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SECOND REPORT

drawn up on behalf of the Committee on External Economic Relations

on restrictions on strategic exports and US-EC technology transfer

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PART B : Explanatory statement
Annexes
Opinions

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A Series: Reports - B series: Motions for Resolutions, Oral Questions, Written Declarations, etc. - C Series: Documents received from other Institutions (e.g. Consultations)

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EXPLANATORY STATEMENTINTRODUCTION

The Pègard affair is now closed, but it remains a valuable illustration of how COCOM works. To recap briefly on the affair, in 1982 the Belgian company Pègard requested authorization from the Belgian authorities to export to the USSR an advanced boring and milling machine and provided the authorities with the necessary documents. The Belgian authorities submitted an application for an export licence to the other COCOM member countries (which must decide together whether an export licence should or should not be granted). The licence having been granted, the boring and milling machine was exported to the USSR, in the face of American protests.

In 1984 an application was submitted to COCOM for a second, more sophisticated boring and milling machine, and the Belgian Government refused to grant an export licence. The affair aroused great controversy, the machine at the heart of the dispute was being bought by the Belgian Army with American financial assistance which culminated in 1985 with the payment of a cheque for US\$715 700. Also in 1985, five new boring and milling machines of the same type, with technical modifications, were exported to the USSR under the aegis of the German authorities with the agreement of the Belgian Government, but without COCOM approval for the decision being sought. The US Administration expressed regret at this action.

The basic aim of this report is to analyse how COCOM operates.

In an endeavour to compile as comprehensive a document as possible, the following steps were taken: a survey of UNICE and its experts; organization by the Committee on External Economic Relations of a hearing with UNICE held on 19 September 1985; a survey of NATO departments and the Belgian authorities; analysis of the results of a seminar on the subject of strategic exports and technology transfer held in Brussels from 6 to 8 February 1986 under the auspices of the American mission to the OECD, NATO and the EEC; and a meeting with representatives of the American Chamber of Commerce in Belgium and of the US Embassy to the Communities.

An initial report, adopted by the Committee on External Economic Relations, was withdrawn from plenary in order to take account of important new developments, particularly the reorganization of COCOM and the drafting of new US legislation. It must also be stressed that the Committee on External Economic Relations instructed its rapporteur to meet both Commissioner Willy de CLERCQ and the US Ambassador to COCOM.

These two meetings took place.

Your rapporteur had requested a meeting with the Secretary-General of COCOM in Paris.

The Chairman of the Committee on External Economic Relations asked the President of Parliament, Lord Plumb, to intervene on its behalf to obtain an interview.

In January 1988, Lord Plumb informed Mr MALLEY, Chairman of the Committee on External Economic Relations, that he was 'sorry that our combined effort had not led to a helpful response from the Secretary-General of COCOM' (see attached letter).

From the beginning of 1987, the US Administration openly expressed its intention of modifying its export policy, the US Congress making very slow progress with this work.

However, a meeting of representatives of the COCOM member states was held in Versailles on 27 and 28 January 1988. Due account has been taken of the meeting in drafting this report.

The fullest account has also been taken of the report by Mr METTEN on technology transfer drawn up on behalf of the Committee on Energy, Research and Technology (Doc. A 2-99/85) and adopted by Parliament in March 1986, the opinion by Mrs BRAUN-MOSER on behalf of the Committee on Transport (PE 98.215/fin.), the opinion by Mr DANKERT on behalf of the Political Affairs Committee (PE 97.811/fin.), and the opinion by Mr RAFTERY on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy (PE 94.246/fin.).

This report attempts to collate all this information and answer the question of what decision the Member States should take regarding the export of strategic products and, on the basis of this fundamental decision, spell out Europe's wishes regarding the operation of COCOM.

I. WHAT IS COCOM?

1. Definition

- Coordinating committee for the control of exports to the Sino-Soviet bloc.
- COCOM was set up on the initiative of the United States during the Korean War (June 1950); it coordinates the activities of its member states with a view to preventing the export of strategic products to the Sino-Soviet bloc.
- COCOM is separate from NATO. It has no legal personality as such and takes the form of an intergovernmental conference.
- There are 15 member states, 12 of which are in Europe: B - RFA - DK - F - GB - GR - I - L - N - NL - P and TR. The three other countries are Canada, Japan and the United States.

Note: the 15 COCOM member states are the 15 NATO member states with the exception of Iceland and the addition of Japan.

- Address of the COCOM Secretariat: The United States Embassy,
rue de la Boétie, PARIS.
- Budget: around US\$500 000 per annum.
- Administration: around 20 officials.
- Meetings: very frequent and traditionally always chaired by the Italian representative.

Modus operandi

2. Modus operandi

As the committee has no basis in any treaty, implementation of its decisions is entirely dependent on the VOLUNTARY cooperation of the Member States. Over the years, COCOM has proved to be surprisingly effective.

The list of products concerned is reviewed at regular intervals. It has decreased from 300 in the early 1950s to 150 by the end of the 1970s (1). Any decision to make exemptions from this list requires a unanimous vote by the member states. In practice, there are cases in which states issue licences without referral to COCOM.

The current trend is very much towards a simplification of the lists.

In the United States, COCOM is the responsibility of the State Department which plays a major role in drawing up the COCOM lists.

A COCOM meeting was held on 8 October 1985 in Paris. The participants stated that they had discussed measures to improve the technical bases for control. At this meeting, Spain became a full member of COCOM. The decision to do so had been taken on 18 September 1985 at a meeting of the Spanish Council of Ministers.

3. The EEC and the COCOM Lists

Mr SEELER discussed this issue in some detail in his report on behalf of the Committee on External Economic Relations on the significance of economic sanctions, particularly trade embargoes and boycotts and their consequences for the EEC's relations with third countries (Doc. 1-83/82, p. 27 ff.):

'since the EEC countries were unwilling to agree to extend the embargo on technology over and above the COCOM lists, it probable that the US has lost part of its share of the market in this sector to other Western exporting countries. The 1980 figures for the export of industrial goods to the USSR from the US show a marked fall compared with 1979. In 1979 the US exported industrial products to the value of US\$656 million, whereas in 1980 it exported only US\$424 millions' worth.'

At the Ottawa World Summit of July 1981 it was decided to review the catalogue of lists. Negotiations on this also took place in Paris in January and October 1982, July 1984 and finally on 8 October 1985. At this last meeting, the USA gave prominence to a published report by the Secretariat for Defense, Kasper WEINBERGER, maintaining that the West was 'subsidizing the consolidation of Soviet military power' by allowing the USSR to acquire, legally or otherwise, Western technology. This point of view apparently met with some sympathy from the European countries as, shortly afterwards, France published a notice in its Official Journal on new methods for controlling technology exports, and Spain imposed a fine of US\$1 million on the Spanish firm PITHER-SEMICONDUCTORES for exporting American equipment to Cuba and the USSR.

(1) Gary K. BERTSCH, US export controls: the 1970s and beyond, Journal of world trade law, p. 72 - (January-February 1981)

4. Comments

- The COCOM lists are never published in full, which gives the drafting authority plenty of latitude for unilateral assessment.
- Ireland is a member of the EC but not of NATO, and is therefore not bound by that Treaty nor by the institutions set up under it.
- Trade between East and West Germany also has a number of features which might encourage 'permeability' between the two blocs, East and West.

Ultimately, only a system of Community rules would guarantee genuinely effective restriction of exports of strategic products and ensure respect for the internal interests of all the contracting parties.

II. AMERICAN EXPORT CONTROL POLICY PRIOR TO THE MEETING OF COCOM MEMBER STATES IN VERSAILLES ON 27 AND 28 JANUARY 1988

The Export Administration Act and its implementing regulations form the bases of the American export control system which is founded on three criteria: national security, foreign policy and availability. The controls applied in the name of national security are the most important by virtue of their number and the fact that they may provoke disputes with the Community.

On 12 July 1985, President Reagan signed the amendments to the Export Administration Act of 1985. The 1979 Export Administration Act was to have expired on 30 September 1983, but it had been extended successively until 1985.

American exporters had suffered losses through the application of the old Export Administration Act (EAA). They were demanding no less than the repeal of Section 6 of the EAA concerning foreign policy and export control, but the Senate and the House of Representatives would not go that far. Thus, the Administration is prohibited from restricting or banning the export or re-export of goods, technology or information if the contracts or agreements entered into force before the controls were enacted. In fact, in the final analysis, the US Administration no longer has the same scope for unilaterally banning or restricting exports though, at the same time, American law is clearer and throws its net wider.

The 1985 EAA lays down procedures for issuing licences for exports to COCOM countries based on the technology threshold laid down by COCOM.

The EAA has no effect at all on the role played by the Defense Department in controlling East-West exports.

Henceforth, the types of licences for technology transfer have a clear statutory basis.

In the case of micro-processors, the new EAA contains provisions which reduce export controls on non-reprogrammable equipment.

On the other hand, it contains provisions for the imposition of sanctions on foreign firms which violate US national security measures, but the agreement of a majority of COCOM members must be obtained before such sanctions can be applied.

