threat to the United States posed by the Soviet Union and of the ways in which this threat should be faced.

Extension of the Export Control Act in the House came under the jurisdiction of the Committee on Banking and Currency, which originally reported out a bill extending the existing 1949 legislation with only minor changes in administration. This was consistent with the position of the Nixon Administration at the time. But a dissent to the majority report of the committee argued for a fundamental change in the law, asserting that the basic premises that underlay the Export Control Act were no longer valid: the Sino-Soviet bloc was no longer monolithic; goods withheld from the Soviet Union by the United States could be obtained elsewhere; and the attempts of the United States to impose unilateral export controls more severe

⁶Ibid., pp. 67-69.

than those of its allies were divisive. According to one Representative, the United States had

... moved into a period in which the Congress should maintain a close, in-depth review of our export control laws with a view to reshaping them in light of political, economic, and technological changes taking place in Western Europe, Japan, and the Communist countries of Eastern Europe At this stage of development, the United States has at least as much to gain as the Communist countries from mutual trade and the barring of this trade today is hurting us more than them Controls on commercial goods continue not only as an irritant to our allies but as a loss in business to U.S. firms The Export Control Act should be amended to include a finding that expanded trade in peaceful goods and technology with all countries with which we have diplomatic or trading relations can further the sound growth and stability of the U.S. economy as well as further our foreign policy objectives.⁷

Another proposed amendment would have introduced the criterion of foreign availability in the disposition of export license applications. The President, it was suggested, should "take into consideration the availability of an export from any nation with which we have a defense treaty commitment in determining whether or not an export license shall be denied or granted to one of our own exporters."⁸

These minority views in the House of Representatives were consonant with the prevailing opinion in the Senate. In its report on the Senate version of the export control legislation, the Senate Committee on Banking and Currency asserted that since 1949, "virtually every circumstance which made the Export Control Act both advisable and feasible has changed." It was no longer possible to "impede the development of Russia by refusing to sell goods to it," for the Soviets could obtain what they desired elsewhere.

The competitive disadvantage suffered by American businessmen and the U.S. balance of payments deficit were added reasons for overhauling the existing legislation. In sum,

The attitude apparent in the language of the Export Control Act is one of open hostility, which is an accurate reflection of the prevailing attitude 20 years ago. The committee believes that it will be helpful in the attempt to reach greater understanding with Russia and nations of Eastern Europe if the legislation which deals with the regulation of exports accurately reflects current attitudes.⁹

The minority view in the Senate, on the other hand, resembled that of the majority in the House. At the heart of the disagreement both within and between the two Houses were the protagonists' assumptions about the nature and future of East-West relations. Some Senators were in favor of maintaining the existing export control legislation with minor administrative changes. They wrote of the proposed Senate revisions:

The proposal which would replace the present Export Control Act is based on the assertion that factors which brought about the enactment of the Export Control Act no longer exist. We cannot agree with such an assertion. It is suggested that we are now living in an era in which the Soviet Union presents a reduced threat to the security of the United States. We find no evidence that such a new era has been ushered in. In fact, we consider the Soviet Union as a much greater threat to the security of the United States than it was when the Export Control Act of 1949 was passed.¹⁰

The views of the majority of the Senate Banking Committee eventually prevailed in Congress and "export control" was replaced by "export administration." The new Act attempted to reconcile an encouragement of trade with the East with the maintenance of national security concerns by declaring it to be the policy of the United States both "to

⁷Representative Thomas Ashley, in U.S. Congress, House Committee on Banking and Currency, *Export Control Act Extension*, report no. 91-524, Sept. 29, 1969, pp. 9-11.

⁸Representative Gary Brown, *ibid.*, pp. 18-19.

⁹U.S. Congress, Senate Committee on Banking and Currency, report no. 91-336, July 24, 1969, pp. 2-3.

¹⁰"Senators Wallace F. Bennett and John G. Tower, *ibid.*, p. 22.

encourage trade with all countries with which we have diplomatic or trading relations," and "to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation . . . detrimental to the national security of the United States" (sec. 3). The Act specifically noted the negative impact of unwarranted regulation of trade on the U.S. balance of payments and the impediment of this regulation to the efforts of businessmen to expand trade. The employment of America's technological resources abroad was no longer to be regarded merely as an instrument of foreign policy and national security; in the Act, trade also became an instrument to "further the sound growth and stability" of the U.S. economy, and Congress' intention to promote trade in peaceful goods was clearly expressed. All language implying that trade restrictions might be used to pursue policies of economic warfare was deleted. Under the Act, therefore, export controls became exceptions limited to three basic purposes: to protect the national security, to protect goods and commodities in short supply, and to further foreign policy aims as determined by the President. The presumption had now shifted in favor of more normal economic relations with the Communist world.

In order to implement this intention, the Secretary of Commerce was authorized to undertake the organizational and procedural changes necessary to revise control regulations and shorten lists of controlled commodities by removing items of purely economic or marginal military use; only goods and technologies that would make a significant military contribution, were in short supply, or would in the view of the President further a foreign policy aim of the United States were subject to control. Exporters were given the right to obtain information on the criteria for export licenses, to learn the reasons for denials or delays in granting licenses, and to present evidence to support their applications in regulatory proceedings. Finally, the administrative agencies responsible for export control were enjoined to con-

sult among themselves and with affected industries for information and advice on the revision of the controlled commodity lists.

The 1972 Amendments: The Equal Export Opportunity Act

The Export Administration Act expired in 1972, at which time it was amended and extended until 1974 by the Equal Export Opportunity Act (Public Law 92-412). Its provisions reflect two problems with the implementation of the 1969 Act—reviews of the unilateral and multilateral commodity control lists, and the proposed consultations among agencies and with affected industries. Although 2½ years had passed since this legislation was enacted, the House Committee on Banking and Currency found that the required reviews and revisions had not been made and that consultations with industry still left much to be desired. According to the committee, this situation stemmed, first, from a shortage of Federal agency manpower and technical expertise regarding the "state of the art" of many products available both in the United States and in Europe. Second, sufficient procedures for consultation with domestic producers who knew the product, the competition, and the "state of the art" had not been developed.¹¹

Although the House report voiced these concerns, the committee recommended extension of the 1969 Act without alteration, rejecting not only amendments addressed to these problems but also one which would have declared it to be "the policy of the United States to use export controls to oppose the denial by any country of the rights of its Jewish and other citizens to free emigration and the free exercise of religion." In this connection, the committee expressed its sympathy in the plight of Soviet Jews, but felt "that the amendment in question might not be the best approach to the resolution of the problem at this time."¹²

¹¹U.S. Congress, House Committee on Banking and Currency, *International Economic Policy Act of 1972*, report no. 92-1260, July 27, 1972, p. 4.

¹²U.S. Congress, House Committee on Banking and Currency, *International Economic Policy Act of 1972*, report no. 92-1260, pt. II, Aug. 3, 1972, p. 2.

The amendments which would eventually be embodied in the Equal Export Opportunity Act ultimately evolved from the report of the Senate Committee on Banking, Housing, and Urban Affairs, which shared the House Committee's concerns over the necessity for review of unilateral and multilateral controls, and over consultation with industry. Of particular interest to the Senate was the possible handicap the Act might pose to American businessmen in competing with other CoCom countries for markets in the East:

At this time the United States controls 495 classifications of goods and technology by multilateral (CoCom) agreement with our Allies. In addition, the United States chooses to retain unilateral controls on 461 classifications of goods and technology. The United States is the only CoCom country which controls the export of a significantly greater number of items than those which the CoCom agree to control multilaterally Items which are available in comparable quality and quantity from foreign sources shall be removed from unilateral controls unless the Secretary gives adequate evidence that such decontrol would threaten the national security.¹³

The committee also found that the establishment of Technical Advisory Committees (TACs) would "enable the Government to utilize more effectively the technical and commercial expertise which only representatives of industry affected by export controls can provide,"¹⁴ and it recommended the creation of such committees.

These proposals encountered the same opposition as had the Export Administration Act 3 years before. Senators Tower and Bennett particularly felt that the Act as it stood was flexible enough for a policy of expanding trade without jeopardizing national security interests. They objected to the establishment of TACs, for instance, on the grounds that the judgments required in export-licens-

ing decisions were governmental responsibilities that industry experts were ill-equipped to make; that TACs would introduce new administrative burdens to the licensing system; that the informal consultation arrangements already adopted by the Department of Commerce were adequate; and finally, that the requirement of consultation with TACs would inhibit the Commerce Department from placing new items under control.

These objections notwithstanding, Congress passed the Equal Export Opportunity Act and gave legislative mandate to the views of the majority Senate report. First, the new Act emphasized the adverse effect on U.S. balance of payments of excessive export controls, particularly those which are more restrictive than those imposed by America's CoCom allies. It directed the Secretary of Commerce to remove, so far as the national security of the United States permitted, unilateral U.S. controls over commodities available ". . . without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States" (sec. 4(b)(2)(B)). This made foreign availability—the existence of significant quantities of comparable goods outside the United States—a formal reason for granting a U.S. export license.

A second provision ensured the use of private sector expertise by requiring the Government to consult with qualified private industry experts on all licensing decisions. To accomplish this, the Secretary of Commerce was directed "upon written request by representatives of a substantial segment of any industry" that produces commodities subject to export controls to appoint TACs consisting of representatives of U.S. industry and Government. The TACs were to be "consulted with respect to questions involving technical matters, worldwide availability, and actual utilization of production and technology and licensing procedures which may affect the level of [unilateral U.S. and CoCom] export controls" (sec. 5(c)(1), 5(c)(2)). Since 1972, the Secretary of Commerce has established eight TACs in the following

¹³U.S. Congress, Senate Committee on Banking, Housing and Urban Affairs, *Equal Export Opportunity Act and the International Economic Policy Act of 1972*, report no. 92-890, June 19, 1972, pp. 2-3.

¹⁴*Ibid.*, p. 4.

fields: semiconductors; semiconductor manufacturing and test equipment; numerically controlled machine tools; telecommunications equipment; computer systems; computer peripherals, components, and related test equipment; and electronic instrumentation.

The Export Administration Act Amendments of 1974¹⁵

Consideration of the Export Administration Act in 1974 occurred in the aftermath of the OPEC oil embargo, economic recession, and serious domestic shortages in several commodities. Although the discussions in both Houses were understandably dominated by the issue of short supply controls, Congress also passed amendments that had an impact on the transfer of technology through national security and foreign policy controls.

In the House Banking and Currency Committee, the central concern arose from the bilateral exchange agreements in science and technology that had been signed after the 1972 U.S.-U.S.S.R. summit. As a result of these agreements and the Joint Commission established under them, many U.S. companies entered into technical cooperation agreements with the Soviet Union, some of which called for the exchange of pure, unembodied technology. Under the existing legislation the Department of Commerce and the other agencies of Government concerned with export control were not informed of the details of these technical cooperation agreements until they led to application for export licenses. This made it difficult for the Government to effectively discharge its export control responsibility. The Subcommittee on International Trade of the House Committee on Banking, therefore, considered an early notification system for technical cooperation agreements. It also investigated charges that technical secrets that would endanger

national security were being exported to the U.S.S.R. through the agreements. Testimony from expert public witnesses, as well as from representatives of the Departments of Defense, State, and Commerce, discounted these charges. And although Government officials testified that new reporting requirements would give them better control of exports to protect national security, no provision on prior notification of technical cooperation agreements appeared in the Senate version of the bill or in the final legislation.

As before, the amendments to the Export Administration Act adopted by the full committee originated in the report of the Senate Committee on Banking, Housing, and Urban Affairs. The Senate discussions of national security controls resurrected the twin concerns of prior Congresses that U.S. businesses not be unduly penalized in the administration of export controls and that the national security not be jeopardized by the transfer of sensitive technologies. On the subject of the administration of licensing provisions, the Senate proposed a new section to the Export Administration Act requiring that applications for export licenses be acted on within 90 days of their submission. If the deadline could not be met, the applicant was to be informed of the reasons for the delay and an estimate given of the time needed for decision. Other amendments required the Secretary of Commerce to report to Congress on the steps taken to expedite the licensing process; the Departments of Commerce, Defense, and State, as well as other appropriate agencies, to be represented on TACs; and disclosure to the House and Senate of information on the reason for export controls already in effect or contemplated.

A final amendment called for review by the Secretary of Defense of all exports to "controlled" countries (i.e., Communist countries). The Military Procurement Authorization Act of 1974 (Public Law 93-365) had already mandated such a review for technologies developed directly or indirectly as a result of R&D funded by DOD. This

¹⁵The material in this and the following section is drawn from Patricia Wertman, "A Brief Overview of the Amending of the Export Administration Act of 1969, With Special Emphasis on National Security and Foreign Policy Controls," Congressional Research Service, Feb. 8, 1979.

oversight was now extended to all license applications. The Secretary was empowered to recommend to the President disapproval of any export if it would significantly increase the military capability of a controlled country. A Presidential decision to override the Secretary of Defense was to be submitted to Congress, which had 30 days in which to overrule the President's decision by majority vote. These provisions were designed "to insure that DOD has an adequate opportunity to consider the military and national security implications of exports to Communist countries and that the Congress has a voice in the decision in the event of White House and DOD disagreement."¹⁶

The Export Administration Act Amendments of 1977

In 1977 there was no serious disagreement between the two Houses on the substance of the proposed amendments to the Export Administration Act. In both the mood was clearly in favor of facilitating the expansion of East-West trade so far as this was consistent with national security. One important area of discussion was the issue of foreign availability. Section 4(b)(2) of the existing legislation stipulated that "goods freely available elsewhere shall not be controlled for export from the United States unless it is demonstrated that the absence of controls would damage the national security." The existing legislation allowed Presidential discretion in imposing national security controls "regardless of the availability" (sec. 4(b)(1)). The House wanted to ensure that the necessity for control was justified, i.e., it wanted to make exemptions from control on the grounds of foreign availability the basic policy of the Act. The Senate agreed, providing in its bill that in the cases where "adequate evidence has been presented to the President demonstrating that the absence of such controls would prove detrimental to the national security of the United States . . . such evidence is to be included in the annual

report required by the act."¹⁷ Moreover, the Senate version required the President to initiate negotiations with other countries to eliminate foreign availability in such instances. Both of the latter requirements were included in the enacted legislation.

In addition, the bills voted out of committee in both Houses sought to alter the ideological classification of countries to which exports should be controlled. Under the existing legislation the Secretary of Defense was directed to review applications for exports to "controlled" countries, i.e., Communist countries as defined in section 620(f) of the Foreign Assistance Act of 1961. '8 Both Houses substituted for "controlled country" the phrase "country to which exports are restricted for national security purposes." According to the Senate, the previous approach was both "straitjacketed" and "inconsistent," little serving the Nation's interest in maintaining flexibility in the scope and application of export control. It was crucial that export control policy reflect the changing complexion of international relations, yet existing legislation foreclosed or diminished new market opportunities in Eastern Europe. At the same time, it ignored the possibility, however remote, of potential threats to the Nation's security from entirely different parts of the world. As the Senate observed, one of the major purposes of the amended legislation was to "promote and encourage a continuing reexamination of export control policies and practices to insure that they reflect changing world conditions and the changing dimensions of national security . . . The bill is intended to diminish the tendency of rigid cold war perceptions of national security to dominate the export control process."¹⁹

¹⁶U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Export Administration Amendments of 1977*, report no. 95-104, Apr. 26, 1977, p. 29.

¹⁷These countries include the Soviet Union, Albania, Bulgaria, Czechoslovakia, Estonia, East Germany, Hungary, Latvia, Lithuania, Poland, Romania, People's Republic of China, Yugoslavia, Tibet, Outer Mongolia, North Korea, North Vietnam, South Vietnam, and Cambodia.

¹⁸Senate report no. 95-104, op. cit., p. 9.

¹⁹U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Export Administration Act Amendments of 1974*, report no. 93-1024, July 22, 1974, p. 9.

The House similarly desired to reduce emphasis on Communist countries as the focus of export controls, recognizing that Communist and non-Communist countries alike might vary in the extent to which they constituted a threat to the national security of the United States. But implicit in this reduction of emphasis on specific countries as the basis for export controls was the need to put greater emphasis on the nature of commodities to be exported.²⁰ What both Houses sought, therefore, was a more flexible approach to export controls that would shift emphasis from the country of destination to the exported commodity. Both bills expressed this in identical language: "In administering export controls for national security purposes, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President may deem appropriate."²¹ The President was to periodically review policy toward individual countries.

The amended Act also limited the grounds on which the Secretary of Defense could recommend against export for national security reasons. Instead of restricting exports of products that "significantly increase the military capability" of a country, it became necessary to show that the exports would "make a significant contribution to the military potential of such country." In another section the original language, "significantly increase the military capability of such country" became "make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country" (sec. 4(h)(1)). The import of these changes was that it was no longer sufficient simply to

show that an export in some way contributed to foreign military capabilities (presumably a very wide range of products and technologies contribute in some way to military uses). The Secretary must now stipulate that the military impact is detrimental to the security of the United States.

The 1977 amendments also embodied several procedural changes in the administration of export controls. Both the House and the Senate were displeased with the persistently slow processing of licenses for export, and both proposed bills reiterated the provision that all export licenses be approved within 90 days unless the applicant was notified in writing that additional time was needed. In addition, the applicant was enabled to respond fully in writing to the questions and considerations raised by the application. In the event of interagency review of a proposed export, the applicant could review the documentation to determine that it accurately described the proposed export. If the export license was denied, the applicant was to be informed of the specific statutory authority for the denial, i.e., national security, foreign policy, or short supply. (The Commerce Department had been denying export licenses on the non-statutory grounds of "national interest.") In addition, the Secretary of Commerce was required to review the export regulations and lists in order to simplify and clarify them. Within 1 year the Secretary of Commerce was to report to Congress any actions to simplify the export rules and regulations.

The 1977 amendments also extended terms of service on TACs from 2 to 4 years, instructed TACs to review multilateral as well as unilateral controls, and the Secretary of Commerce to report to Congress semi-annually on consultations with TACs. But while the Senate bill provided that TACs be informed of the reasons for the failure of the Government to accept their advice, the House bill stated that:

The committee notes that it considered and rejected recommendations by industry that the Government be required to justify

²⁰House report no. 95-190, op. cit., pp. 3-4.

²¹Senate report no. 95-104, op. cit., p. 57; House report no. 95-190, op. cit., p. 32.

directly to the TACs any refusal to accept their advice. The committee views such a requirement as an unwarranted intrusion of the private sector into governmental decisionmaking. The committee bill preserves the requirements that the Government be accountable for its actions, without creating a presumption that the Government is constrained to accept the advice of any single interest group.²⁷

The final legislation incorporated the House version.

The Export Administration Act of 1979

The 1977 amendments extended the Export Administration Act until September 30, 1979. But by September 1978, attempts were already underway in the House of Representatives to produce legislation that would impose conditions restrictive to the growth of East-West trade. The Technology Transfer Ban Act (H.R. 14085), introduced by Representative Dornan on September 14, 1978, asserted that no coherent national policy controlled the transfer of technology to the Communist world; that actions taken by the Soviet Union, including human rights violations and enterprises in Africa, demonstrated that Soviet and American views of detente basically differed and belied the expectation that increased economic interdependence with the West would moderate Soviet military and political objectives; that trade with the West was being utilized by the Communist world to acquire strategic technology; and that current U.S. procedures did not adequately prevent the transfer of critical technology to the Soviet Union, Eastern Europe, and China nor adequately encourage America's allies to do the same. The bill therefore proposed to restrict the export of goods and technology that "could make any contribution to the military or economic potential" of any nation, which would prove detrimental to the national security of the United States.

This language could obviously be interpreted broadly enough to virtually embargo all trade with the Communist world. After the bill died in Committee, its supporters modified it, and in March 1979, the "Export Administration Reform Act of 1979" (H.R. 3216), introduced by Representative Lester Wolff and cosponsored by Representatives Miller, Ichord, Dornan, and 21 others was referred jointly to the House Foreign Affairs and Armed Services Committees. This bill sought to assign a larger role to DOD in export control proceedings by giving the Secretary of Defense the primary responsibility for identifying the types of technologies and goods to be controlled for national security purposes. It furthermore mandated the formulation of a list of critical technologies (see chapter V) and prohibited the export of "any critical technology or critical good to any controlled nation" as well as such exports to any other nation, except under validated license. "National security impact statements" were to be required by Congress in all cases of the President's deciding to overrule or modify classifications of technologies by the Secretary of Defense, or in any cases of licensing decision made on grounds of foreign availability. Congress was given the power to overrule such Presidential determinations by a resolution in either House.

The major alternative to this bill in the House was H.R. 2539, introduced by Representative Jonathan Bingham in March 1979. This bill emphasized the importance of exports to the U.S. national interest, and noted the detrimental effects of the present "uncertain" administration of export controls to the U.S. economy. It declared it to be the policy of the United States to use export controls to further the national security of the United States, but also to encourage trade with all nations with which the United States had diplomatic or trading relations, and to restrict exports only in exceptional circumstances after full consideration of the economic impact of such restrictions. The legislation sought to make the process of export licensing more accountable to the public

²⁷House report no. 95-190, op. cit., p. 16.

and to Congress, and to encourage multilateral cooperation in the use of export controls.

The legislation that was ultimately reported out of Committee, H.R. 4034, most closely resembled the Bingham bill. Under H.R. 4034, the Department of Commerce retained the lead role in the administration of the export control system with the Departments of State and Defense providing principal supportive roles, but the working relationship between the three was formally defined. DOD, whose responsibility lay in the national security aspects of the export-licensing system, would continue to conduct technical evaluations of the military implications and potential military diversion of proposed exports. Its concurrence was formally required in any changes in the commodity control list. The Secretary of Defense was also given authority to appeal directly to the President on any licensing decision inconsistent with national security. The critical technologies approach was encouraged and the Secretary required to report annually on its progress.

The State Department continued to have responsibility for recommending the use of export controls for foreign policy purposes and for representing the United States in CoCom, although authorization for participation in CoCom was transferred from the Battle Act to the Export Administration Act. In addition, the Secretary of State was given the authority to appeal directly to the President on any licensing decision inconsistent with U.S. foreign policy interests.

In the hearings on H.R. 4034, a considerable amount of testimony focused on the inefficiency of the present system in processing export license applications. The bill had provided for a series of "suspense points" that would automatically elevate undecided cases to higher policy levels, although the President was given authority to waive these time limits in important cases for purposes of renegotiating with the seller or foreign customer. The bill also provided for congressional veto over the intended (or expanded) use of export controls for foreign

policy purposes. In addition, a new form of export license, a "qualified general license" (see chapter II) was instituted to expedite the licensing process by allowing exports of certain categories of previously licensed exports, obviating repeated validated license application.

H.R. 4034 explicitly distinguished the criteria and procedures in the use of national security and foreign policy export controls. National security controls were designed to

... prevent the acquisition or delay [the acquisition] by hostile or potentially hostile countries of goods and technology which would significantly enhance their military capabilities to the detriment of U.S. national security .²³

This statement had clear implications for the issues of both foreign availability and of the role of Congress within the licensing process. By their very nature, licensing decisions in the national security arena are highly technical; this tends to preclude major congressional involvement; foreign availability makes U.S. controls ineffective in any case.

The bill was less precise on the use of controls for foreign policy reasons, the purposes of which can range from the human rights policy of another country; to inhibiting another country's capacity to threaten countries friendly to the United States; to associating the U.S. diplomatically with a particular group of countries; to disassociating the United States from the policies of a repressive regime. Because foreign policy controls involve political-as opposed to technical—decisions, congressional involvement was deemed more appropriate. Thus, H.R. 4034 contained a provision for congressional veto on the Presidential use of foreign policy controls.

On the issue of foreign availability, the House report noted that U.S. ability to unilaterally deny goods and technology to the

²³House Committee on Foreign Affairs, *Report on the Export Administration Act Amendments of 1979*, report no. 96-200, May 15, 1979, p. 7.

Eastern bloc has been eroded by an array of factors, including the increased competition in the high-technology marketplace. In acknowledgment of this fact, the bill required the Secretary of Commerce to establish a capability within the Office of Export Administration (OEA) to continuously monitor the issue of foreign availability, utilizing in part the Government-industry TACs and seeking a more unified CoCom response to the foreign availability problem.

The primary legislation considered in the Senate was S. 737, introduced on March 22, 1979, by Senator Adlai Stevenson and referred to the Committee on Banking, Housing, and Urban Affairs.²⁴ The bill was reported out on May 7, 1979, with committee amendments. Under S. 737, a new export control statute—the Export Administration Act of 1979—was to be established, superseding the Export Administration Act of 1969, as amended.

As with the House bill, findings and policy declarations stressed the importance of exports to the U.S. economy. Particular attention was given to the minimization of “uncertainties in export control policy” as a means of encouraging trade with all countries with which the U.S. has diplomatic or trading relations, except in cases where such trade would be against the national interest.

As introduced, S. 737 had referred to the “right to export.” The bill was amended to substitute the word “ability,” the intention being not to denote a constitutional or otherwise legally enforceable right to export free from Government restriction, but rather to reinforce the strong presumption that citizens should be free to engage in international commerce except in instances where regulation is clearly needed to advance important public interests. Thus, the control of exports should be the exception and not the rule.

The bill reaffirmed the notion that export controls administered for national security

²⁴On Apr. 23, 1970, S. 977 was introduced by Senator Proxmire at the request of the Administration. Its provisions offered no major reforms in the administration of export controls.

purposes should give special emphasis to controlling exports of technology (and goods that contribute significantly to transfer of such technology) that could make a significant contribution to the military potential of any country, detrimental to U.S. national security, and also declared that the United States should cooperate with its allies for this purpose. The President was required to annually review unilateral national security controls and to review multilateral export controls maintained for national security purposes every 3 years. High administrative priority was given to the prevention of exports of critical goods and technology, and the Secretaries of Commerce and Defense were enjoined to revise controls to ensure they are focused on and limited to militarily critical goods and technology.

The criteria for using export controls for foreign policy purposes as set forth in S. 737 included the following:

(1) alternative means to further the foreign policy purposes in question; (2) the likelihood that foreign competitors will join the United States in effectively controlling such exports; (3) the probability that such controls will achieve the intended foreign policy purpose; (4) the effect of such controls on United States exports, employment, and production, and on the international reputation of the United States as a supplier of goods and technology; (5) the reaction of other countries to the imposition or enlargement of such export controls by the United States; and (6) the foreign policy consequences of not imposing controls.²⁵

The President was required to reconsider annually export controls maintained for foreign policy reasons and to report the results to Congress. Thus, foreign availability was to be assessed in both the foreign policy and national security cases. The Department of Commerce's OEA would be responsible for assessing foreign availability. Review and revision of export control lists were also required.

²⁵See Senate Committee on Banking, Housing, and Urban Affairs, *Report on the Export Administration Act of 1979*, report no. 96-169, May 15, 1979, pp. 5-6.

Like its counterpart in the House, S. 737 instituted a qualified general license, to be used to permit multiple shipments to a particular consignee or for a specified end use. Similarly, it established a timetable for export license review, placing a 90-day limit on review of a license if referral to other agencies or CoCom was not required, and a 180-day limit where referral was necessary.

Finally, S. 737 contained a subsection that superseded the Battle Act and required the President to initiate negotiations with CoCom members for the purpose of reaching agreement on: 1) publishing the CoCom control list, 2) modification of controls to obtain full acceptance and enforcement by CoCom members, and 3) adoption of more effective enforcement procedures.