The 1985 EAA stipulates that existing contracts cannot be broken except in cases where a 'breach of the peace' represents a serious and immediate threat to the strategic interests of the United States.

As with the 1979 Act, the 1985 Act cannot in principle be applied outside the United States. (The US Customs are responsible for enforcing the laws).

The Commerce Department has just extended for one year the export controls imposed according to the criterion of foreign policy. These cover, in particular, South Africa, Iran, Iraq, Syria and Libya, and generally take the form of an embargo containing clauses which give them no territorial effect. The lesson of the Soviet gas pipeline seems to have been learnt.

Present trend in American policy on exports of strategic material

In general, the slackening off of East-West trade is not solely due to the application of COCOM or the Export Administration Act, but to a range of political and financial considerations. We are witnessing a growth in bilateral trade between the USSR and Japan and a simultaneous fall in trade between the USSR and the United States, although this may change if the new policy of detente gains ground rapidly.

On 5 May 1984, without explicitly abandoning the principle of extra-territoriality, Secretary of State SCHULTZ put forward proposals to tone down the effects of the restrictive export measures and outlined a four-point programme:

- an agreement would be sought with the European allies on basic principles for the restriction of exports of advanced technology to the Communist countries;
- the United States would not apply trade sanctions until it had 'tried to take into account the foreign interests involved';
- the various sections of the US Administration would consult the State Department 'when they intend to take measures which might kindle reaction abroad over sensitive matters of jurisdiction';
- the United States would attempt to finalize procedures through the OECD and the UN for prior consultation on such issues.

The policy of Mr BALDRIGE, US Secretary of Commerce, on export control (1986-1987)

This was set out by Mr BALDRIGE himself in a statement of 9 February 1987 which was the subject of a Notice to Members (PE 115.266).

It will suffice to recap on a few salient points:

- The slowness of controls and uncertainty regarding decisions on export licences harm American exporters and lead to the loss of sizeable market shares.
- The ensuing costs to the US economy (storage, red tape, etc.) are becoming excessive.

- The introduction of two export licence systems has reduced these costs and delays.
- The abolition of controls on a number of low-technology products has helped numerous exporters to export greater volumes more quickly.
- The United States cannot alone run an effective export control and management system. Some form of international cooperation, of which COCOM seems to be a good example, is essential.

In brief, controls must be concentrated on a small number of products and exports of the largest possible number of products must be deregulated.

III. EUROPEAN POSITIONS PRIOR TO THE VERSAILLES MEETING OF 27 AND 28 JANUARY 1988

1. Hearing by the Committee on External Economic Relations with representatives of the Union of Industries of the EC, 26 September 1985

Participants were in agreement on a broad range of issues and stated that they accepted the COCOM system as it stood.

In their view, the system combined security needs with trade requirements relatively well and in a sufficiently flexible manner, and took into account the complexity of the problems involved. There was apparently no discrimination between countries, but improved publicity regarding the COCOM system would be useful for small firms who were poorly informed. Information concerning COCOM's methods of working and drawing up its lists should also be made more readily accessible. The legal basis for COCOM was judged to be adequate. On the whole, the US economy would seem to be more affected by the repercussions of COCOM than the European economy. Judging by statements made by European industrialists at the hearing, COCOM does not paralyse East-West trade. Participants were also eager to stress that the complexity of current international trade relations was an inescapable reality.

2. The Brussels seminar (6-8 February 1986)

The opinions expressed were extremely varied. In practice, however, there are two distinguishable schools of thought which may be roughly defined as American and European.

- According to the 'American' school of thought, the two blocs, East and West, are indomitably hostile to each other. Their mutual survival is contingent upon a delicate balance of forces. Each side should therefore try to retain its trump cards and make them available only to its allies. In essence, this is an isolationist policy which tries to prohibit as far as possible any form of transfer to the East.
- According to the 'European' school of thought, hostility between the two blocs is essentially a matter of historical chance which has left the two areas with different political and economic systems, differing levels of development and divergent, even conflicting, interests. This situation can be reversed. By increasing economic, political, trade and other forms of contact, it is possible gradually to build up a communality of interests which will outweigh the divergences and, in the long term, bring the two blocs closer together. From this point of view, the 'outstretched hand' is the approach always adopted.

In the long run, technical cooperation, i.e. a common or at least complementary technological development policy, can be envisaged. The task is to seek out and cultivate everything which could be of mutual benefit to the partners.

IV. THE VERSAILLES MEETING: ADJUSTMENT OR RADICAL CHANGE IN THE OPERATION OF COCOM?

1. Background

A. Preliminary remarks

A number of basic principles have been accepted by the participants, including:

- the wish for the Member States to respect COCOM rules,
- the determination shared by all participants to control exports of products and technology likely to undermine the security of member countries,
- the need for an approach based on intergovernmental cooperation with the view to increasing the effectiveness of COCOM,
- the responsibility of each member country to implement the measures laid down by COCOM,
- the need to improve export control systems in the most sensitive strategic sectors.

B. The US economy is in a low-growth phase, but exports are increasingly buoyant, which may prompt the US Administration to relax controls on them.

The fall in the value of the dollar has placed an important card in the hands of US exporters and in 1988, according to some experts, US exports will constitute the main growth factor on condition that investment takes place in the United States to improve production capacities in certain sectors.

There is no longer one-way traffic between the US economy and those of its Western allies. Many foreign firms are acquiring property and industrial plant in the United States, and some are even buying stakes in banks, provoking concern among businessmen and politicians, some of whom are putting forward the argument of national defence and independence.

COCOM is thus faced with a choice:

- adopt a firm stance so as to regain control of the export policy of all those Western countries which are NATO members

- adopt a flexible and conciliatory attitude towards those allies which have become more influential,
- in plain terms, allow a greater volume of products to be exported, but impose strict controls on prohibited products.

Overall, this may lead to an even closer rapprochement in the positions held by the Americans and their European allies in a COCOM equipped with a more effective administrative and legal structure.

C. An undisguised wish to protect the West's high technology

It is worthy of note that on 18 January 1988, a week before the Versailles Conference, an article on this topic appeared in 'Business America', a weekly review published by the US Department of Commerce.

The article, written in a very aggressive style, listed all the loopholes which allow leaks of technology to Eastern Europe and stressed the possible military consequences.

It drew the attention of businessmen to the responsibility of firms with regard to defence and hinted that fresh controls might be necessary.

All this must of course be seen in the context of the March 1988 NATO summit. The implementation of the COCOM rules must be consistent with NATO policy.

D. France and the Marseilles case

The shortcomings in the implementation of COCOM have been highlighted on several occasions, most notably by the TOSHIBA affair.

As the Versailles Conference was opening, the French intelligence service was breaking up an illegal ring which had exported sensitive equipment to the USSR.

All those implicated had apparently admitted organizing several illegal shipments of electronic measuring and radiocommunication equipment effected by a German firm (ROHDE and SCHWARZ). If the planned shipment required a licence, the individuals implicated in the affair altered the customs references for the merchandise, thus obviating any need for an application.

Thus the Versailles Conference opened against a background of great sensitivity on the part of all the allies with regard to exports to the Eastern bloc and their control.

2. The work of the Versailles Conference

A. Need for multilateral action

A particular remark must be made at the outset. When COCOM was set up in 1950, the United States was the chief supplier of sensitive products and trade in them was relatively easy to control, particularly as COCOM encompassed only six European countries in addition to the United States.

With time, technology has developed, sensitive products are much more widely used, manufacturers have become more numerous, and COCOM now has sixteen members and is no longer the same compact organization.

Given the financial, industrial, commercial and technological interrelations between the various sectors of the economy within and among these countries, it is clear that unilateral measures - such as the US Export Administration Act - may seriously penalize certain partners, or even the author of the measures, and thus encourage these partners to contravene the rules. Accordingly, there is a need to set up a multilateral control system based on closer cooperation among the member countries which leaves less room for individual initiatives or slackness.

B. Agreement on reducing the lists of prohibited products

Tighter controls will only prove practicable if the list of prohibited products is short. The dead wood must be cut away in order to improve coordination among the member countries.

This reduction has been achieved by removing the bottom-of-the-range products whose strategic importance has decreased or which are produced throughout the world, thus rendering any export restrictions superfluous.

On the other hand, the emphasis of the COCOM controls must be shifted towards those countries which possess the most advanced technologies in key sectors (this being precisely the spirit in which COCOM was set up).

C. New initiatives

Controls must be made more effective and, to this end:

- the overall administrative structure must be strengthened, even if, initially, this merely entails more frequent meetings of member country representatives;
- each Member State must introduce more stringent penalties for those contravening the rules, if possible in accordance with a more or less uniform scale;
- cooperation must be instituted with countries outside COCOM as a means of encouraging them to take similar measures so that the non-industrialized countries do not become a prime source of supply for the Eastern bloc. It seems that Singapore, Sweden, Switzerland, Finland and Austria are moving in this direction;

- the public must be provided with better information regarding COCOM's objectives, and the resulting implementation procedures should also help to improve its efficiency.