Debates in both the House and the Senate on their respective bills underlined the two major themes which, since 1969, have surrounded the passage of and amendments to the Export Administration Act: the threat to U.S. national security posed by the sale of dual-use technologies to the Communist world; and the importance to the U.S. national interest of a positive trade balance and therefore of a healthy export sector. The Act that ultimately emerged, the Export Administration Act of 1979 (Public Law 96-72), closely follows both H.R. 4034 and S. 737 and therefore leans to the latter preoccupation. This Act, which expires on September 30, 1983, is reproduced in its entirety in the appendix to this volume. A selection of its major provisions may, however, be summarized as follows:

- The Act finds that the ability of U.S. citizens to engage in international commerce is a fundamental concern; that exports contribute significantly to the national security and well-being of the United States; and that over-restriction or uncertainty in the exercise of export controls can be detrimental to the interests of the United States. On the other hand, export of goods or technology without regard to whether they make a significant contribution to the military

potential of recipient countries may adversely affect the national security of the United States.

- The Act declares it to be the policy of the United States to minimize uncertainty in export controls and to encourage trade. Export controls are to be utilized only after full consideration of their economic impacts and only to the extent necessary to protect U.S. national security, to further significant foreign policy goals, or to protect the domestic economy in cases of short supply.
- A qualified general license, as proposed in the Senate bill, is established and a detailed procedure for processing export-licensing applications, including deadlines, provisions for multiagency consultation, and applicant notification and consultation is outlined. Qualified general licenses, in lieu of validated licenses, are to be encouraged to the maximum feasible extent.
- The Battle Act is superseded and authorization provided for U.S. participation in CoCom. The President is enjoined to enter into negotiations with other CoCom governments with a view toward reducing the scope of export controls, publishing the CoCom lists and other pertinent documents, and holding periodic high-level meetings on CoCom policy.
- U.S. firms or enterprises (excepting educational institutions) entering into commercial agreements with controlled countries must now report these agreements to the Secretary of Commerce if they cite an intergovernmental technical cooperation agreement and will result in the export of unpublished technical data.
- In cases where reliable evidence shows diversion of dual-use items to military use, the Secretary of Commerce is authorized to deny all further exports to the end user responsible for the diversion until such time as it ceases.
- Foreign availability shall be continuously reviewed by the Secretary of Com-

merce in consultation with other agencies and with the TACs, and an office established to gather information and engage in ongoing monitoring activities.

- Validated licenses may not be required in cases where foreign availability has been demonstrated, except in cases where this provision is waived by the President. In these cases, the Secretary of Commerce must publish the details of the basis and estimated economic impact of the decision.
- The Commodity Control List (CCL) may be indexed, i.e., annual increases in performance levels of items subject to controls identified and items automatically deleted on the basis of these stipulations.
- The President is enjoined to consider alternative actions and the following criteria before curtailing exports for foreign policy purposes:
 - the probability that such controls will achieve the intended foreign policy purpose in light of other factors, such as foreign availability;
 - the reaction of other countries;
 - the likely effect of the controls on the U.S. economy; and
 - the ability of the United States to effectively enforce the controls.

Summary

The present Export Administration Act is the embodiment of a policy of encouraging trade with the Communist world in a manner that nevertheless protects U.S. national security and allows the President flexibility in the use of export controls to further foreign policy aims. The fact that these aims may not always be entirely consistent is reflected in the content of the congressional debates that have surrounded the Act since its passage in 1969, and in the nature of the amendments to it. These amendments have sometimes pulled in different directions—some attempting to facilitate the expansion of trade, others expressing concern at the strategic implications of that trade. The general drift of the legislation has, however,

been toward liberalization of export controls of goods and technologies to the East.

As the nature and quantity of the goods and technologies permitted for export to Communist nations have expanded and the climate of detente has encouraged American businessmen to seek new markets in the East, the system for the administration of export controls has had to contend with growing numbers of cases involving increasing technological variety and complexity. In addition, it has had to balance the sometimes conflicting demands of facilitating trade and protecting national security. The following sections describe the operation of this system and discuss the problems that it has encountered.

THE ADMINISTRATION OF U.S. EXPORT CONTROLS: THE LICENSING SYSTEM

In U.S. law, the freedom to export is a privilege and not a right. All U.S. exporters require permission from the Government to ship their goods. In accordance with the requirements of the Export Administration Act, the licensing system through which this permission is granted is administered by the Department of Commerce, which has jurisdiction over most commodities and unclassified technical data. The only exceptions, which fall under the jurisdiction of other Federal agencies, are munitions exports, which are controlled by the Department of State; nuclear materials by the Nuclear Regulatory Commission; and gold and foreign currency by the Treasury Department. Commerce's authority extends to the reexport of commodities and data to third countries; to the utilization of American technical data overseas; to the use of U.S.-origin parts and components in commodities manufactured abroad and destined to a third country; and to exports of commodities and data by any person subject to the jurisdiction of the United States.

As the orientation and objectives of U.S. trade policy with Communist countries have

shifted since the end of World War II, so too have variations occurred in trade levels and in the number and kinds of items on the list of controlled commodities. But the procedures and institutions of the export control administration system established over 30 years ago persist. This phenomenon was summed up in a recent Government study which noted:

In the aftermath of World War II, in response to problems of the Cold War, *security defined in military terms became the overriding purpose abroad—both in concept and in organizational form. Today, the concept has somewhat changed, but the organizational form mostly remains.* (author's emphasis)"

The Commodity Control List

There are two types of export license—general and validated. A general license permits the export of certain commodities and technical data without the need to submit a formal application or obtain a license document for each transaction. These apply to most commercial transactions, and approximately 90 to 95 percent of all U.S. exports are shipped under their authority. The remaining 5 to 10 percent, sent under validated license, are subjected to a rigorous application process.

Technologies requiring a validated license are specified by the U.S. Department of Commerce in the CCL (see figure 3). The present CCL is the descendant of the lists of controlled commodities that the Secretary of Commerce, with the advice of the Secretaries of State and Defense, was first enjoined to compile under the Export Control Act. Under the terms of this Act and Department of Commerce regulations, the CCL contains those technologies, products, or commodities that fall into the following general categories:

- products and technical data that the U.S. Government determines capable of contributing significantly to the design, manufacture, and utilization of military hardware, or that fall under the CoCom strategic control system; petroleum and other products or commodities in short supply; and
- some devices related to nuclear weapons and explosive devices; certain nuclear power facilities; and crime control and detection equipment, that is controlled for foreign policy reasons.²⁷

Most items on the list are also on the CoCom list of controlled commodities; but at present 38 items are unilaterally controlled by the United States,²⁸ according to the interpretation of Commerce, Defense, and State officials of the general criteria provided in the law. U.S. industry, anxious to expand exports to Communist-bloc countries, is particularly critical of this fact, and as will become apparent below, much of the criticism of the export-licensing system as a whole is directed at the composition of the list itself.

At the present time, the CCL contains some 200 entries, many of which embody high technology. These are grouped in the following 10 categories:

Group	Types of commodities
0	Metalworking machinery
1	Chemical and petroleum equipment
2	Electrical and power-generating equipment
3	General industrial equipment
4	Transportation equipment
5	Electronics and precision instruments
6	Metals, minerals, and their manufacture
7	Chemicals, metalloids, and petroleum products
8	Rubber and rubber products
9	Miscellaneous

²⁷See the testimony of Rauer Meyer, Director of the Office of Export Administration, U.S. Department of Commerce, before the Subcommittee on Domestic and International Scientific Planning, Analysis, and Cooperation, Committee on Science and Technology, U.S. House of Representatives, Oct. 4, 1978.

²⁸See the testimony of Stanley Marcuss, Senior Deputy Assistant Secretary for Industry and Trade, U.S. Department of Commerce, before the Subcommittee on International Economic Policy and Trade, Committee on Foreign Affairs, U.S. House of Representatives, Mar. 7, 1979.

²⁹"Graham T. Allison, "Overview of Findings and Recommendations from Defense and Arms Control Cases, in appendixes: *Commission on the Organization of the Government for the Conduct of Foreign Policy*, June 1975, vol. IV (Washington, D.C.: U.S. Government Printing Office, 1975), p. 21.

Figure 3.—Sample Page of the U.S. Commodity Control List

Commodity Control List—399.1

CCL-1

Export Control Commodity Description	Commodity Number and Description	unit	Precees- ing Code	Validated License Required	GLV \$ Value Limits		
					T	v	Q

GROUP *METAL-WORKING MACHINERY ¹**Forming Machines:**

1072A Presses and specialized controls, accessories, IL. --s II MC II QSTVWYZ II 1,000 II 1,000 II O
and parts therefor, as follows:

- (a) Presses (stabilized equipment using rams) for applying high impact energy work forces through use of explosives or compressed gases including air;
- (b) Presses specially designed or re-designed for the working or forming of metals, alloys, or other materials with a melting point exceeding 3,452° F (1,900° C) ;
- (c) Hydraulic presses, as follows:
 - (1) vertical presses having a total rated force of over 10,000 tons; or
 - (2) horizontal presses having a total rated force of over 5,000 tons;
- (d) Isostatic presses, as follows (isostatic presses are those capable of pressurizing a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions within the cavity upon a workpiece or material) :
 - (1) capable of achieving a maximum working pressure of 20,000 of psi (1,406 kg/cm²) or greater and possessing a chamber cavity with an inside diameter in excess of 16 inches (40.6 cm) ; or
 - (2) capable of achieving a maximum working pressure of 5,000 psi (351 kg/cm²) or greater and having a controlled thermal environment within the closed cavity, *except those possessing a chamber cavity with an inside diameter of less than 5 inches (127 mm) and which are also capable of achieving and maintaining a controlled thermal environment only between + 176°F (+80° C) and —S1°F (—35° C);* and
- (e) Control equipment, accessories, and parts which are specially designed for the above presses.

1075A Spin-forming and flow-forming machines, II-----s II MC II QSTVWYZ II 1,000 II 1,000 II O
double support or three roller types, as follows:

- (a) Horizontal spindle type designed to have and having a drive motor of 80 hp (59kW) or more; or
- (b) Vertical spindle type designed to have and having a drive motor of 50 hp (37kW) or more; and
- (c) Specially designed parts and accessories therefor.

Other Metal- Working Machinery:

1080A Machines and equipment, including special- l{- --.s II MC II QSTVWYZ II 1,000 II 1,000 II O
ized tooling and fixtures, and specially designed
parts and accessories therefor, specially designed for making or measuring gas turbine blades, *including but not limited to* the following:

- (a) Blade belt grinding machines;
- (b) Blade edge radiusing machines;
- (c) Blade aerofoil milling and/or grinding machines;
- (d) Blade blank pre-forming machines;
- (e) Blade rolling machines;
- (f) Blade aerofoil shaping machines, *except metal removing type*;
- (g) Blade root grinding machines;
- (h) Blade aerofoil scribing equipment;
- (i) Blade aerofoil and/or root automatic measuring equipment;
- (j) Precision vacuum investment casting equipment;
- (k) Small home drilling equipment for producing holes less than 0.030 inch (0.76mm) in diameter; and
- (1) Directional solidification casting equipment.

¹ See § 370.10 for commodities which require export authorization from other U.S. Government Departments and Agencies.
J Report machines in "number."

Each entry on the CCL contains a general description of the technical commodity, the countries for which validated licenses are required, and in some cases, value limitations on exports which set restrictions on the number or dollar value of items that may be exported.

For export control purposes, all foreign countries except Canada, which is subject to minimal restrictions, are divided into seven separate country groups, designated by alphabetic symbols (see table 17). Most Communist-bloc countries are included in a single group, but Poland and Romaina both have MFN status and are treated separately. Communist countries to which most trade is embargoed (North Korea, Vietnam, Cambodia, and Cuba) also form a distinct group.

The need for an exporter to apply for a validated license therefore turns both on the commodity or data to be exported and the country of destination. Exporters may have to consult the CCL for guidance on each separate transaction. Validated licenses are required for most high-technology exports to Communist destinations and for strategic materials and products to all destinations except Canada. The Commerce Department issues and updates a series of regulations that lay out these requirements.²⁹

*U.S. Department of Commerce, *Export Administration Regulations*, June 1, 1978. This is a looseleaf publication that includes Export Administration regulations and supplementary Export Administration bulletins.