D. COCOM working programme for the short term

Following the meeting, delegates from the member countries agreed to

- rationalize the lists by concentrating on the control of products and technologies of clear strategic importance
- improve cooperation with third countries with regard to technology transfers and the control of the tax distinction applied to these products and technologies
- harmonize and uprate national controls in order to combat more effectively illegal transfers of these products and technologies
- facilitate exchanges of these goods and technologies among member states
- organize high-level meetings at regular intervals (probably once a year) to assess progress achieved in these fields and draw up fresh measures
- publish national lists of controlled products incorporating lists of products and technologies subject to control under COCOM itself.

E. Reaction of the United States

The conference was a clear success from the American point of view. The COCOM member countries demonstrated a wish to strengthen the multilateral control system and fall in line with the American position.

3. Likely short-term consequences

A. First objective: strict implementation of the export control measures

The COCOM members will very probably wish to take their lead from the methods advocated by the Americans

- bank on goodwill and the support of the business world
- prevent violations of the export control system by the early detection of attempts at diversion, for example by establishing a continuously and carefully updated licence system
- discourage potential violators of the rules by applying particularly heavy sanctions.

B. Strengthening national policy measures, particularly in the United States

Here again, the member countries are likely to fall into line with the United States, but the trend will no doubt be less marked.

By way of illustration, since 1981 the US Department of Commerce has quadrupled the number of staff dealing with export control from 203 to 810. Equally significant is the volume of funds allocated to export control programmes, this having increased from US\$ 7.3 million to US\$ 39 million in the same period.

In October 1987, a Bureau of Export Administration was set up in the Commerce Department with the role of developing national export control policy.

It is particularly interesting to note that one of the objectives is to reduce the burden on exporters themselves, in particular the delays resulting from the implementation of the licence system and the attendant paperwork. A computerized management system would seem to be the most rapid and effective means of achieving this.

There might be a case for developing such a system in the Community Member States, or at least coordinating any similar systems which might be introduced.

C. Longer-term prospects

(a) Glasnost, perestroika and COCOM

The problem of developments in East-West relations was not touched on at the Versailles Conference, which dealt exclusively with strengthening and revitalizing COCOM as one element in a defence strategy for the Western world.

(b) Technological developments in the Eastern and Western blocs

The conference worked on the assumption that the Western world enjoys a considerable technological lead and dealt with ways of preserving the defence benefits of this.

The problem of possible technology transfers from one bloc to another was not discussed in Versailles.

(c) COCOM and the completion of the large internal market in 1992

Members are aware that this process will affect COCOM's future, although to what extent it is difficult to assess. However, the problem is not on the agenda in COCOM, and is unlikely to be until the EEC is represented in the organization as a full member.

(d) Substantial changes regarding sensitive products

This is a matter which will occupy COCOM's attention in the future. For the moment, the only change is the removal of bottom-of-the-range products.

V. RECENT POSITIONS IN THE EUROPEAN PARLIAMENT ON TECHNOLOGY TRANSFER

1. The METTEN report on technology transfer (Doc. A 2-99/85, p. 21)

According to the METTEN report, the United States should be aware:

- 'that it is unacceptable to declare its legislation enforceable on the territory of its allies. If measures need to be taken by its allies in the light of security or foreign policy considerations, consultations constitute the means to achieve the objectives concerned.

In the security field, the appropriate forum for consultations is COCOM. However, it is in no way appropriate for the US first to obtain major concessions from its allies in such consultations and then, however, to apply additional, bilateral controls that also affect these allies.

Agreed multilateral controls imply the abolition of unilateral controls.

The further review of the Export Administration Act, with a view to amendment, presents a timely opportunity to assess US intentions.'

2. On embargoes and boycotts

Resolution on the significance of economic sanctions, particularly trade embargoes and boycotts, and their consequences for the EEC's relations with third countries (report drawn up by Mr SEELER on behalf of the Committee on External Economic Relations - Doc. 1-83/82)(1)

After noting that embargoes and boycotts are sanctions recognized in international law, the report stresses that the history of economic sanctions is one of fruitless measures unsatisfactory as a means of achieving foreign policy objectives (even if they may serve to complement other forms of action). The report also stresses the adverse side-effects of economic sanctions.

3. On relations with COMECON

The Committee on External Economic Relations is drawing up a report on relations between the EEC and COMECON with Mr SEELER as rapporteur. We refer you to the conclusions in this report which has not yet been adopted.

(1) OJ No. C 292, 9.11.1982, p. 13 ff

4. The DANKERT opinion (Political Affairs Committee - PE 97.811/fin., p. 4)

With reference to the subject under discussion here, the opinion states:

'A separate problem with regard to the COCOM list of strategic goods is the inclusion of the People's Republic of China in the group of Communist countries to which the list applies. There is both strategic and commercial justification for a more flexible policy vis-a-vis the People's Republic.

It has already been noted that COCOM restrictions are of significance not only to trade with Communist countries but also to commercial dealings among the member states of COCOM itself. The incorporation of COCOM agreements into national legislation is detrimental to the European market in particular: an export licence is required in order to trade, within Western Europe, in goods that are subject to COCOM conditions.'⁽¹⁾

It should be noted that the American position is becoming more entrenched, and the intention being to restrict their technological exports to the USSR, whereas China is being treated more openly, in fact increasingly so.

There is, therefore, nothing to prevent China from re-exporting to the USSR technology for which she (China) can have no direct use, for example in order to acquire foreign currency. The export control policy is thus not necessarily as coherent and watertight as it might seem at first glance.

Furthermore, the latest trade agreement between Japan and the United States on semi-conductors could produce a paradoxical situation whereby the United States' European allies would not be able to import Japanese semi-conductors (the Japanese are the world's leading suppliers) whilst nothing would prevent the Soviets or the Chinese from receiving Japanese supplies!

5. The RAFTERY opinion (Committee on Economic and Monetary Affairs and Industrial Policy)

'The inadequacy of COCOM

Without wishing to belittle the role played by COCOM, it must be stressed that the committee's work does not fully meet the present requirements. In a field as complex and as fluctuating as that of new technologies, the adaptation of lists of products needs to be performed with greater speed and flexibility. It is regrettable, for example, that it has taken several years for COCOM to sanction the export of small personal computers, even though this represents a

⁽¹⁾ PE 97.811/fin., p. 4

very limited adjustment. Moreover, a number of countries such as Taiwan, Singapore, South Korea, Sweden and Austria do not belong to COCOM and can evade the regulations on transfers of technology. This weakens the scope of COCOM's regulations and produces a distortion of competition. It would be sensible, therefore, to consider setting up a consultative body for the USA and the Community which would include representatives from both the governments and industries concerned and could launch a dialogue at strictly commercial level which would be productive for both sides.'(1)

6. The BRAUN-MOSER opinion (Committee on Transport)

This opinion states that:

'The (COCOM) control mechanism in its present format neither promotes trade liberalization within the GATT nor advances international cooperation. Furthermore, the control exercised by the USA on the intergovernmental conference of the COCOM mainly restricts the exports of the Community to the COMECON countries rather than USA exports because American exports to COMECON account for 10% of the total imports of COMECON while Community exports account for about 79% of all trade between the OECD and COMECON in 1982.'(2)

VI. CONCLUSIONS: THE FUTURE OF EAST-WEST TRADE RELATIONS WITH REGARD TO TECHNOLOGY TRANSFER IN THE LIGHT OF THE APPLICATION OF COCOM

1. Preliminary remark

Just as the Pègard affair is only one example, so COCOM is only one aspect of East-West relations. It should also be noted that in international terms it is difficult to separate trade policy (Low Policy) from general policy (High Policy), and it is a vain hope to wish to draw a clear distinction between civil and military technologies.

Ultimately, we arrive back at the familiar dispute between those who believe that trade relations promote peace and are the best way for the West's democratic values to triumph (a theory argued by Samuel PISAR in particular and recently reiterated by Mr David ROCKEFELLER, President of the Trilateral, in the Figaro magazine of 2 November 1985 when he said that '... I hope that business and human rights will be separated'), and those who fear that the USSR maintains and consolidates its political system through the free world's technologies and aid.

(1) PE 94.246/fin., p. 6

(2) PE 98.215/fin., p. 5

The operation of COCOM is a technical aspect of East-West relations and any evaluation of this body is conditioned by the evaluator's views on the fundamental issues of international politics.

The problems which COCOM seems to be experiencing at the moment are only a reflection of the fact that the United States and the Community hold somewhat different views on international affairs and of problems connected with the strategic defence of Europe, particularly the United States' Strategic Defense Initiative.

This is noted by Mr DANKERT in his opinion:

'Political differences of opinion with the US on the significance of trade to East-West relations would appear unbridgeable. The US, in its role as a superpower, will always view the USSR in terms of military capabilities to a greater extent than Western Europe.'
(Dankert opinion, PE 97.811/fin. of 31 October 1985, p. 4).

2. Practical features of the development of COCOM

A. Principles

Since the election of President REAGAN, the USA has been at great pains to strengthen export control by obtaining two things:

- the harmonization of national control systems and,
- an undertaking by the industrialized countries outside COCOM to take account of COCOM control mechanisms.

However, this invitation to third countries has a political side to it, and faces major pitfalls in view of the sovereignty and foreign policy of these countries.

With regard to the harmonization and implementation of export controls, the scope remains vast.

What is needed is:

- more effective export control systems,
- closer cooperation between member countries, particularly in the sphere of customs and,
- deterrent sanctions for illegal exports.

Industrialists in all the member countries must also be better informed of the realities of COCOM. Updating the embargo lists is vital in this connection.

In the light of the above, COCOM is more likely to achieve its objectives.

Given that the completion of the single market by 1992 is one of the Community's primary aims, this economic unification must involve the replacement of current control mechanisms by an equally effective Community system (customs control at the common external frontier).

B. MAJOR PROBLEMS FACING COCOM

(a) Effectiveness of export controls

Strengthening controls in COCOM is a priority objective for the United States, which advocates two methods of achieving it:

1. The harmonization of control measures with a view to increasing their effectiveness (by increasing the number of customs officers, the severity of sanctions, COCOM's budget, etc.);
2. The so-called third country initiative.

This initiative has taken the form of representations to third countries urging them to introduce, by means of appropriate legislative instruments, controls on re-exports from these countries to the Eastern bloc and China.

These efforts have borne fruit in a number of cases. Sweden, Finland, Australia, South Korea and Singapore have indicated their readiness to cooperate in some way with COCOM.

The other COCOM partners do not deny the need for effective control, but take the view that the rationalization of the embargo list would be just as effective in strengthening controls as the two methods quoted above. The United States' partners advocate the simplification of the embargo lists as a matter of priority by means of their updating, so as to weed out certain obsolescent items, and their continuous rationalization.

Last year, the Western allies accepted that priority should be given to strengthening controls (US proposal) on condition that the United States should at the same time seek to simplify the lists.

The compromise achieved in Versailles in January 1988 put these two priorities on an equal footing, and the Europeans are very keen to see progress being achieved simultaneously in both areas.

Nevertheless, the Versailles compromise has not resolved the problem raised by the extra-territoriality of the US Export Administration Act.

(b) The extraterritorial nature of the US legislation was illustrated in a graphic manner during the Toshiba-Kongsberg affair (illegal export of Japanese numerical machine tools and Norwegian software). Following this affair, the United States threatened to couple their future trade legislation with extraterritorial sanctions targeted against firms in COCOM member states which contravened the embargo.

American opinion is divided on the imposition of unilateral sanctions of this kind, possibly accompanied by protectionist measures. It has also left Congress at loggerheads with the US Administration which is anxious to protect its trade interests without neglecting the strategic implications of this trade (and the sensibilities of its Western partners in COCOM!).

This is why the US Administration wishes to see COCOM strengthened.

In this way - and by means of other measures such as the structural reform of COCOM - the US Administration intends to draw the teeth of the bill debated in Congress.

(c) West-East technology transfer

The trend towards more stringent export controls on strategic products is matched by a reluctance to ease restrictions on technology transfers to Eastern bloc countries.

The United States wishes to limit this to the assembly of components manufactured in the West. The primary aim is to preserve the West's technological lead, which is most graphically demonstrated by its ability to combine mass production and quality.

(d) West-West technology transfer

West-West technology transfers are also viewed with mistrust by the Americans, despite statements of principle advocating technological collaboration in NATO or the creation of a vast technology market among the COCOM member countries.

It comes as no surprise that one of the stumbling blocks to a cooperation agreement between NASA and the European Space Agency for the joint development and operation of a space station was the transfer of sensitive products and technologies.

Similar trends can be seen in areas of scientific cooperation.

3. The future of East-West trade

Some observers believe that East-West relations will slide into a real decline for economic and political reasons rooted in both East and West. In the East, the Soviet leaders are apparently aiming at self-sufficiency. Speeches and articles underscore the importance of socialist economic cooperation and the difficulties encountered by the USSR through the acquisition of Western technology.

In addition, the Soviets seem to be increasingly aware of their dependence and vulnerability as their production system deteriorates.

With regard to Europe, there is clearly a need to take account of the possible impact on exports of the signing, in Luxembourg on 25 June 1988, of the agreement between the EC and COMECON.

4. US trade policy

There are certain general problems affecting trade relations between the EEC and the USA, and joint solutions are currently being sought.

US trade policy towards Eastern Europe is rather different from that of the EEC. In general, the Americans control their strategic exports far more strictly than do the Europeans. However, there have been certain contradictions in American trade policy, for example when the US abandoned its wheat embargo and yet called on its allies to tighten their trade controls

when dealing with the Soviets. It should also be borne in mind that the United States and the European countries accuse each other of protectionism and the danger in this area is a real one. It follows naturally from this that the Europeans sometimes fear that certain American actions are designed to protect purely national interests. At all events, Western policies may lead to increasing costs and a relative loss of markets.

It must be stressed that no government of a Community Member State has ever called for the abolition of COCOM or wanted to withdraw, and the recent accession of Spain indicates a desire to continue with this type of control while making improvements.

The Europeans seem to be following the line taken by Mr MITTERAND as early as 1981 in Ottawa when he stated that he was in favour of revitalizing COCOM's activities (1).

It is clear that the development of US trade policy will be influenced by the summit meeting between Mr REAGAN and Mr GORBACHEV and by the policy of GLASNOST.

It should be pointed out that the section of the official communique released after the TORONTO Summit dealing with trade stated that its expansion could serve common interests, but only if it was conducted in accordance with international principles and did not threaten the security of Western countries. These provisos, insisted on by the United States, were designed to remind people of COCOM's existence.

A few days later, Mr CARLUCCI, the US Defense Secretary, reminded the United States' allies of the need to maintain strict surveillance of high technology exports to the USSR, stating that the West had only been able to preserve its qualitative military lead through the superiority of its technology. The loss of this lead would give rise to serious difficulties.

5. Export controls and the completion of the single market

Future control systems must take account of both the national security interests of the member countries and the completion of the single market. They must also be sufficiently effective to persuade the United States to drop its re-export controls on intra-Community trade.

In order to convince them, the Community would have to be able to guarantee that products on COCOM lists would only be exported outside the Community after effective and reliable controls had been carried out.

In the interests of all parties concerned, Community legislation and practice should fall into line with current developments in US trade law on all matters affecting COCOM, rather than declaring war on it.

(1) YAKEMPCHOUK - 'Transfers of sensitive technologies between East and West'
Studia diplomatica vol. XXXVII, 1984, No. 4, p. 496

It is unacceptable that the United States should draw up legal provisions imposing sanctions on foreign companies which violate the laws of their own countries on the export of strategic products because the state concerned is incapable or reluctant to enforce its own rules, but is equally unacceptable for the United States' partners and allies to indulge in such practices. The two sides can only expect to be taken seriously if they adopt a level-headed and responsible approach to this matter. This will prevent a repeat of situations such as the sanctions imposed under US law on the Japanese firm Toshiba or disputes such as that between the EEC and the United States concerning the GARN amendment (see Annex 3).

In the Community, the controls carried out by the Member States will clearly pose a serious problem when the single market is completed, a matter of profound American concern. The Commission is currently studying solutions which could be applied during the transitional period up to the end of 1992 and the solutions which will be applied after 1 January 1993. It will shortly submit appropriate proposals to the Council.

Future control systems will have to take account of both the national security interests of the member countries and the completion of the single market. They will also have to be sufficiently effective to persuade the United States to drop their re-export controls on intra-Community trade. In order to convince them, the Community would have to be able to guarantee that products on COCOM lists would only be exported outside the large internal market after effective and reliable controls had been carried out.

There are, admittedly, indirect ways of transferring technology to the Eastern bloc, in particular through countries which are not members of NATO or COCOM. Due account must also be taken of industrial espionage, although this demands a great deal of time and resources and is therefore very costly. Finally, one must add the new role which China may play now that controls on US exports to that country are increasingly being relaxed.

Finally, it must be stressed that trade organizations seek to influence the award of export licences for reasons unconnected with defence.

What is needed above all is greater cohesion among the Member States. Would the Community then be faced the problem of drawing up European lists for the export of strategic products and the question of whether the military, as experts, might usefully play a more active role in the procedure for awarding licences?

This greater cohesion would have to go hand in hand with improvements in the exchange of information among the Member States and the standardization of their technologies. In more general terms, this raises the problem of Europe's response to the challenge of modern technology (1). However, this must be seen in an overall European context, because there can be no technological Europe without a large market without frontiers based on the harmonization of standards, the opening up of public contracts, joint legislation on industrial property, European status and competition in the Community, monetary and financial cooperation and, even, a common foreign policy.

(1) See report by Mr PONIATOWSKI (Doc. A 2-109/85)

This leads on to the possible response to the problem of the strategic defence of Europe and the Community's position vis-à-vis the strategic defence proposals made by the USSR and the USA. The Versailles Conference pointed up the Community's weaknesses with regard to strategic trade policy.

The United States easily imposed their point of view on indecisive partners who were unable to put forward joint positions.

Discussions dealt essentially with technical problems associated with trade policy which fall within the sphere of competence of the Community, which was not even represented in its own right.