Table 17.— Export Administration System: Country Grouping

Country Group O	French West Indies	Country Group V
Romania	Haiti (including Gonave and Tortuga Islands)	All countries not included in any other country group (except Canada)
Country Group S	Jamaica	
Southern Rhodesia	Leeward and Windward Islands	Country Group W
Country Group T	Netherlands Antilles	Poland
	Trinidad and Tobago	
North America:	South America:	Country Group Y
Greenland	Northern Area:	Albania
Miquelon and St. Pierre Islands	Colombia	Bulgaria
Southern Area:	French Guiana (including Inini)	Czechoslovakia
Mexico (including Cozumel and Rivila Giledo Islands)	Guyana	Estonia
Central America:	Surinam	German Democratic Republic (including East Berlin)
Belize	Venezuela	Hungary
Costa Rica	Western Area:	Laos
El Salvador	Bolivia	Latvia
Guatemala	Chile	Lithuania
Honduras (including Bahia and Swan Islands)	Ecuador (including the Galapagos Islands)	Outer Mongolia
Nicaragua	Peru	People's Republic of China (excluding Republic of China)
Panama		Union of Soviet Socialist Republics
Bermuda and Caribbean Area:	Eastern Area:	Country Group Z
Bahamas	Argentina	North Korea
Barbados	Brazil	Vietnam
Bermuda	Falkland islands (Islas Malvinas)	Cambodia
Dominican Republic	Paraguay	Cuba
	Uruguay	

NOTE Canada is not included in any country group

SOURCE U S Department of Commerce, *Export Administration Regulations*, supplement no 1, pt 370, June 1, 1978

The Executive Agencies in the Licensing Procedure

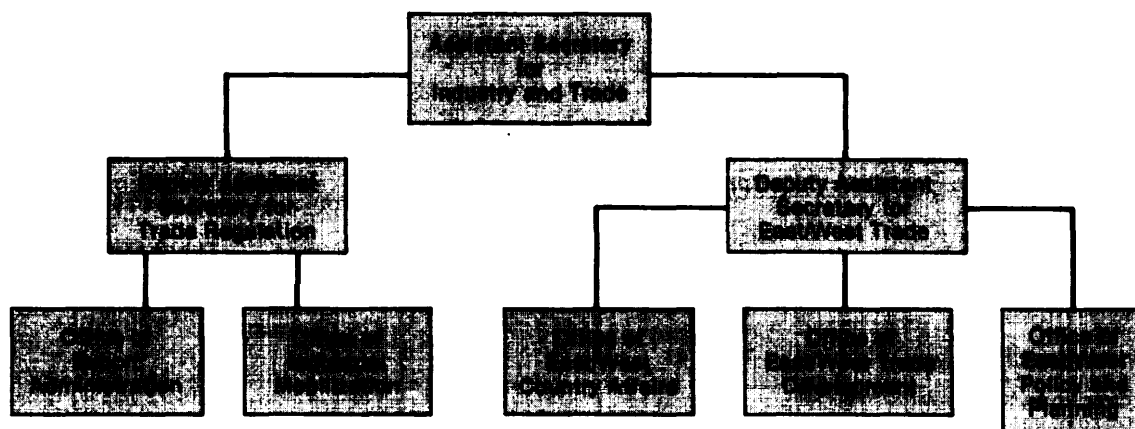
The Department of Commerce.—Exporters seeking validated licenses must enter a system primarily administered by the Department of Commerce, which works in cooperation with the Departments of State, Energy, and Defense. Its export control responsibilities give Commerce a somewhat contradictory mandate. On one hand, it is charged with the general promotion and encouragement of U.S. exports; on the other, it is required to administer an elaborate system designed to limit certain of these transactions.

The Department has attempted to reconcile these activities by keeping export restrictions to the minimum necessary to fulfill the objectives of the Export Administration Act, thus causing the least negative impact on U.S. trade. Jurisdictional ambiguities and conflict cannot be entirely avoided. Reorganizations in the past few years have been designed to minimize their effects, and recent discussions within the Administration have once again raised the prospect of further reorganization. Offices responsible for the promotion of East-West trade and those charged with the control of such trade were once housed together in the Department's Bureau of East-West Trade, which was established in 1972 to encourage

and facilitate the trade resulting from the U.S./U.S.S.R. trade agreement. The two functions have since been separated. In 1977, a new Industry and Trade Administration was established. It contains two parallel bureaus with functions relevant to East-West trade and its administration: the Bureau of Trade Regulation, which houses OEA and is responsible for administering export controls; and the Bureau of East-West Trade, which retains trade promotion operations. Figure 4 illustrates this organization.

The Department of State.—The Department of State is primarily concerned with the foreign policy, as opposed to the economic and commercial, implications of export control. Its involvement in export control is threefold. First, State advises the Commerce Department on any foreign policy considerations arising from U.S. export license applications. These foreign policy issues may cover matters as diverse as U.S. national security, virtual embargoes on trade with certain Communist countries, U.N. sanctions on trade with Rhodesia, selected restraints on trade with South Africa, the former embargo on trade with Uganda, and controls for human rights, antiterrorism, and regional stability purposes. State is also involved with nuclear nonproliferation cases and the export of hazardous substances. Sec-

Figure 4.—Industry and Trade Administration, U.S. Department of Commerce



SOURCE Office of Technology Assessment

end, the State Department assumes the leading role in U.S. efforts to implement multi-lateral export controls. In this connection, it represents the United States in all CoCom sessions, including CoCom list reviews and exception cases (see chapter VIII). Third, under the Battle Act the State Department has primary responsibility for the development of a list of items completely embargoed to the Communist world. This list, the Mutual Defense Assistance Control List, includes arms, ammunition, implements of war, atomic energy materials, and certain dual-use items.

All of these activities are handled in the Office of East-West Trade in the Bureau of Economic and Business Affairs. The Office's seven officers, two of whom reside in Paris where CoCom is headquartered, all have full-time responsibility for export controls.

The Departments of Energy and Defense.

—The Departments of Energy and Defense play important roles in the system by providing technical expertise and advice on national security matters. The Department of Energy advises on energy-related exports, such as oil-extractive equipment, and reviews all cases involving nuclear materials.

As would be expected, DOD has been heavily involved with the export control system from the outset. In 1962, the Assistant Secretary of Defense for International Security Affairs was charged with the responsibility for DOD's role in the implementation of trade control policies, and subsequent amendments to the Export Administration Act have further delineated the role of the Secretary of Defense within the control system (see above). DOD's task is to evaluate the military and strategic potential of items under review. This entails a complex consulting system within the Department that may involve the technical and intelligence arms of the military services as well as a number of other offices and agencies.

Until recently, responsibility for export licensing within DOD was diffused. Although the processing of applications came

under the jurisdiction of the International Security Affairs Branch, policy functions, including obtaining technical evaluations, were carried out in the Office of the Deputy Under Secretary of Defense for Research and Advanced Technology. Both functions have now been centralized in the Office of the Deputy Under Secretary for International Programs and Technology. The reorganization is intended to streamline the Department's role in processing export license applications.

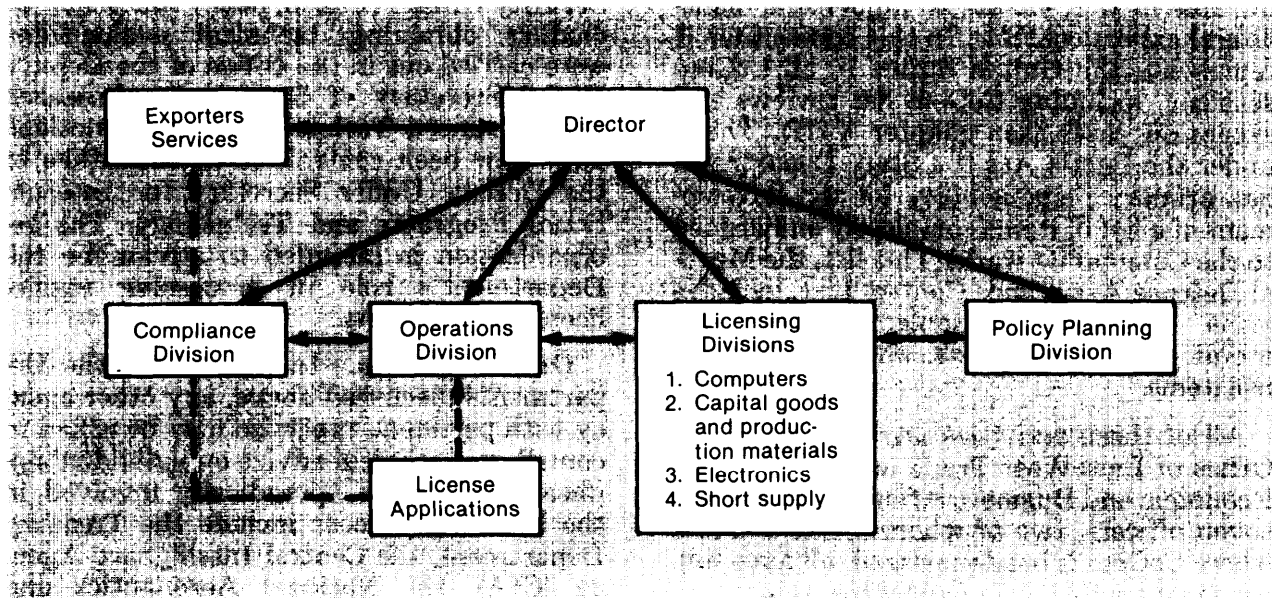
Other Agencies.—In addition to the Departments discussed above, any other agency with pertinent expertise may be asked to contribute technical advice on individual applications. Bodies sporadically involved in the licensing process include the Treasury Department, the Central Intelligence Agency (CIA), the National Aeronautics and Space Administration, and the National Bureau of Standards.

The Mechanics of the Validated Licensing Procedures

Entry to the export control licensing system is by way of OEA, which receives all export license applications. Figure 5 delineates its present administrative structure. A license application requires detailed technical information on the product or process to be exported, the quantity to be exported, unit selling price, and total sales receipts. Details concerning the foreign buyer, including intermediate and final consignees, and on the end use of the product must also be provided (see figure 6). In theory, the prospective exporter may obtain an advisory opinion on the likely disposition of the application, and thus avoid costly pre-sale promotion. In some instances, however, this process has been as time-consuming as the formal application itself. Furthermore, the advisory opinion is delivered orally and is not binding.

An application is initially received in the Operations Division where it is logged in, entered into a computerized information system, and briefly reviewed against a list of known or suspected violators of export con-

Figure 5.—Office of Export Administration, U.S. Department of Commerce



SOURCE. Comptroller General, *Export Controls. Need to Clarify Policy and Simplify Administration*, Report to the Congress, March 1, 1979, p. 34

trol laws. It then moves to one of the three Licensing Divisions—Computers, Electronics, or Capital Goods and Production Materials. At this point the application is given a careful technical review by OEA staff. This review focuses on the following items: the function and use of the equipment; its level of sophistication; normal military/civilian use in the United States and the country of destination; foreign availability of comparable equipment in terms of both quantity and quality; suitability of the equipment for the proposed end use; the known activities of the end user; likelihood of diversion; and the economic and commercial implications of the proposed export. In investigating these points, the staff may draw on outside resources, including TACs, the Nation's intelligence agencies, and the Export Information Service of the Department of Commerce. Specifically, they attempt to answer the following questions:

- Is the item designed or intended for military purposes? Does it have significant military use?

- If the item has both military and civilian uses, will the transaction involve only the latter?
- Does the item contain advanced or unique technology of significance in terms of the export control program's objectives?
- Is there a shortage of the item in the area of destination that affects military potential?
- For strategically significant nonmilitary items, can non-U.S. sources supply a comparable item or an adequate substitute? What is the normal use in the country of destination?

After this information has been gathered and evaluated, the request moves to the Policy Planning Division where it is reviewed in terms of general OEA policy. At this stage the Division must determine whether it has sufficient data on which to base a decision and sufficient authority to unilaterally make that decision, or whether consultation with other Federal agencies is required. If the latter, it must also determine what kind of consultation is called for.

Figure 6.—Export License Application

FORM DIB-622P (REV 3-75) (FORMERLY FC-419) Form Approved OMB No. 41-R-0735		U.S. DEPARTMENT OF COMMERCE DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION BUREAU OF EAST WEST TRADE OFFICE OF EXPORT ADMINISTRATION WASHINGTON D C 20230		DATE RECEIVED <i>(Leave Blank)</i>	CASE NO <i>(Leave Blank)</i>
CONFIDENTIAL - Information furnished herewith is deemed confidential and will not be published or disclosed except in accordance with provision of Section 7 (c) of the Export Administration Act of 1969, as amended.		APPLICATION FOR EXPORT LICENSE			
DATE OF APPLICATION		APPLICANT'S TELEPHONE NO.			

1 APPLICANT'S NAME		2 PURCHASER IN FOREIGN COUNTRY <i>(If same as ultimate consignee, state "SAME AS ITEM 3", if same as intermediate consignee, state "SAME AS ITEM 4.")</i>	
STREET ADDRESS		NAME	
CITY, STATE, ZIP CODE		STREET ADDRESS	
		CITY AND COUNTRY	
3 ULTIMATE CONSIGNEE IN FOREIGN COUNTRY		4. INTERMEDIATE CONSIGNEE IN FOREIGN COUNTRY <i>(If none, state "NONE", if unknown, state "UNKNOWN.")</i>	
NAME		NAME	
STREET ADDRESS		STREET ADDRESS	
CITY AND COUNTRY		CITY AND COUNTRY	
5 COUNTRY OF ULTIMATE DESTINATION		6 APPLICANT'S REFERENCE NUMBER	

7 (a) QUANTITY TO BE SHIPPED	(b) COMMODITY DESCRIPTION AS GIVEN IN COMMODITY CONTROL LIST (include characteristics such as basic ingredients, composition, type, size, gauge, grade, horsepower, etc.)	(c) EXPORT CONTROL COMMODITY NUMBER AND PROCESSING NUMBER	(d) TOTAL SELLING PRICE AND POINT OF DELIVERY <i>(Indicate b', o, B, b', A, S, C.I.F., etc.)</i>
			UNIT PRICE TOTAL PRICE
			TOTAL

8 FILL IN IF PERSON OTHER THAN APPLICANT IS AUTHORIZED TO RECEIVE LICENSE	9. IF APPLICANT IS NOT THE PRODUCER OF COMMODITY TO BE EXPORTED. GIVE NAME AND ADDRESS OF SUPPLIER. <i>(If unknown, state "UNKNOWN.")</i>
NAME	
STREET ADDRESS	
CITY, STATE, ZIP CODE	
10 END USE OF COMMODITIES COVERED BY THIS APPLICATION DESCRIBE FULLY	
11 IF APPLICANT IS NOT EXPORTING FOR HIS OWN ACCOUNT, GIVE NAME AND ADDRESS OF FOREIGN PRINCIPAL AND EXPLAIN FULLY	

12 ADDITIONAL INFORMATION *(Attach separate sheet if more space is needed.)*

13 APPLICANT'S CERTIFICATION. — The "undersigned applicant hereby makes application for a license to export and certifies as follows: That all statements herein, and in any documents or attachments submitted in support hereof, are true and correct to the best of his knowledge and belief; and that (a) he has read the instructions on the fifth copy of this application and is familiar with the U.S. Department of Commerce Export Administration Regulations; (b) this application conforms to such instructions and regulations; (c) unless Item 14 is completed, he negotiated with and secured the export order directly from the purchaser or ultimate consignee or through his or their agents abroad; (d) all Parties to the export transaction, the exact commodities and quantities, or the exact technical data, and all other terms of the order and other facts of the export transaction are fully and accurately reflected herein; (e) documents and records evidencing the order and other facts of the export transaction to which this application relates will be retained by him for 2 years from whichever is later, the time of (i) the export from the United States, or (ii) any known reexport, transshipment, or diversion, or (iii) any other termination of the transaction, whether formally in writing or by any other means, and made available to the Department of Commerce upon demand; (f) any material or substantive changes in the terms of the order or other facts of the export transaction as reflected in this application or any certification made in connection therewith, whether the application is still under consideration or after a license has been granted, will be reported promptly by him to the Department of Commerce; and (g) if the license is granted, he will be strictly accountable for its use in accordance with the Department of Commerce Export Administration Regulations and all terms and conditions specified on the face of the license.