The first step must therefore be to make suitable arrangements for the Community to be represented.

Indeed, the presence of a Community representative is essential, particularly in view of the development of East-West trade relations and, more specifically, the EC-COMECON agreement on the one hand, and the completion of the single market on the other.

In conclusion, one could posit the introduction of a legal instrument more rigid than COCOM in its present form, perhaps by means of an international treaty, with strict operating rules, clearly defined obligations and rights for all the partners and adequate publicity for the resulting legal provisions. The outcome of the Versailles Conference seems to indicate that COCOM, an essential offshoot of the North Atlantic Treaty, is developing in this direction.

ANNEX I

The President
of the European Parliament

THE LORD PLUMB

19 January 1988

Dear Mr Mallet,

Thank you for your letter of 16 December about the report which Mr TOUSSAINT is preparing on the transfer of technology and COCOM.

I am sorry that our combined efforts have not led to a helpful response from the Secretary General of COCOM. However, I note that Mr TOUSSAINT has had some useful contacts with certain COCOM representatives.

We seem to have exhausted the interventions which Parliament might make with COCOM. I doubt that it would be appropriate for Parliament to seek an intervention on our behalf by the Presidency of the Council. Regrettably, therefore, there seems no alternative to Mr TOUSSAINT now moving to finalize his report on this important subject.

Yours sincerely,

(sgd) Henry PLUMB

Mr Jacques Mallet,
Chairman,
Committee on External Economic Relations

INTRACOMMUNITY EXPORT CONTROLS

The way in which Member States control high technology exports is, to say the least, far from transparent.

They base their actions on national laws, rules and administrative procedures, some of which are very often not made public or publicized. Methods and degrees of effectiveness vary from one Member State to another. In Germany, exports are unrestricted unless explicitly banned. In Italy, all exports are controlled unless explicitly exempted from such checks. In most cases, the products covered seem to tally with the COCOM lists but, in some cases, the net is thrown wider.

In general, a potential exporter from one Member State exporting a product appearing on a list to another Member State must obtain from the potential importer an International Import Certificate (IIC) issued by the authorities responsible for awarding licences in the importing country. This enables the importing country to check the final use of the product. Having obtained the IIC, the potential exporter can apply for an export licence from the responsible authorities in the exporting countries. Before deciding whether or not to grant an export licence, the authorities can consult experts or other government bodies. This procedure normally takes between two and four weeks. Once the licence has been obtained, the merchandise can be dispatched following submission of the dispatch documents to the local customs authorities. On receiving the dispatch documents, the importers must obtain a delivery verification certificate which is sent, along with a copy of the importation document issued by the customs, to the exporting firm which forwards it to the licence office of the exporting country. This normally concludes the procedure for the control of final use between Member States.

There are two exceptions to this general procedure. Licences are not required for intra-Benelux trade, nor for exports from Ireland to the United Kingdom.

DELEGATION FROM THE COMMISSION OF THE EUROPEAN COMMUNITIES

'The delegation from the Commission of the European Communities and the Embassy of the Federal Republic of Germany present their compliments to the State Department and wish to allude to the 1987 law on the control of multilateral exports and the accompanying sanctions (the so-called GARN amendment) which is currently part of the Senate version of the HR3 1987 omnibus law on trade and competition.'

The EEC understands that the GARN amendment provides for the imposition of sanctions covering a period of two to five years on any foreign entity which may violate the export control rules outside the United States. These sanctions would consist, in part, of exclusion from contracts with US government departments or agencies and a total ban on imports of their merchandise into the United States.

The European Community and its Member States understand the importance to the United States of protecting its national security interests. However, were it to be adopted in its current form, the bill would run counter to the generally accepted principles on which international law operates. The bill would require that the law be applied to persons who are not American citizens and to actions which did not take place in the United States.

This extraterritorial application of US law is unacceptable in both legal and political terms to the European Community and its Member States.

These measures would also seek to impose commercial sanctions on non-American firms in a discriminatory manner incompatible with internationally accepted trade rules. Their application would have a considerable impact on the commercial interests of the Community.

In addition, by imposing penalties retroactively, these measures would run counter to generally accepted principles with regard to retroactivity.

If the GARN amendment were to be adopted and enter into force, the European Community and its Member States would take action to protect their legitimate rights laid down under GATT.

The Member States of the European Community and the Embassy of the Federal Republic of Germany take this opportunity to assure the State Department once again of their very highest consideration.

Washington D.C.

15 January 1988

MOTION FOR A RESOLUTION (Doc. 2-721/84) tabled by Mr LINKOHR, pursuant to Rule 47 of the Rules of Procedure on the restrictions imposed by the USA on the international transfer of technology and the damaging effects on industrial development in the European Community

The European Parliament,

- A. whereas since the end of the 1970s the USA has stepped up its controls on the transfer of technology, even to the countries of the European Community, by such means as secrecy regulations, export restrictions and clauses in public sector contracts,
 - B. having regard to the findings of an unpublished study on the restrictions imposed on the international transfer of technology by the USA (carried out on behalf of the Federal German Ministry for Research and Technology),
 - C. concerned at the growing nationalism surrounding technology, whereby the USA hopes to achieve economic and technical supremacy,
 - D. whereas US export control laws are much more extensive than the equivalent laws in other countries, and also cover re-exports,
 - E. fearing that, in the absence of a concerted approach, the European Community's technical dependence will lead to ever greater political dependence and make it vulnerable to blackmail,
 - F. whereas US secrecy regulations seriously impede the exchange of scientific data and research results,
1. Calls on the Council and Commission to bring all their influence to bear on the USA to secure the lifting of restrictions on the transfer of technology between the USA and the European Community;
 2. Calls on the Commission to have proposals for countermeasures at the ready in the event of the restrictions being maintained;
 3. Reaffirms its view that the level of advanced technology in Europe should be improved by greater cooperation within the framework of the Community research and industrial policy, particularly in the fields of data processing, automation, biotechnology, aeronautics and aerospace, new materials and telecommunications;
 4. Calls on the Commission to draw up a report on the current state of technology transfer between Western countries;
 5. Instructs its President to forward this resolution to the Council and the Commission.

ANNEX V

MOTION FOR A RESOLUTION (Doc. 2-466/84) tabled by Mrs LIZIN pursuant to Rule 47 of the Rules of Procedure on the Pégard company and exports to COMECON

The European Parliament,

- A. aware of the difficulties encountered by the Pegard company in Andenne which was refused a licence to export a boring and milling machine to the USSR, even though it was recognized that the machine was of no strategic importance,
- B. aware that this company is once again running a risk in requesting a licence for another non-strategic export,
- C. believing that it is not in the general interest of European trade and industry for the broad interpretation accepted by Belgium with regard to the boring and milling machine contract to be applied in future,
 1. Calls on Belgium to grant the Pegard company an export licence in respect of the new contract for Bfrs 916 million.
 2. Calls on the Commission and the Council to reaffirm Europe's commercial independence and to confirm that measures are being taken to obtain information on American exports to the USSR.

OPINION

(Rule 101 of the Rules of Procedure)

of the Political Affairs Committee

Draftsman: Mr P. DANKERT

By letter of 31 January 1985, the Political Affairs Committee requested authorization to deliver an opinion on the political aspects of the transfer of technology.

By letter of 11 February 1985, the committee was authorized to deliver an opinion on this subject.

At its meeting of 22 March 1985, the Political Affairs Committee appointed Mr DANKERT draftsman of the opinion.

It considered the draft opinion at its meeting of 31 October 1985 and unanimously adopted the conclusions contained therein

The following took part in the vote: Mr HÄNSCH, first vice-chairman and acting chairman; Mr DENIAU, third vice-chairman; Mr DANKERT, draftsman; Mr BALFE (deputizing for Mr LOMAS), Mr CHRISTIANSEN (deputizing for Mr WALTER), Mr FITZGERALD (deputizing for Mrs ANGLADE), Mr FLANAGAN, Mr B. FRIEDRICH, Mrs van den HEUVEL, Mr KLEPSCH, Mr NEWENS, Mr NORMANTON (deputizing for Lord DOURO), Mr PELIKAN (deputizing for Mr AMADEI), Mr PENDERS, Mr PLASKOVITIS, Mr POETTERING, Mr SABY (deputizing for Mrs CHARZAT), Mr SEGRE, Mr TZOUNIS (deputizing for Mr ANTONIOZZI) and Sir Peter VANNECK.

The arms race between East and West is also a contest in advanced technology. Easy access by one side to the other's technological innovations is the cheaper option; but it also brings about an intensification of the arms race.

There are therefore good reasons for restricting the transfer of militarily sensitive technology to the USSR and its allies. The United States and its NATO allies, together with Japan, regulate this via agreements within the Coordinating Committee for Multilateral Export Controls (COCOM). A COCOM list of 'strategic goods' is drawn up at fairly regular intervals; only under very restrictive conditions may such goods be exported to Communist countries.