Type or Print	SIGN HERE	Type or Print
(Applicant (Same as Item 1))	IN INK	(Name and title of person whose signature appears on the line to the left)
(Signature of person authorized to execute this application.)		

Type or Print	SIGN HERE	Type or Print
(Order Party)	IN INK	(Name and title of person whose signature appears on the line to the left)
(Signature of person authorized to sign for the Order Party)		

14 ORDER PARTY'S CERTIFICATION (see § 372.6 (c) of the *Export Administration Regulations*) - The undersigned order party certifies to the truth and correctness of Item 13 (d) above, and that he has no information concerning the export transaction that is inconsistent with, or undisclosed by the application and agrees to comply with Items 13 (e) and 13 (f) above.

This license application and any license issued pursuant thereto are expressly subject to all rules and regulations of the Department of Commerce. Making any false statement or concealing any material fact in connection with this application or altering in any way the validated license issued, is punishable by imprisonment or fine, or both, and by denial of export privileges under the Export Administration Act of 1969, as amended, and any other Federal statutes.

FOR OFFICIAL USE ONLY					
ACTION TAKEN	VALIDITY PERIOD	AUTHORITY	RATING	DV	TECH DATA
<input type="checkbox"/> APPROVED	MONTHS				
<input type="checkbox"/> REJECTED			END USE RE-EXPORT	SUPPORT DOCUMENT	TYPE OF LICENSE
DOCUMENTATION			1		
				(Licensing officer)	(No.) (Date)
				(Review officer)	(Date)

NOTE: Submit the first four copies of this application, Form DIB-622P (with top stub attached), to the Office of Export Administration, Room 16 17M, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230, retaining the quintuplicate copy of the form for your files. Remove the long carbon sheet from in front of the quintuplicate copy. Do not remove any other carbon sheets. See Special Instructions on back of quintuplicate. Reproduction of this form is permissible, providing that content, format, size, and color of paper and ink are the same.

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In theory, all applications for validated licenses should be subjected to a formal interagency review process; in practice, the Commerce Department often takes unilateral licensing decisions, with the consent of the other agencies involved in the system, i.e., the Departments of State, Defense, and Energy. This is a practical necessity: unless the vast majority of cases were decided without prolonged multiagency review, the system would be overwhelmed by the number of applications to be processed. The requirement for multiagency consideration is met, therefore, in any one of three ways, each involving progressively more active and formal interagency consultation. These are first, a unilateral decision by OEA based on prior delegations of authority from the other agencies; second, informal consultation which is usually bilateral; or third, full-scale formal multiagency review.

OEA decides which of these routes to take on the basis of internal guidelines called "policy determinations." A policy determination establishes procedures governing the disposition of particular categories or types of export applications. Policy determinations specify limitations or conditions respecting commodity, destination, and use or end uses that determine how an application decision must be resolved. In instances, therefore, where a new license application falls within the technical specifications, end use, and destination criteria previously established as acceptable for export, OEA may make a unilateral decision without the necessity of actual interagency consultation. The performance characteristics of the product or its destination will therefore indicate when OEA should discuss a case with another agency, even if it itself feels confident that the export can proceed. The majority of cases are decided by OEA alone. These usually involve exports to free world destinations. Most exports to Communist countries require some explicit consultation.

There are several kinds of informal consultation, but no rigid or explicit criteria govern the choice of one over another. In some instances, a single phone call to another agen-

cy (or, if the problem is the application itself, to the prospective exporter) may be sufficient. Alternatively, the Policy Planning Division may send a memorandum and supporting documents, which summarize the case on the basis of the technical evaluation conducted in the Licensing Division, to another agency, requesting its opinion or its concurrence in Commerce's recommendation. OEA may also send "waiver memoranda." These outline the case and request the acquiescence of each consulting agency to Commerce's decision on an application. Usually, this concurrence is forthcoming. For example, of the approximately 12,000 memoranda sent through the first 6 months of 1976, DOD recommended denial of only 9 applications that Commerce had favored. Defense concurred in 76 Commerce recommendations for denial and in 6 cases for partial approval.³⁰

In some cases, however, the mechanisms of day-to-day contacts among staff-level personnel, bilateral agreements, and waiver memoranda cannot resolve a case, and more extensive interagency consultations are required. The applications subjected to this procedure nearly always involve dual-use items—nominally civilian products or processes that nevertheless have military applications which could enhance the strategic capabilities of a potential adversary. The product lines most frequently involved here include numerically controlled machine tools, semiconductor processing equipment, high-strength materials, high-temperature polymers, nuclear-related materials, computers, electronic testing and measuring equipment, magnetic recorders, and integrated circuits.

The formal interagency review process begins with the operating Committee (OC). This is a senior staff-level group which meets weekly and is chaired by an executive director, a Commerce employee in OEA. Every effort is made to resolve interagency differences informally before a case is brought be-

³⁰Report of the President's Task Force to Improve Export Administration Licensing Procedures (draft). Sept. 22, 1976, p. 23.

fore OC. Referral there requires careful and often protracted consideration of the strategic significance of the proposed transaction, the foreign availability of comparable commodities or data, and the licensing history of past applications for like or similar commodities or data.³¹ All interagency decisions must be unanimous.

Obviously, the most complex and controversial cases reach this stage. It is these cases that cause delays in the system. At the weekly meetings, an average of 5 cases are discussed, although the agenda may contain up to 30 cases. One of the principal barriers to the consideration of more cases is the frequent inability of member departments of OC to arrive with prepared agency positions on applications. This is due in many instances to the complexity of the procedures for receiving technical advisory guidance within these departments. Each consulting agency in the system may decide whether to refer an application to any of a number of its own offices for technical evaluation. Thus, licensing responsibilities are not only diffused among executive branch agencies and departments; they are also diffused within departments. This point is further discussed below in the context of criticisms of the present system.

It is difficult to obtain an accurate count of the number of cases handled by OC. Estimates from senior personnel³² have ranged from 250 to 300 cases for 1977 and 1978, but these figures are at variance with information supplied for the public record by other Department of Commerce officials. Congress has heard testimony, for example, that during 1977 "608 transactions were submitted to the Operating Committee for formal re-

view."³³ For Communist-bloc countries only, other public testimony indicated that "374 [cases] required full-blown multiagency review within the Operating Committee," in 1978.³⁴ One reason for these discrepancies may be the fact that the lower numbers refer to categories on the OC agenda, where groups of similar cases may be handled together. Be that as it may, it is clear that only a small percentage of validated license applications actually reach the OC level. Furthermore, very few cases proceed beyond this level.

Cases that cannot be resolved at the OC level theoretically move through a series of committees involving progressively higher level decisionmakers (see figure 7). This formal structure is rarely utilized, however. Until recently, the sub-Advisory Committee on Export Policy (sub-ACEP), which is made up of Department Deputy Assistant Secretaries, was inactive; and even when it was operative, it met infrequently. For example, between 1975 and 1976, sub-ACEP met five times, discussing a total of six disputed cases. It has been suggested that the group meet monthly, in an effort to provide more policy guidance for the overall system on a continuing basis and to review unresolved cases, but meetings remain irregular.

ACEP itself, which is composed of Assistant Secretaries, has not met since at least 1975. Instead, issues still remaining in dispute above the sub-ACEP level have been referred to the Cabinet-level Export Administration Review Board (EARB). EARB exists to assure the highest level consideration of trade control policies and actions. In 1975 it met twice to discuss these policy matters and to deal with four disputed cases.

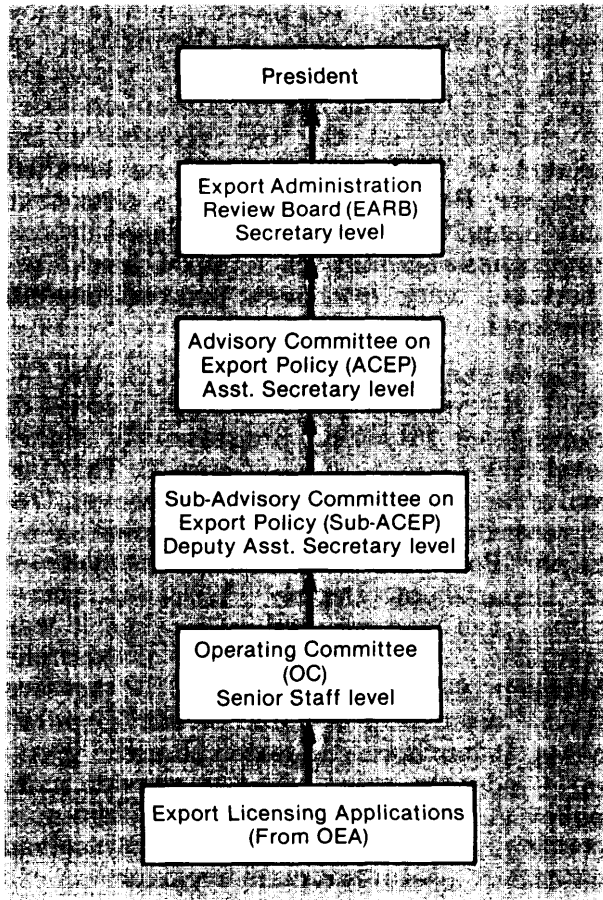
³¹See Arthur T. Downey, in *Export Licensing of Advanced Technology: A Review*, hearing before the Subcommittee on International Trade and Commerce of the Committee on International Relations, House of Representatives, 94th Cong., 2d sess. (Washington, D. C.: U.S. Government Printing Office, 1976), p. 72.

³²Including Lawrence Brady, former Deputy Director, Office of Export Administration, and Thomas A. Hoya, Chairman of the operating Committee.

³³Testimony of Rauer H. Meyer, Director, Office of Export Administration, before the Subcommittee on Domestic and International Scientific Planning, Analysis, and Cooperation, Committee on Science and Technology, U.S. House of Representatives, Oct. 4, 1978, p. 15 (typed manuscript).

³⁴Testimony of Stanley J. Marcuss, Senior Deputy Assistant Secretary for Industry and Trade, Subcommittee on International Economic Policy and Trade, Committee on Foreign Affairs, U.S. House of Representatives, Mar. 7, 1979, p. 8 (typed manuscript).

Figure 7.—Multiagency Advisory Committee on Export Policy Structure



SOURCE Comptroller General, *Export Controls Needs to Clarify Policy and Simplify Administration*, Report to the Congress, Mar. 1, 1979, p. 35.

Through September of 1976, the Board met once to review policy issues and three cases. It has not met since, although it has handled a few matters via exchange of memoranda. In the event of EARB inability to resolve a case, the President is the final arbiter. The recent proposed sales of a Dresser drill-bit factory and a Sperry-Univac computer to TASS, the Soviet news agency, are examples of cases decided at the Presidential level.

An applicant whose export request is rejected at any point in the review process receives a "negative consideration" letter. The exporter may respond formally to any of the reasons given for denial, and unofficial discussions may also continue between the

applicant and the licensing officer. In some instances, however, the Government's sensitivities about strategic or foreign policy interests and the exporter's proprietary interests may circumscribe forthright and frank exchanges, and the reason given for denial may be as vague as "national security considerations." This is one source of the dissatisfaction of some parts of the business community with the licensing process.

A similar and parallel structure (see figure 8) exists to carry out U.S. multilateral responsibilities under the Battle Act. These include the periodic CoCom list reviews and the processing of the individual exception requests.

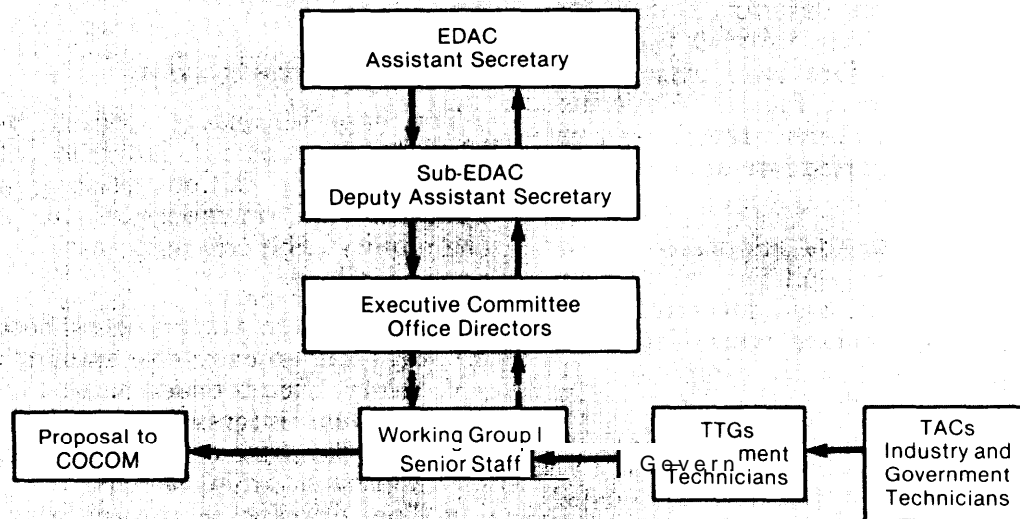
The Department of State handles inter-agency involvement in CoCom cases in a manner similar to Commerce's administration of U.S. unilateral export controls. That is, it relies on interagency advisory mechanisms. In this system, the counterpart of OC is Working Group I, and the formal higher policy level entity dealing with CoCom matters is the Economic Defense Advisory Committee (EDAC). It is composed of Assistant Secretaries from the Departments of State (the chair), Defense, Commerce, Energy, and Treasury. CIA acts in an advisory capacity.

The bulk of the workload of EDAC falls on Working Group I, a senior staff-level inter-agency group. An executive committee, chaired by the Director of the Office of East-West Trade, provides its operational guidance. Cases that remain unresolved here are passed along to successively higher policy levels and, ultimately, if necessary, to the President. Technical Task Groups (TTGs), composed of interagency technical experts and the private industry technical experts on TACs, both provide input and advise on decisions affecting CoCom list reviews and exceptions. CoCom itself is the subject of chapter VIII.

Compliance

Efforts to enforce domestic compliance with export controls are centered in OEA's

Figure 8.—Economic Defense Advisory Committee Structure



SOURCE: Comptroller General, *Export Controls Need to Clarify Policy and Simplify Administration* Report to the Congress. March 1, 1979. p. 19

Compliance Division; overseas enforcement activities are handled through the Department of State. OEA's Compliance Division has three branches—facilities, intelligence, and investigations—with personnel in Washington and New York. OEA's computerized list of approved applications and discrepancies, such as overshipments, are forwarded to the Compliance Division. Although it also enforces controls made for short supply and foreign policy purposes, its major efforts lie in the area of strategic goods and technologies. These are concentrated in five kinds of activities: prelicensing checks, physical inspections of cargo shipments, postshipment document reviews, general license review, and validated license comparisons. Violations of export controls are punishable under the Export Administration Act, which provides for civil and criminal penalties, including fines and/or imprisonment.

The intelligence branch provides information to licensing officers on those potential exporters singled out during a preliminary

screening process. This screening is accomplished through checking all applications against the Department of Commerce's Economic Defense List, a comprehensive index of firms and individuals previously denied export privileges or listed as suspect on the basis of allegations received by Commerce. The intelligence branch also provides information at this stage on individuals or firms that have supplied insufficient documentation for their applications. In both cases, information is gathered through cooperation with the Department of State, the intelligence agencies, and trade and industry sources.

Spot checks are made on cargo to physically verify that the contents of shipments correspond to licenses. There are also reviews of postshipment documents: the Bureau of Customs verifies that every shipment over \$250 is listed on an outgoing carrier's manifest, a service for which it is reimbursed by OEA. In addition, OEA reviews declarations of cargo shipped under general license and

searches for discrepancies between declarations and the data appearing on approved validated licenses. General license reviews ascertain, through the descriptive data on the customs declarations, whether previous shipments should in fact have been made under validated license. Finally, for items sent under validated license, the Bureau of Customs collects information on shippers' export declarations.

The State Department administers two programs in foreign countries to inspect commodities that have been licensed by the Department of Commerce. One, the safeguard program, applies to computers. It comes under the jurisdiction of CoCom, and is implemented by industry representatives in Communist countries. The other is a U.S. program performed by U.S. overseas posts. The purpose of both programs is to ensure that dual-use items are being used for the purpose designated on the license. Violators who fall under U.S. jurisdiction are subject to administrative and criminal penalties specified in the Export Administration Act; others may be denied future U.S. shipments. It is obvious, however, that monitoring third-party transfers of technology of U.S. origin is virtually impossible without the active cooperation of foreign states.

The safeguard program has been in effect since 1976 and applies to those licenses granted under a CoCom stipulation that:

Responsible Western representatives of the supplier will have the right to access to the computer facility and all equipment wherever located during normal working hours or at any time when the computer is operating and will be furnished information demonstrating continued authorized application of the equipment.³⁵

Individual licensing agreements designate the frequency of required inspections. In addition to these inspections, the Commerce Department may request that U.S. officials overseas examine strategic commodities

that have previously been licensed for export by the United States. This usually occurs in cases of suspected diversion from the original end use.

Criticism of the System

The export-licensing system has often been the object of criticism from U.S. industry, America's CoCom trading partners, Congress, and members of the academic community. The criticisms may be summarized as follows:

- The system suffers from needless delays and an excessive amount of uncertainty. This is exacerbated by the cumbersome interagency review process and the time-consuming case-by-case approach to applications.
- The diffusion of responsibility among and within agencies results in a lack of administrative responsiveness and forthrightness in the system. This further discourages efforts by American business to expand exports.
- The system suffers from a lack of adequate policy guidance. This results in a situation in which too much discretion is allowed to midlevel administrators and too little influence is exerted by those who are both technically qualified and attuned to both the changing environment of U.S./U.S.S.R. relations and the vital role of exports in the U.S. economy.
- The U.S. CCL is too restrictive. By attempting to control items unilaterally, it incurs the antagonism of foreign exporters who need reexport licenses for technology of U.S. origin. Moreover, the unilateral control puts U.S. businessmen at a competitive disadvantage. Not only are more products controlled than in Western Europe and Japan, but neither the list itself nor the system that administers it takes adequate consideration of foreign availability.

Delays.—The first of these criticisms is the most frequently heard and most universally recognized. U.S. exporters testifying

³⁵Quoted in the Comptroller General, *Export Controls: Need to Clarify Policy and Simplify Administration*, op. cit., p. 55.

before Congress have been virtually unanimous in their condemnation of a system that subjects their license applications to long and often seemingly arbitrary delays. Cases that are subjected to holdups—sometimes of many months or even several years—create serious problems for the potential exporter and may damage the credibility of American suppliers abroad. The law has set a 90-day limit on the entire licensing process, from application to approval or denial; but in 1978 almost 2,000 applications exceeded this limit, about twice the 1977 figure (see table 18). As might be expected, licenses involving the export of high-technology dual-use items, like sophisticated electronic equipment and computers, to Communist destinations accounted for the largest portion of these delinquent cases. In 1975, of the 1,105 delayed cases, 923 were destined for the Communist world. In all, 957 cases involved computers and electronic equipment, 827 of which were for export to Communist countries. Similar patterns have prevailed since.

However, delayed cases represent only about 3 percent of all license applications. It is not the number, therefore, but the visibility of these cases that is disturbing. The fact that they usually represent large orders of high-technology items, and that they involve

highly sensitive issues of national security and foreign policy, make them the subject of the bulk of the publicity concerning export licenses. It is worth noting here that, in cases held for national security considerations, the applications are requesting exceptions for items that have serious potential military uses. The very fact that the cases are considered at all indicates a willingness on the part of the Government to assist exporters and permit sales wherever possible. Obviously, the quickest response would be a simple "no." This is not necessarily the case when applications are delayed for foreign policy reasons.

A second important point to be made about the delayed cases is that, although their numbers may be relatively small, they are growing. This points to a disturbing trend. Between the enactment of the Export Administration Act in 1969 and 1974, the number of applications received by OEA declined steadily—from over 145,000 to less than 66,000, a drop of 55 percent. This decrease is a reflection of the liberalization of U.S. policy toward East-West trade, and can be attributed to the fact that items of purely economic significance were dropped from the CCL, thus reducing the number of required validated license applications. After 1975, however, the downward trend in application numbers ceased. The workload has since been growing at an increasing rate. In 1976, OEA processed 54,359 cases; in 1977, 58,967; and in 1978, 63,476. The total for the 1979 calendar year is expected to exceed 77,000.

A comparison of authorized funding and staff levels of OEA with workload estimates over the past 11 years indicates the problem facing OEA staff (see table 19). In the past 5 years, the number of authorized positions has risen about 18 percent;³⁶ if one assumes that 68,000 cases will be processed in FY 1979, the number of license applications will have risen more than 27 percent during the

Table 18.—Export License Applications Pending for More Than 90 Days

Ending period	Number of applications
1975a	1,105
Apr. 30, 1976a	294
Sept. 2, 1976 ^b	298
Sept. 2, 1977 ^b	454
June 1978 ^c	603
Sept. 1, 1978 ^b	645
Feb. 2, 1979 ^c	585
1976 ^d	689
1977 ^d	1,032
1978 ^d	1,988

SOURCES:

aReport of the president's Task Force to Improve Export Administration

Licensing Procedures, Sept 22 1976 (draft)

bOffice of Export Administration data

cTestimony of Stanley Marcuss, Senior Deputy Assistant Secretary for industry and Trade, Office of Export Administration before the Subcommittee on International Economic Policy and Trade Committee on Foreign Affairs U S House of Representatives, Mar 7, 1979

dExport Administration Act Amendments of 1979, Report, Committee on Foreign Affairs, U S House of Representatives, 96th Cong 1st sess May 15, 1979, p 4

³⁶ 168 positions are authorized for FY 1979. OEA presently employs 145 professionals and clerical personnel and is, according to recent testimony, actively seeking additional staff.

Table 19.—Funding, Authorized Positions, and License Applications Volume

Fiscal year	Funding (\$000)	Positions	Export license applications	
			Received	Processed
1979.....	\$~,-jo-'	- 168	-----	68,000*
1978.....	5,550	162	—	63,476
1977.....	5,256	167	—	58,967
1976.....	4,626	142	—	54,359
1975.....	4,400	142	—	52,600
1974.....	4,634	114	65,883	—
1973.....	4,103	154	64,070	—
1972.....	6,111	256	78,561	—
1971.....	5,900	256	107,615	—
1970.....	5,358	256	132,498	—
1969.....	5,358	272	145,369	—

* Estimated

NOTE. After 1974 the Department of Commerce changed its method of counting license applications. Instead of tabulating the number of applications received, it now reports the number actually processed. The two may not be identical, as some applications are withdrawn before a decision is made.

SOURCE Office of Export Administration, U S Department of Commerce.

same period. Moreover, the system's administrators contend that the complexity of the issues surrounding export license applications has increased tremendously since the passage of the Export Administration Act, so that a simple comparison of workload measured by number of applications processed is misleading. There has also been an increase in the number of CoCom exception cases, which tend to be the most complex. To this must be added the fact that the overall workload is clearly growing at an accelerated pace.

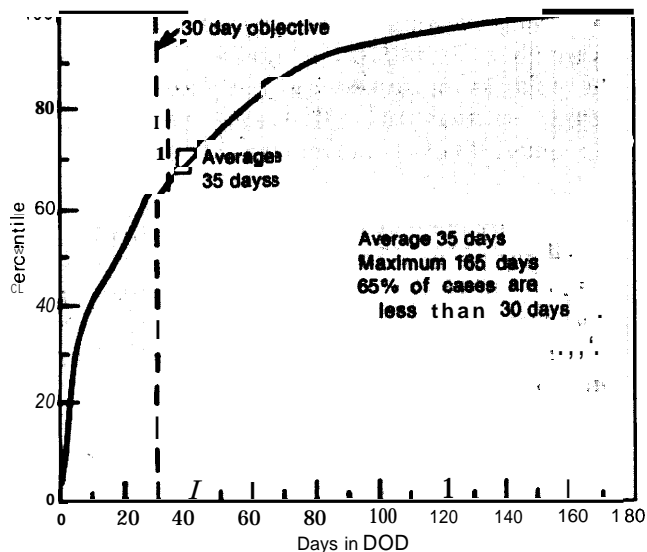
Similar or heavier workloads may be found in the other Departments involved in the license process. The number of cases referred to the State Department's Office of East-West Trade because of their foreign policy implications more than doubled between 1977 and 1978, rising from 1,200 to 2,500, but the Washington staff level of five employees has remained unchanged. Before the recent DOD reorganization, the Office of Strategic Technology and Munitions Control of DOD had a staff of three to four professionals and two secretaries who were responsible both for coordinating and developing all DOD positions on U.S. license applications, and for the Department's contribution

to CoCom list reviews and exceptions. The workload of each professional employee in the Office was enormous; in 1975 alone, it handled 2,200 cases. This excessive workload is one of the primary reasons for license decision delays.

The previous Deputy Assistant Secretary responsible for the licensing process in Defense did institute a "Guillotine Closure" system designed to speed-up the system. Its goal is to provide the Secretary of Commerce with an advisory opinion regarding the national security aspects of an export license application within 30 days. The procedure operates on the assumption that a license can be issued unless the technician recommends otherwise within a specified period of time. Before the guillotine was put into place, only 72 percent of the cases handled by Defense between January and September 1978 were closed within 30 days. With the system in-place, from October to December 1978, 98 percent of the cases were closed within the stipulated period. In addition, the average time per case was reduced from 29 days to 12 and the age of the most delinquent case from 165 days to 35 (see figures 9 and 10). It would appear from this that the present system is sufficiently flexible to respond to calls for increased efficiency.