The negotiations on the basis of which the COCOM list is drawn up are increasingly laborious: not only does the US Department of Defense exert considerable pressure with a view to adopting a very restrictive policy - the Pentagon still takes the view that the COCOM list should be subject to continuous review in the light of recommendations from a new committee of military advisers - but the increasing difficulties also result from the fact that, in a number of areas of technology, civil developments are more advanced than military developments and that, consequently, COCOM restrictions inhibit normal trade. Such curbs even extend to COCOM's member states: the COCOM list is incorporated into national legislation, as a result of which export licences are required for transactions both within the COCOM area and with Communist-bloc countries. US legislation - the Export Administration Act and the extraterritorial nature thereof - further complicates the issue.

Consequently, COCOM-related issues are increasingly a source of friction in the far from untroubled trading relations between Japan, the US and the European Community. In view of the major significance of US defence contracts for technological innovation, the expanding role of the Department of Defense in the export of US technology, outside the COCOM forum, is a further disruptive factor. The Pentagon employs not only the COCOM list but also its own, confidential list: it approaches the government departments responsible for issuing export licences and often succeeds in making US policy more restrictive than is called for under COCOM agreements.

In recent years, the political problems arising from regulating the export of strategic goods primarily related to the East-West dimension. The gas pipeline affair of a few years ago is the best example of this type of problem.

Although doubts may be entertained that European opposition to the ban imposed by President Reagan on US undertakings from supplying parts for the so-called Siberian gas pipeline, from either the US or US subsidiaries in Europe, was motivated by political rather than economic considerations, the ban itself was a major political event in US relations with Europe, as too was the decision by European enterprises to supply such goods in spite of this ban.

For at least two reasons, the confrontation between the US and Europe over the Siberian gas pipeline is still significant today:

1. The conflict demonstrated that there could be serious differences of opinion between the US and Europe on major aspects of policy on East-West relations.
2. It also indicated that excessive technological dependence forces Western Europe into political subservience too. That this could be avoided in connection with the gas pipeline affair was due not only to European opposition but also to the fact that some US undertakings experienced difficulties after breaking the contract in question. It was even more

significant that the US President simultaneously allowed a major delivery of cereals to the USSR to proceed, as a result of which the general impression was that double standards were being applied to this particular issue.

The new Export Administration Act incorporates safeguards against interference with existing contracts. Nevertheless, because of the extraterritorial nature of this legislation, there are insufficient safeguards against the rise of new conflicts. This in itself is a major incentive for initiatives geared towards strengthening Europe's technological base (Esprit, Eureka, etc.).

Political differences of opinion with the US on the significance of trade to East-West relations would appear unbridgeable. The US, in its role as a superpower, will always view the USSR in terms of military capabilities to a greater extent than Western Europe. The issue of the division of Germany and Western Europe's preference for détente - the latter is related to a certain extent to the former - combine to ensure that the European Community, as a trading power, will continue to favour the strengthening of commercial relations with Eastern Europe. Trade in high-technology products offers the best opportunity of expanding the current fairly narrow basis of relations.

A separate problem with regard to the COCOM list of strategic goods is the inclusion of the People's Republic of China in the group of Communist countries to which the list applies. There is both strategic and commercial justification for a more flexible policy vis-à-vis the People's Republic.

It has already been noted that COCOM restrictions are of significance not only to trade with Communist countries but also to commercial dealings among the member states of COCOM itself. The incorporation of COCOM agreements into national legislation is detrimental to the European market in particular: an export licence is required in order to trade, within Western Europe, in goods that are subject to COCOM conditions.

Should such goods contain components in respect of which an export licence issued by a third country is required, transactions may be seriously delayed. In particular, there are often problems in connection with licences to be issued by the United States for exports from Italy to the Netherlands, for example. In the case of products or components manufactured outside the United States but subject to the extraterritorial provisions of the Export Administration Act, there are additional complications: Western European governments do not recognize the extraterritoriality of this Act and, because of this refusal, they are unable to assist undertakings in obtaining a re-export licence from the US.

In practice, therefore, the COCOM list gives rise to major difficulties for Community Member States in their trading relations with each other. Obviously, at a time when it is wrestling with major trading problems caused by the high dollar exchange rate, the US will be readily suspected of using procedural difficulties as a pretext for promoting domestic trade (see NRC Handelsblad of 4 July 1985). The role of the COCOM agreements in this has helped to create a climate of mutual mistrust within the Atlantic Alliance.

Specific measures to improve the situation will not be easy to devise. The best solution would be for the COCOM countries to conclude an agreement whereby the goods listed by them may circulate freely within the COCOM area.

COCOM is not the only source of political problems in the field of technology transfer: reference has already been made to the United States' own, more far-reaching policy. As a result of the increasing importance of defence

contracts to the economy - currently, in particular, SDI-related contracts - there is a risk that the role of the Department of Defense in US policy-making on exports will be consolidated. In view of Japan's development in particular, it is far from fanciful to suggest that the already marked tendency in the US to prevent Japanese access to new technology will be heightened by the Pentagon. It is inevitable that such a move will affect Europe too.

Trade conflicts with the US have hitherto been viewed primarily as conflicts about steel- and agriculture-related problems. Nevertheless, and in view of the serious Japanese threat to what remains of the US electronics industry, the present conflict will probably spread quickly: advance warning has already been given by the problems within COCOM and by the issue of the extraterritorial nature of US legislation.

Commercial and foreign policies are inextricably linked. The worsening trade problems affecting relations between the US and Europe, the US and Japan and, of course, Japan and Western Europe cannot remain immune to political consequences.

DRAFT OPINION

(Rule 47 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman : Mr RAFTERY

On 21 November 1984 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr RAFTERY draftsman.

At its meeting of 22 April 1985 the Committee on Economic and Monetary Affairs and Industrial Policy considered the draft report and adopted its conclusions unanimously.

The following took part in the vote :

SEAL (Chairman), BEAZLEY (Vice-Chairman), RAFTERY (Draftsman), BESSE, BEUMER, CAROSSINO (replacing Bonaccini), CASSIDY, FRIEDRICH, GAUTIER, Mrs GREDAL, van HEMELDONCK, Mr HERMAN, KILBY (replacing de FERRANTI), OPPENHEIM, PATTERSON, Ms QUIN, ROGALLA

1. American restrictions on transfers of technology

After a period of relative liberalism, in line with its so-called policy of detente, the United States has gradually stepped up its controls on the transfer of technology. The strengthening of these controls reached a critical point on 18 June 1982 when the United States President decided to extend the ban it had imposed on American companies concerning exports to the Soviet Union of materials intended for use in the construction of the Siberian gas pipeline, to foreign subsidiaries of American companies and to undertakings holding American licences. This attempt to impose American law extraterritorially and retroactively, on the European governments concerned produced a very perceptible hardening of attitudes in trade relations between the EEC and the United States.

The common position taken by the Member States of the Community, the reactions of certain American industrial circles affected by the ban and the growing scepticism as to the real effects of these economic sanctions led the American Administration to suspend these measures in November 1982 (Non-paper arrangement). However, the trade dispute between the EEC and the USA in this field was certainly not resolved by the November 1982 arrangement.

For example, the agreement reached by COCOM(1) on 13 July 1983 following long negotiations on the third list of products with dual civil and military use is far from being wholly satisfactory, even though the export of small personal computers is now accepted.

Furthermore, the 1979 Export Administration Act has now been revised. The text adopted by Congress provides for the maintenance of strict controls on exports. Under the new legislation, foreign companies which ignore the American ban on the export of goods considered to be of strategic importance will be prohibited access to American markets. Similarly, the US Trade Department reserves the right to refuse export authorizations to US companies until such time as their overseas subsidiaries give a contractual commitment to comply with American trade regulations. The legislation adopted by the USA does not bode well, therefore, for a liberalization of policy on transfer of technology.

(1) COCOM (Consultative Group Cooperation Committee), a coordinating committee for the multilateral control of exports, is comprised of Japan and the member countries of NATO, with the exception of Iceland and Spain

2. The harmful economic effects on the Community of US restrictions on the international transfer of technology

The position of the Community as regards trade with the COMECON countries is very different from that of the United States in terms of both type and quantity. In 1980, for example only 9% of American exports were to COMECON countries and only 3% of American imports came from these countries. In contrast, Western Europe accounted for 80% of all trade between the OECD and COMECON in 1980. In addition, it should be noted in particular that, whereas the USA exports mainly agricultural products to the Soviet Union, Community exports are principally of manufactured goods.

This produces a technological interdependence (spare parts, future deliveries...) and implies, a certain degree of mutual trust.

In other words, the US restrictions on the transfer of technology have a much greater effect in the Community, than they have in the US.

Moreover, the ban on exports of material intended for the Siberian gas pipeline clearly showed the effects of such restrictions on the European economy. Thousands of jobs were at risk during this embargo and the governments concerned responded, some by using their right of requisition in respect of the companies concerned, others by turning to the courts(1).

Recently, the Pegard company, which manufactures machine tools in Belgium, was refused a licence to export a boring and milling machine to the Soviet Union, even though it was recognized that the machine was of no strategic importance. Had it not been for the intervention of the Belgian Government, the survival of the company would have been seriously threatened(2). In addition to their effects on economic activity, the US restrictions also pose a serious threat to the unity of the European market.