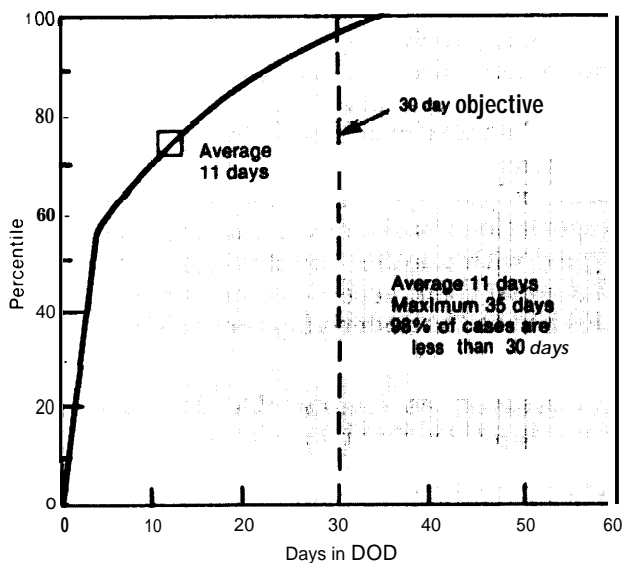
In addition to the sheer volume of paperwork which comes before DOD, holdups are often occasioned by the need to tap additional technical resources in the Army, Air Force, and Navy; in Department-wide research laboratories and facilities; and in other Pentagon offices. For instance, in 1975 virtually all computer cases were referred to the Institute for Defense Analysis. In addition, most computer, electronics, and technical data cases went to the Office of the Under Secretary of Defense for Research and Engineering, while the Office of the Assistant Secretary of Defense for Installations and Logistics screened most machine tool and technical data cases. As the system has been administered, the processing of export control requests gets low priority among technical experts whose main tasks lie elsewhere. Whether the recent reorganiza-

Figure 9.—Age of DOD Export Control Cases
(January-September 1978)



SOURCE: Testimony of The Honorable William J. Perry, March 5, 1979, Senate Committee on Banking, Housing, and Urban Affairs

Figure 10.—Age of DOD Export Control Cases
(October-December 1978)



SOURCE: Testimony of The Honorable William J. Perry, March 5, 1979, Senate Committee on Banking, Housing, and Urban Affairs

tion, described above, will alleviate this situation remains to be seen, but one immediate change will be staffing levels. The new export-licensing program will have a staff of 14 and an initial budget of \$500,000.

Policy Guidance.— It is possible, however, that the quality of decisions may suffer from attempts to speed up the system as it is presently constituted and that fundamental changes are needed to preserve both the responsiveness demanded by industry and the policy guidance and technical evaluation necessary to protect of U.S. national security. It is here that the charges of inadequate policy guidance arise.

A recent Presidential Review Memorandum on East-West Technology Transfer (PRM 31) investigated this and other problems in the present licensing system and concluded that the present organization should be augmented. It suggested that the National Security Council (NSC), the Office of Science and Technology Policy, and the Arms Control and Disarmament Agency all be given export control responsibilities, presumably to lend policy guidance. Implementation of this recommendation has begun. Representatives from the three agencies now may participate in OC discussions, and an ad hoc technology transfer group has been created within NSC.

After its own investigation of the system, however, the General Accounting Office (GAO) has declared that it does "not believe the problems associated with diffused management authority can be solved by adding more Government agencies to the licensing process. This is not a regulatory activity which suffers from a lack of bureaucratic attention, and better attention, not more attention, is needed at the licensing level."³⁷

Restrictiveness of Export Controls.— Many of the companies engaged in East-West trade are multinationals. Their ex-

³⁷Comptroller General, *Export Controls: Need to Clarify Policy*, op. cit., p. 66.

perience in developing technology, moving personnel, and monitoring research activities around the world has convinced them that technology comparable to their own is almost always otherwise available. They contend that the administrators of U.S. export controls underestimate the degree of technical sophistication in the East and ignore technical developments in Western countries both within and outside CoCom.

Many examples illustrate the availability of technology from multiple sources:

- Hungary exhibited advanced computer-controlled machines at the 1978 machine tool show in Chicago. Many of the machines that it brought to the United States would not have been exportable by U.S. firms under Export Administration guidelines.
- The sale of a U.S. Univac computer to TASS was stopped during the summer of 1978 for foreign policy reasons. Although the decision was later reversed, TASS has now signed with a French computer manufacturer.
- A U.S. firm was unable to obtain a license for the sale of an aluminum production plant. Here too, a contract was signed with the French within a very short period of time.
- A U.S. firm was approached by the PRC regarding the sale of some electronic equipment. After preliminary discussions with OEA, the American firm withdrew because it feared it could not get the necessary export licenses. The Chinese were confident, however, that the equipment could be obtained elsewhere: the PRC had a close relationship with a Japanese firm that could supply the equipment and indeed had done so under similar circumstances in the past.

Many firms also contend that U.S. export controls extract high costs of compliance and discourage entry into Eastern markets. Accounting methods do not usually lend themselves to ready identification of the

direct costs of validated license applications, but large corporations heavily engaged in trade with the East have estimated that they incur annual licensing-related costs of as much as \$1 million, a figure that includes the salaries of several employees solely assigned to deal with OEA and the intermittent services of numerous executives.

But, the largest costs may be indirect and unmeasurable. U.S. businessmen contend that the current export control procedures have resulted in suspicion toward the United States and U.S. firms—suspicions that have caused Eastern nations to go elsewhere. Some firms report that over the past few years approaches to U.S. business officials in Eastern nations have markedly decreased. This is attributed to the fact that the delay and uncertainty associated with dealing with the United States has caused potential customers to turn to other suppliers. The perceptions of the potential customers are important. An illustrative example can be found in the case of a U.S. company that had been negotiating for over a year with the PRC. If consummated, the deal in question would have provided the PRC with access to the use of new communications technology, but not the technology itself. The day before the contract was to have been signed, a high-level U.S. Government official made a comment that was interpreted by the PRC delegation as an indication that the U.S. Government might not fully support the sale. Negotiations broke down and the PRC soon signed with another country—an agreement that gave them access to the same capabilities and to the underlying technology.

Moreover, as chapter IX demonstrates, firms in other countries can sometimes get license pre-approvals that eliminate a major area of doubt from negotiations with Communist countries. Differences in the administration of the export controls between the United States and its CoCom partners lead some American corporations to perceive the U.S. Government as the greatest obstacle to their international business activities.

The unilateral controls embodied in the U.S. CCL are believed to contribute to this problem. By reflecting unrealistic technical decisions for controlled items (i.e., setting technical parameters unnecessarily low), they allow firms in nations with different standards to capture business that would otherwise come to the United States. Finally many companies seem to feel that the administration of export controls does not sufficiently take into account the policing capabilities of the private sector. Corporations see it in their own interest to control the unauthorized transfer of goods by requiring that critical components be acquired from the original supplier.

Thus, industry argues that because of U.S. export controls, a considerable volume of trade with the Communist world is being administered by foreign subsidiaries and its benefits are being lost to the U.S. economy. Many of the administrative activities associated with East-West trade are carried out through divisions, subsidiaries or affiliates of U.S. firms located abroad. Reasons for this lie in the affinity between European businessmen and their Soviet-Eastern European counterparts; the reduced operating costs that result from geographic proximity; and the fact that relationships between the U.S. companies and centrally planned economies are closely related to their marketing efforts in Western Europe.

But U.S. executives sometimes also contend that companies operate in this manner because it avoids much of the "aggravation" associated with the administration of export controls in the United States. No body of data appears to be available on the extent to which U.S. export controls motivate multinationals to remove their operations from the United States. Given the relatively low volume of U.S. trade with the East it is unlikely that this is often a primary consideration.

Recommendations for Improvement.—These criticisms have sometimes generated tension between business and Government, and have resulted in a spate of proposals for

reform of export-licensing procedures. Finding that the complex system for administering export controls is plagued by "vague criteria, insufficient funding, and low priorities," GAO has recommended, in part, that:

- The Export Administration Act should be amended to state that the President shall consider foreign availability when imposing export controls for foreign policy purposes.
- The President's semiannual report to Congress should discuss in more detail the uses and reasons for foreign policy controls.
- The foreign availability clause should be administered as a separate effort under a "foreign availability evaluator."
- A new procedure to process routine license requests should be established in OEA.
- A multiagency Export Policy Advisory Committee should be established at an appropriate administrative level. This would allow the abolition of the entire EDAC and ACEP referral structures.
- Export license application management responsibility should be centralized in the Department of Commerce's OEA so that responsibility for license applications is no longer diffused.
- Funding of technical evaluations should be centralized in OEA.³⁸

The Export Administration Act of 1979 (see above and appendix) has gone some way toward meeting these suggestions, but it has not instituted fundamental alterations in the licensing system, and is unlikely to entirely still criticism from that part of the business world engaged in East-West trade.

CONTROL OF NUCLEAR EXPORTS

Since the Atomic Energy Act was passed in 1954, special controls have been imposed on the export of nuclear equipment and technology. These are presently governed by the

³⁸Ibid., p. 18, vi, 42-49.

Nuclear Non-Proliferation Act (Public Law 95-242), enacted in March 1978, which established new procedures for controlling the export of nuclear facilities, equipment, materials, and technology; and dealt with the criteria, organization, and procedures for control of U.S. nuclear exports, both domestically and abroad. Under this Act, nuclear technology was added to the Department of Commerce's Control List, and primary responsibility for the controls divided between the Department of Energy, the Nuclear Regulatory Commission, the Department of Commerce, and the Department of State, depending on the specific materials and technology being licensed. In addition, special controls were placed on the export of components specially designed or prepared for use in nuclear facilities. Components for uranium enrichment facilities, fuel-reprocessing facilities, or heavy water production plants may now be exported only when specifically licensed for a cooperative agreement. Finally, the Act imposed additional conditions for Government approval of nuclear exports and expanded Government control over the export of component parts for nuclear facilities. It directs the Nuclear Regulatory Commission (NRC), in consultation with the Secretaries of State, Energy, and Commerce, and the Director of the Arms Control and Disarmament Agency, to determine which items should be subject to export controls because of their importance in

nuclear explosions. Export licenses for these must be granted by NRC and only then if the following criteria are met:

1. International Atomic Energy Agency safeguards exist for the items;
2. No such item shall be diverted for any nuclear device; and
3. No such item shall be retransferred without prior U.S. consent.

In addition, NRC must certify in writing that the issuance of each export license will not result in adverse consequences for U.S. national security and defense.

The Department of Energy has primary jurisdiction over the control of transfer of certain types of nuclear technology. This control emanates from a provision of the Nuclear Non-Proliferation Act, which forbids any person to directly or indirectly engage in the production of any special nuclear material outside the United States, except as authorized by a determination by the Secretary of Energy that such activity would not be detrimental to the national security of the United States. The Department of Energy coordinates with other agencies, including the Arms Control and Disarmament Agency, in this process. Under the legislation, if NRC is unable to issue a license or takes too long to do so, the President has the authority either to block or to authorize exports.

CREDITS AND TARIFFS

THE EXPORT-IMPORT BANK OF THE UNITED STATES³⁹

When the U.S. Government extended diplomatic recognition to the Socialist regime in Russia in 1933, the Soviet Union represented a vast, new, and badly needed market for American exports. To facilitate the U. S.-Soviet trade that was expected in the wake

of recognition, in February 1934, President Roosevelt issued Executive Order No. 6581 directing the Secretaries of Commerce and State to organize the Export-Import Bank (Eximbank) of Washington as a banking corporation under the laws of the District of Columbia. Although financing trade with the U.S.S.R. was the acknowledged primary purpose of Eximbank, the executive order also stated a general aim: "To aid in financing and to facilitate exports and imports and the exchange of commodities between the United States and other nations or the agen-

³⁹For a complete history of the Bank, see George Holliday, "History of the Export-Import Bank," in Paul Marer, ed., *U.S. Financing of East-West Trade* (Bloomington, Ind.: International Development Research Center, 1975).

cies or nationals thereof. " Ironically, it was to be 39 years before Eximbank extended any credit to the Soviet Union.

At first a relatively obscure institution with an initial total capitalization of \$11 million, Eximbank has grown to participate in a variety of programs in over 140 countries. Presently it has an obligation ceiling of over \$40 billion and over the past few years, has been responsible for the financing of approximately 10 percent of all U.S. exports. This support has been primarily concentrated in transportation and construction equipment and powerplants (especially nuclear), but manufactured goods and capital goods are also heavily supported. Approximately 18 percent of all U.S. manufactured exports and 21 percent of capital goods exports have been financed by Eximbank.

At first, Eximbank operated without official Government support, but in 1945 it received legislative mandate in the Export-Import Bank Act (Public Law 79-173). Under this Act, the Export-Import Bank of the United States became an independent agency of the Government, its management vested in a bipartisan Board of Directors. Four of these are appointed by the President with the advice and consent of the Senate; in addition, the Secretary of State sits on the Board *ex officio*. An Advisory Committee consisting of the Bank's chairman; the Secretaries of State, Treasury, and Commerce; and the Chairman of the Board of Governors of the Federal Reserve System advises on major policy questions. The U.S. Treasury provided Eximbank's original funds by purchasing \$1 billion of the capital stock of the Bank and, in addition, by continuing at intervals to purchase part of its obligations. Eximbank receives no direct appropriation from Congress, however, although Congress does retain oversight control of the Bank's operations through the exposure ceilings it establishes on new and outstanding credit authorizations. In addition, Eximbank may borrow up to \$6 billion directly from the U.S. Treasury to meet its short-term needs. It must satisfy its medium- and long-term re-

quirements through borrowing from the Federal Financing Bank.

Eximbank carries out its mandate to promote U.S. exports through four programs:

- First, it can make direct loans in the form of dollar credits to foreign borrowers purchasing U.S. goods and services. These loans must be used to pay U.S. exporters and they must be repaid in dollars. This program is designed to supplement, not replace, private financing; it provides credit at favorable terms in cases where private institutions are unwilling to assume risks and it extends credit for longer terms than will private lenders. Eximbank usually demands a downpayment of at least 10 percent from the borrower. It then finances part of the loan through its own funds and requires private financing at commercial terms for the balance.
- Second, Eximbank can provide guarantees to private financial institutions that their loans financing U.S. exports will be repaid. These guarantees are backed by the full faith and credit of the United States and are designed to encourage private lenders to extend export credits, and to lower their interest costs. They are available for medium-term transactions (181 days to 5 years).
- Third, Eximbank, in cooperation with the Foreign Credit Insurance Association, a group of approximately 50 U.S. insurance companies, can insure U.S. exporters against the exceptional risks inherent in foreign transactions. In these cases, private insurance covers normal risks, and Eximbank extends coverage for extraordinary events such as war or expropriation.
- Finally, Eximbank can provide incentives for private banks to finance U.S. exports by administering a discount loan program. Discount loans are advance commitments to discount export debt obligations acquired by commercial banks. The commitment assures the private lender that additional funds will

be available should they be needed during the full maturity of the obligation, which is generally short term. Loans in which Eximbank is participating as a direct lender are ineligible for this program.