(1) In the Sensor versus CEP case, the Hague District Court ruled clearly against the extraterritorial application of the US embargo decision. Its ruling therefore compelled the Dutch company, a subsidiary of an American company, to honour its contract with the CEP, the destination of which was the Soviet Union. (The Hague District Court, Compagnie européenne des pétroles - Sensor Nederland. 17 September 1982. International Legal Materials. July 1982, Vol. XXI)

(2) Motion for a resolution Doc. 2-466/84

Nevertheless, the areas of dispute are not just the harmful effects of these restrictions. In fact, numerous subsidiaries of American companies are justifiably worried by the severe penalties laid down in the Export Administration Act and are refraining from infringing the export restrictions laid down by the US Administration. As a result, the Community economy, has suffered an undeniable loss of activity. It would therefore be useful for the Commission, as far as is possible, to compile a review of the harmful effects caused by American restrictions on the transfer of technology.

The Community cannot accept a US trade policy, prompted by specific political ends and in some respects contrary to international law, especially regarding its extraterritorial and retroactive application, if that policy is damaging the future of the European economy. This is all the more true when the unity of its market and its independence in the field of trade and energy are threatened. Moreover, it is increasingly apparent that, under the cover of secrecy and in the guise of foreign policy, the USA is seeking to protect its dominant position vis-à-vis the Community in advanced technological sectors. For example, in the field of products with dual civil and military use, it is difficult to know whether the controls on exports are intended to widen the technological gap with the COMECON countries or with the USA's Western trading partners.

3. The position of the Community

It is clear that, faced with a crisis situation, the Member States of the Community will have to take the necessary retaliatory measures in the form of requisition orders or compensation within the framework of GATT. The European Parliament can only recommend that the Commission show greater firmness in these cases. Nevertheless, it is clearly not in the interests of either side of the Atlantic to embark on a trade war which, certainly for its part, the Community does not want.

There appear to be two courses of action open to the Community in this area. On one hand, measures should be taken to recreate the right conditions for fair trading practices, notably by improving existing instruments, and on the other, to strengthen the Community's own technological cooperation.

(a) The inadequacy of COCOM

Without wishing to belittle the role played by COCOM, it must be stressed that the committee's work does not fully meet present requirements. In a field as complex and as fluctuating as that of new technologies, the adaptation of lists of products needs to be performed with greater speed and flexibility. It is regrettable, for example, that it has taken several years for COCOM to sanction the export of small personal computers, even though this represents a very limited adjustment. Moreover, a number of countries such as Taiwan, Singapore, South Korea, Sweden and Austria do not belong to COCOM and can evade the regulations on transfers of technology. This weakens the scope of COCOM's regulations and produces a distortion of competition. It would be sensible, therefore, to consider setting up a consultative body for the USA and the Community which would include representatives from both the governments and industries concerned and could launch a dialogue at strictly commercial level which would be productive for both sides.

(b) The work of international bodies

The slow progress of the work undertaken by the United Nations Conference on an International Code for the Transfer of Technology, which is next due to meet during the first half of 1985, is to be regretted. The European Parliament can only recommend that the Commission participate as actively as possible in the development of this work, which concerns transfers of technology between both East and West and North and South.

As far as the activities of the European Parliament are concerned, the Committee on Economic and Monetary Affairs and Industrial Policy can only stress the vital role played by the US Congress and European Parliament Delegations and call for the continuation and strengthening of this dialogue.

(c) The activities of transnational undertakings

The restrictions imposed by the USA on transfers of technology assume a particular significance in the light of the vast network of transnational undertakings, of which the great majority are American. This raises the

problem of controlling the activities of these undertakings, the effects of their dependence on US legislation and the improper contractual clauses which they accept and with which they comply

(d) Strengthening technological cooperation in the Community

Ensuring the independence of the Community's trade policy in the face of a dominant partner will not be easy, particularly as the Community has not yet regained an adequate level of competitiveness. The Committee on Economic and Monetary Affairs and Industrial Policy can only stress the need to step up investment in research and development and increase Community funding in this sector and to strengthen cooperation between the Member States, particularly on projects like the ESPRIT programme.

In conclusion, the Committee on Economic and Monetary Affairs and Industrial Policy :

1. Condemns the unacceptable restrictions on the transfer of technology to the EEC and on the export of certain high technology products made in the Community and considers that these restrictions, which in the way they operate are often contrary to international trade laws and inappropriate to their military and political objectives, constituting too often an abuse of America's dominant position in the technological field and, amongst other things, reflect a disturbing increase in US protectionism;
2. Draws attention to the potential conflict between the application of the US legislation, which can effect the transfer of technology between European Country Members States, and the provisions of the EEC Treaty in the fields of the internal market and competition policy.

3. Stresses the serious effects of these commercial practices on the economic development of the Community, particularly on employment, and on the Community's independence in the field of trade and energy; calls therefore on the Commission and Council to respond vigorously to these practices using all the means at their disposal and asks the Commission to report on actions taken since the beginning of the year;
4. Calls on the Commission and Council, in order to avoid crisis situations of this kind in trade relations between the USA and the Community the two largest trading blocs in the world, to seek continually to persuade the US Administration to establish a permanent dialogue with the Community which would promote a better understanding of the problems and their implications and ensure that trade regulations and undertakings are respected;
5. Is of the opinion, in spite of recent positive steps (liberalisation of controls on personal computers, and the acceptance of the principle that revision of the list of equipment under control should keep pace with the advances in technology), that the functioning of COCOM is not really satisfactory;

Notices that the decisions of this body, which are often restricting the normal dissemination of technology and exchange of scientific knowledge, invariably reflect the preoccupations of US foreign policy which are clearly dominant within COCOM;

Notices that the putting into practice of COCOM decisions is not always carried out uniformly thus putting certain Community countries at a disadvantage.

6. Proposes to this end that, in view of the inadequacies of the Cooperation Committee for the multilateral control of exports (COCOM), a bipartite USA/EEC committee be set up, composed of representatives of the governments and industries to examine systematically the complex questions related to transfers of technology so as to prevent any restrictions which are not based on undisputed motives of security in East-West relations;
7. Calls also for the work undertaken by the UN Conference on an International Code for the Transfer of Technology to be pursued and for the Commission to play an active role in it;
8. Stresses that, generally speaking, the difficulties in trade relations between the USA and the Community stem largely from the serious lack of cooperation on both sides of the Atlantic on economic and monetary matters, and is relying on the European Parliament and US Congress Delegations to continue to emphasize the need for the closer economic and monetary cooperation between the USA and the Community which is vital for the international economic order;
9. Calls finally on the Community to step up its cooperation in the field of research and innovation so as to reduce the technological gap and secure its commercial independence; to this end, calls for an increase in Community funding for research and commercialisation of research findings, and awaits new proposals from the Commission in this field.

OPINION

(Rule 47 of the Rules of Procedure)
of the Committee on Transport

Draftsman: Mrs BRAUN-MOSER

On 25 April 1985, the Committee on Transport appointed Mrs BRAUN-MOSER draftsman of the opinion.

The committee considered the draft opinion at its meetings of 18-19 June 1985 and 30 October 1985. It adopted the draft opinion at its last meeting unanimously.

The following took part in the vote: Mr ANASTASSOPOULOS, chairman; Mr KLINKENBORG, vice-chairman; Mrs BRAUN-MOSER, draftsman; Mr CORNELISSEN (deputising for Mr STARITA), Mr CAROSSINO, Mr EBEL, Mr REMACLE, Mr VAN DER WAAL and Mr WIJSENBECK.

1. INTRODUCTORY

1. The report TOUSSAINT raises three interrelated but fundamental issues that concerns directly the Community:
 - a) the role and current practice of the Coordinating Committee (in brief, CoCOM) which is responsible for the control of exports of strategic importance to COMECON countries;
 - b) the economic significance of the East-West trade and its impact on the transfer of technology;
 - c) the relations, generated by considerations of trade, between the Community and the COMECON countries in the field of transport.
2. At the heart of the controversial case surrounding strategic trade there are three institutions of different nature and objectives which are bound to work together due to events and circumstances; these institutions are: the CoCOM, the COMECON and the Community. A brief comment on the first two would help understand the importance and complexity of the transport relations between the Ten, and from January 1st, 1986 the Twelve, and the COMECON countries.
3. The Council for Mutual Economic Assistance (abbreviated as COMECON) was created in January 1949 after an initiative of the Soviet Union.¹⁾ COMECON's founder-members were: Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland and Rumania with the objective to form a broad economic co-operation. East Germany and Albania became full members soon after the formation of the COMECON council, although the latter has taken no part in COMECON work since 1961. Jugoslavia (in 1964), Mongolia (in 1962), Cuba (in 1972) and Vietnam (in 1978) have maintained differing degrees of involvement in council participation or standing commissions. COMECON's economic significance is correctly stated in the Economist's Survey: "Yet COMECON matters: it unites - and sometimes divides - the west's principal economic and military rivals; its members form a tenth of the world's population, and certainly produce more than a tenth of the world's income" (1), p.3).
4. A careful analysis of the trade statistics reveals that commercial links of the OECD countries with the COMECON have grown significantly. It is estimated that in 1984 the Soviet Union exported to the OECD nearly \$24 bn worth of goods while it imported nearly \$22 bn worth of OECD exports; the other six Eastern European countries traded less with OECD but still enough to account for \$16 bn worth of their exports while importing from OECD some \$12 bn worth of goods.