Eximbank activities in the Communist world have had a troubled and complex history. In 1934, the establishment of such an institution seemed desirable for several reasons. First, the Soviets were short of the hard currency necessary to pay for imports. Second, many U.S. private financial institutions were unwilling to risk providing credit to the U.S.S.R. Finally, Great Britain, Germany, Italy, and France had all successfully established similar organizations to provide foreign trade financing. The atmosphere of the time was one of intense competition for dwindling world markets and the Soviet Union seemed a potentially rich prize.

The barrier to Eximbank credit at first was the refusal of the Soviet Government to settle Tsarist debts to U.S. citizens. The Johnson Debt Default Act of 1934 (Public Law 80-772) had prohibited the extension of credits or financial assistance in any form to any foreign government in default on its obligations to the United States. In 1945, the Export-Import Bank Act expressly removed prohibitions on loans from Eximbank to governments in default as of April 1934. By this time, however, U.S.-U.S.S.R. relations had begun their rapid postwar deterioration. With the exception of Yugoslavia, the Bank made no loans to the Communist world through the cold war period of the 1950's. This self-imposed limitation was formalized in 1964, when the Foreign Assistance and Related Agencies Appropriation Act (Public Law 88-634) prohibited Eximbank from lending to or in any way participating in the extension of credits to any Communist country, except when the President determined that the extension of such credit was in the national interest. In 1964 and 1966, President Johnson did make such determinations as part of an effort to improve East-West relations, but with the exception of small loan guarantees to Romania

and Hungary in 1964, little Eximbank activity took place. In 1968, the prohibition of Eximbank involvement in trade with the Communist world was made absolute through an amendment to the Export-Import Bank Act that barred, without provision for Presidential waiver, the extension of Government credit to any country furnishing by direct Government action "goods, supplies, military assistance or advisors" to any nation engaged in armed conflict with the United States (Public Law 90-267). Thus, the Vietnam War had the effect of denying Eximbank credit to all Communist nations except Yugoslavia.

The absolute prohibition was lifted in 1971 for those countries not themselves in armed conflict with the United States (Export Expansion Finance Act, 85 Stat. 345), and once again the President was empowered to determine if a credit transaction with a specific Communist country would be in the national interest. President Nixon made such determinations for Romania in 1971 and Poland in 1972. Also in 1972, the formal inception of detente and the signing of the U.S.-Soviet trade agreement paved the way for a Presidential declaration in favor of allowing Eximbank credit to the U.S.S.R. The Soviet Union finally received its first Eximbank loan in February 1973, and in the next 15 months Eximbank exposure on the Soviet debt grew to over \$460 million, an amount that supported over \$1 billion in U.S. exports. Table 20 shows Eximbank exposure in the Communist world as of September 30, 1978. Eximbank was one of the

Table 20.—Export-Import Bank Exposure in Selected Communist Countries (Sept. 30, 1978)

Country	Millions of dollars
U.S.S.R.	\$456.4
Poland	228.4
Romania	90.2
Yugoslavia	858.9
China	26.4*

*Granted before 1948

NOTE Exposure consists of the combined total of direct Eximbank credit, guarantees, and insurance programs. The bulk of this exposure is in direct loans.

SOURCE Export-Import Bank of the United States, 1978 Annual Report.

Administration's major tools in detente, and the Soviets had been quick to take advantage of the credits newly available to them. All indications were that the amount of these credits and guarantees would continue to grow rapidly. Projects already partially funded by Eximbank included a \$400 million chemical complex, the \$342 million trade center, and a \$36 million iron ore pellet plant. By 1974, applications were pending for help in financing \$110 million in oil and gas exploration equipment and a \$50 million tractor factory. \$1.2 billion to \$1.4 billion in new credits were projected through calendar year 1977. In 1974, the issue of Eximbank credits to the Soviets became enmeshed in a larger debate over the future of detente and the role of Congress in foreign policy. One focus of these concerns was the reaction of Congress against the use of subsidized credits. Testimony before the Senate International Finance Subcommittee, for instance, made it increasingly clear that Government-supported credits could no longer be regarded as a costless way of promoting exports.⁴⁰ Eximbank loans to the U.S.S.R. had, in accordance with Bank policy, been provided at the highly favorable fixed rate of 6 percent, but rapidly rising commercial rates were steadily increasing the export subsidy. Even after July 1974, when the Bank responded to severe congressional criticism by instituting a flexible interest rate, Eximbank's maximum was still below rates obtainable in the private sector.

The point of view that eventually held sway in Congress was summarized by Senator Stevenson:⁴¹

Both the level and rate of Exim assistance [to the U. S. S. R.] as well as the kind of projects involved raise serious questions about the policies being pursued. It is clear that detente is one of the goals. It is a goal which we all seek . . .

But it is far from certain that the United States can buy detente with credits. A genuine and lasting easing of tensions requires resolution of the difficult issues which divide the United States and the Soviet Union . . . difficult and long-standing problems which will not be resolved overnight and most certainly will not vanish at the first sign of American cash.

Unless the underlying factors which gave rise to these problems are solved, credits are unlikely to be of much avail. What is worse, they may have the effect of boosting Soviet military capability and in turn lead to a worsening of relations. It is significant, for example, that none of the Exim-assisted Soviet projects to date, and none of those which are planned, involve the export of U.S. consumer goods. Instead, all relate to capital construction or the development of productive capability by freeing Soviet resources for other purposes; the United States may be indirectly contributing to Russian military potential.

Thus, there was concern over actual or proposed projects—chemical complexes, the Kama River truck plant, oil and gas development projects, the construction of wide-bodied aircraft production facilities—which might have direct military possibilities. The completion of such projects would be tantamount to financing the military production capability of a long-standing adversary before the achievement of a permanent improvement in relations.

Congress was also concerned that rapid increases in Eximbank's financial exposure in the Soviet Union might unwittingly increase Soviet leverage over the United States. The possibility of Soviet threats to withhold payment on almost a half a billion dollars seemed an unacceptable risk. These doubts were enhanced by the apparent lack of need for such massive credits. West Germany had only recently declined to provide financing for a \$1 billion iron and steel complex in Kursk, but the Soviet Union found the necessary cash itself. Similarly, it had agreed to pay \$48 million in cash to a British firm for a new plastics factory, and still found itself with sufficient reserves to extend \$600 million in credits to Argentina for an electric

⁴⁰See Stanley J. Marcuss, "New Light on the Export-Import Bank," in Marer, *op. cit.*, pp. 257-290.

⁴¹In the Report of the Committee on Banking, Housing, and Urban Affairs, U.S. Senate on Export-Import Bank Amendments of 1974, 93d Cong., 2d sess. (Washington, D.C.: U.S. Government Printing Office, Aug. 15, 1974).

power project. With such apparent financial capability, why should the Soviets require massive Eximbank assistance? An additional worry was the potentially adverse impact of Eximbank's worldwide activities on the competitive position of U.S. industry. The creation of production facilities abroad could result in the long-run export of U.S. jobs and decline of U.S. markets.

In response to these fears, Congress passed legislation that made the use of credit—and the withholding of credit—a political weapon. First, the Stevenson amendment to the 1974 Export-Import Bank Act put a \$300 million limitation on new loans and guarantees to the Soviet Union. Within this ceiling, specific restrictions were placed on energy-related projects, reflecting Congress' particular concern with the potential military and practical relevance of Soviet oil and gas development. A maximum of \$40 million was set for energy exploration and research, and no Eximbank loans were to be used for Soviet energy production and transmission. Congress was to periodically review these ceilings, which could be lifted by the President if he found it in the national interest to do so, and if Congress approved the increase by concurrent resolution.

The effect of this amendment was made moot, however, by the passage of the Jackson-Vanik amendment to the Trade Act of 1974 (Public Law 93-618). This resulted in the scrapping of the U.S.-Soviet trade agreement and effectively terminated all credits to the U.S.S.R. by linking trade benefits to nonmarket economies to the free emigration of their citizens. The Jackson-Vanik amendment is discussed in more detail below.

THE COMMODITY CREDIT CORPORATION

In addition to the financial assistance provided by Eximbank, credit is available to the Communist world through the Commodity Credit Corporation (CCC), created in 1933 by executive order. Since 1956 this organization has administered an export credit sales pro-

gram designed to help U.S. agricultural exporters expand their sales in foreign markets. During the early years of detente in the 1970's, CCC provided the Soviet Union with over \$550 million in credits for the purchase of U.S. grains. Like Eximbank credits, CCC support was effectively suspended by the passage of the Jackson-Vanik amendment to the Trade Act of 1974. The provisions of that amendment have, however, allowed selected Communist-bloc countries to be deemed eligible for CCC programs (see below and table 21). CCC makes credits available to importers at somewhat better terms than could be obtained elsewhere. Although interest rates vary, they are usually slightly below equivalent market rates, and maturities are often longer than agricultural credits offered by private banks.

A related program was created by the Agricultural Trade Act of 1978 (Public Law 95-501). Under the provisions of this law, credit with commercially competitive repayment terms of up to 3 years is available to many foreign buyers of American farm products. Communist countries currently eligible for the 3-year credits—Yugoslavia, Romania, Poland, and Hungary—are also eligible for "intermediate" credit, with repayments of up to 10 years, for the following purposes:

To finance purchases of grain for reserve stockpiling under international commodity agreements or other plans acceptable to the United States; to finance purchases of breed-

Table 21.—Communist Countries: Eligibility for U.S. Programs (as of July 15, 1979)

Country	MFN	Eximbank	CCC
U.S.S.R.	No	No	No
East Germany . . .	No	No	No
Yugoslavia . . .	Yes	Yes	Yes
Poland	Yes	Yes	Yes
Romania.	Yes	Yes	Yes
Hungary	Yes	Yes	Yes
Bulgaria	No	No	No
Czechoslovakia,	No	No	No
PRC.	No	No	Yes

MFN = Most-favored-nation

CCC = Commodity Credit Corporation

SOURCE Office of East-West Trade, Department of State

ing livestock, including freight costs; to finance, where feasible, establishment of facilities for improved handling of imported farm products; and to meet credit competition from other countries, but not to initiate credit wars.

The Agricultural Trade Act further authorizes the Agriculture Department to offer CCC financing for up to 3 years on sales of commodities to the PRC. In a related action, the bill authorizes CCC credits up to 3 years to private U.S. exporters who make deferred payment sales to currently eligible countries, including China.

TARIFFS: MOST-FAVORED-NATION STATUS

Most-favored-nation status guarantees a nondiscriminatory U.S. tariff rate to the foreign exporter, i.e., a rate as low as that negotiated for any other American trading partner for any given commodity. Beginning in 1934 and continuing into the postwar era under the auspices of the General Agreement on Trade and Tariffs, a series of trade negotiations has resulted in the reduction or elimination of nearly all substantive tariffs levied on U.S. imports. Denial of MFN denies the potential foreign exporter any benefits flowing from these progressive relaxations of the tariff structure. Those States to which the United States denies MFN must attempt to market their products under the 1930 Hawley-Smoot Tariff, a system of relatively high tariff barriers which was constructed after the crash of 1929 to insulate the U.S. market.

The Trade Agreements Extension Act of 1951 withdrew MFN status from all Communist countries except Yugoslavia. The major obstacle at present to the granting of MFN to the U.S.S.R. and other remaining centrally planned economies is the Jackson-Vanik amendment to the 1974 Trade Act.

The Jackson-Vanik amendment proscribes the extension of any Government credits and/or investment guarantees, the

signing of commercial treaties, or the granting of MFN to any nonmarket nation that:

1. denies its citizens the right or opportunity to emigrate;
2. imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatever; or
3. imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his or her choice.

Communist nations that already enjoyed MFN—Poland and Yugoslavia—were exempt from these provisions. but in order for any other Communist country to qualify for MFN, credits, or commercial treaties, the President must submit to Congress a report indicating that the country is not in violation of any of the above conditions, including information on the nature and implementation of emigration laws and policies and restrictions applied to those wishing to emigrate. The amendment further gives the President authority to waive its restrictions on reporting to Congress that:

- . he has determined that such waiver will substantially promote the objectives of free emigration; and
- s he has received assurances that the emigration practices of that country will eventually lead to free emigration.

A majority vote (within 90 days of receipt of the President's report) in either house of Congress can veto the extension of MFN status or U.S. Government credits, and the President retains the authority to suspend or withdraw the extension of MFN treatment to any country at any time.

Thus far, the President has used this waiver authority on two occasions—for Romania and Hungary, which both now enjoy MFN and Eximbank eligibility. In the case of Romania, confidential diplomatic discussions, which took place between senior U.S. and Romanian officials in 1975, resolved the

major emigration issues to the satisfaction of President Ford. No written assurances were provided. In the case of Hungary, oral discussions in 1978 were supplemented by an exchange of letters containing assurances on emigration between the U.S. Ambassador to Hungary and the Hungarian Foreign Minister.⁴²

The economic importance of MFN to recipient countries is discussed elsewhere (see chapters I I and III), but it is important to note that the granting or withholding of

MFN has important symbolic value in the Communist world and may therefore affect the political climate as well as overall trade levels. This is true for both the PRC and the U.S.S.R. It is in this context that media speculation surrounding the granting of MFN to the Soviet Union must be understood. One key factor in any administration strategy to resume U.S. trade and tariff benefits to the U.S.S.R. must be the nature of the recent trade agreement with the PRC, which, among other things, proposes the extension of MFN. This agreement must still be ratified by Congress. Table 21 summarizes the present status of selected Communist countries with respect to their eligibility for U.S. credit and MFN.

⁴² Executive Order 11854, Apr. 24, 1975, 40 F.R. 18391, applied to Romania; and Executive Order 12051, Apr. 7, 1978, 43 F.R. 15131, applied to Hungary.