1) This paragraph heavily relies on the Economist's Survey on 'Inside COMECON', April 20, 1985

5. The Consultative Group on Co-operation Committee (CoCOM, in short) was formed in June 1950 after an initiative of the USA in order to coordinate the exports of strategic importance of its 15 country members.²⁾ The role, objectives and functioning of the CoCOM are fully described in the TOUSSAINT report. Briefly, the CoCOM acts as an export control mechanism; it has no formal treaty and is subject to the voluntary cooperation of its members. A list of embargoed export items of strategic importance has been maintained which today accounts for about 150 manufactured goods. A notable example of this control mechanism has been the decision of the Reagan administration in June 1982 to ban exports to the Soviet Union of materials intended for the construction of the Siberian gas pipeline. Exceptions to the embargoed list require a unanimous vote of the 15.
6. Critics of the CoCOM, like the two motions for a resolution (Doc. 2-721/84 and Doc. 2-466/84) upon which the TOUSSAINT report is based, believe that such a control mechanism in its present format neither promotes trade liberalisation within the GATT nor advances international co-operation. Furthermore, the control exercised by the USA on the intergovernmental conference of the CoCOM mainly restricts the exports of the Community to the COMECON countries rather than USA exports because American exports to COMECON account for 10 per cent of the total imports of COMECON while Community exports account for about 79 per cent of all trade between OECD and COMECON in 1982.
7. Such criticism partly touches the issues at stake. From a pure Community point of view, restrictions of high-technology capital goods raise two interrelated issues:
- a) the role of hi-technology in economic development,
 - b) the transport policy towards COMECON countries.

We consider briefly the above interrelated issues in the following chapters.

II. TECHNOLOGICAL SIGNIFICANCE OF THE EAST-WEST TRADE

8. There are three forms of transfer of technology or dissemination of technological information:
- i) direct investment,
 - ii) licensing of know-how,
 - iii) export of capital goods embodying high-technology

2) CoCOM's 15 members are the member countries of NATO with the exception of Iceland but including Japan.

COMECON countries have been interested in (i) and (iii) and to a lesser extent in ii). The Soviet bloc needs the transfer of embodied technology because the so-called 'technological gap' is wide and because it has a comparative disadvantage in marketing and innovations - which is due to institutional constraints - while it has a comparative advantage in producing manufactured goods. This is why we experience the East-West trade to flourish not only in 'high' technology goods but also in 'standardised' technology already available and wide-spread.

9. In other words the high technology trade determined essentially by innovations and embodied in new products when sold to the countries of the Eastern bloc, its producers, having the comparative advantage in production, would quickly imitate the innovators and hence produce 'investment goods' without recourse to R and D in the first place, leading to technical progress. On the other hand buying standardised technology embodied in exportables but unavailable in the Soviet bloc it would allow to adopt, given again a comparative advantage in production, a new process of production leading to a reduction of resources used or alternatively to greater output with the same resources and therefore contributing to technical progress.
10. On the other hand, the owners of superior technology, ie the West, enjoy a temporary monopoly position in world market so long the difference between the level of technological achievements is maintained. Such a monopoly position would give two advantages to the West; first it would earn a monopoly rent and also assume a strategic superiority, if such technological knowledge is embodied in its products; second, a technology leader could reinvest its monopoly rent leading to further innovations and further advantages by expending resources on R and D in order to consolidate and extend its advantage in other fields as well.
11. On both accounts, the Community seems to be a loser; the Community is not a technology leader and hence its monopoly rent is not very significant. Empirical research into the trade flows supports this argument since the greatest share of technology-based products imported by COMECON is found to embody 'standardised' technology which accounts for about 80 per cent of the total.
12. Furthermore, the quantitative restrictions set by CoCOM on high-technology and for reasons of hard currency for the Soviet bloc, the imports of technology-intensive consumer goods (television sets, hi-fi equipment, electronics etc) for which the Community has a comparative advantage, are limited; only 10% of the total accounts for such high-technology goods.

III. TRADE FLOWS AND COMMUNITY TRANSPORT POLICY

13. The pattern of trade largely determines the means of transport upon which trade policies are formed and are conducted. Furthermore the pattern of trade would determine - in conjunction with the size of the market and the division of labour - the specialisation of one mode of transport in a specific sector. Hence the three determinants of an optimum transport policy vis-à-vis two trading parties are:
- a) the pattern of trade,
 - b) the size of the market,
 - c) the technology used in the field of transport
14. With a given pattern of trade between the Community and the COMECON as described in the previous section and determined by considerations other than transport and given the fact that there is a 'technological gap' of equal size and applicable in the field of transport, the only determinant that is left unknown is the size of the market. One of the more important questions related to the size of the market is the institutional structure or, to put it differently, the market practices that prevail. Trading in high-technology or standardised products with the COMECON, therefore, begs the question of fair or unfair practices or adherence to the principles of the market. The shares of the participating enterprises cannot be determined unless one examines the prevailing market practices of COMECON and Community transport undertakings.
15. The Committee on Transport has repeatedly stressed ³⁾ the unfair practices of COMECON transport undertakings derived mainly from the 'hidden subsidies' afforded by the state which lead to phoney lower costs affecting adversely fair competition, the market principles and the principle of reciprocity. Hence at taxpayer's expense, the state-owned transport enterprises undercut fares, penetrate the markets of the West and the Third World expanding in this way COMECON's external economic power.
16. Assume that the Community follows suit and subsidises its transporters so as to bring its rates to the level charged by COMECON, would Community undertakings be able to compete in Eastern markets? The answer is that they would be equally competitive but they would obtain no freight and this because the allocation of freight and charters is in the hands of the centrally-planned state bodies that control also the transport sector. Hence embarking on a subsidy race with the COMECON countries would be self-defeating.

5) See the JUNG report on 'the EEC's relations with the COMECON countries in the field of maritime shipping' (Doc. 517/79) O.J. No C 140 of 5.6.79 and the HOFFMANN report on 'relations between the EEC and the COMECON countries in the field of transport policy' (Doc. 1203/82) O.J. No C 233 of 13.9.82

17. Excluding any organisation of Community trade and its transport sector on the same state-monopoly lines, the Community, in its adherence to the principles of the Rome Treaty, offers equal rights regarding the access to its cargoes and freedom of establishment to COMECON subsidiaries and acquisitions in its territory. It has resulted in excessive penetration of Community markets by exploiting the advantages of a free market.
18. Furthermore the 'transit rule' as practiced today is unfair to Community's interests because it allows COMECON's transport enterprises to take part in third countries' traffic without legal restrictions whereas Community transport undertakings require bilateral agreements.
19. Of the six modes of transport: rail, air, road, inland navigation, pipelines and maritime shipping, given the various degrees of protection by the Ten, maritime shipping seems to be faced with the severest problems. Community fleets are, with various forms of restrictions, not allowed to bid for freight in COMECON countries. Even in cross-trade, the Community fleet cannot compete not because it has a comparative disadvantage but because COMECON countries set uneconomic rates derived from the state-controlled trade and hidden subsidies.
20. In its documented HENNIG opinion ⁴⁾ the ESC echoed the same sentiments and urged the Community, in forming an opinion on the appropriate action she should follow, to start negotiations with the COMECON based on the 'principle of reciprocity'. The Committee on Transport would therefore repeat its request to institute a consultative procedure between the Community and the COMECON countries.

IV. CONCLUSIONS

21. The Committee on Transport asks the Committee on External Economic Relations to include the following into its motion for a resolution :
 - i) Notes that in recognising the strategic importance that Western exports carry, the objectives set for the CoCOM to act as a control mechanism are worth noting;
 - ii) Stresses, however, that in an increasingly changing world in the technological field and flux state of independent suppliers of capital goods exports, the efforts made by the CoCOM to regulate certain exports have sometimes harmed Community interests and have resulted in inefficiency;

4) Economic and Social Committee of the EC, 'EEC's transport problems with East European Countries' Brussels, Nov. 1977

- iii) Urges the Council to mandate the Commission of the EC to represent the Community to the CoCOM and, on behalf of the Ten, present specific proposals aiming at reforming the internal functioning of the CoCOM so that trade between OECD and COMECON could be increased without unjustified restrictions;
- iv) Believes that the pattern of trade, to a large extent, determines the mode of transport and that the guidelines for the conduct of trade (ie not to cause or threaten to cause serious injury) between the Community and the COMECON countries should apply to transport policies as well;
- v) Adheres to the principle of reciprocity which holds the view that all bilateral or multilateral trade arrangements should not be concluded without involving a reciprocal arrangement for transport undertakings; reciprocity should be interpreted to mean:
 - a) equal rights for Community enterprises with regard to access to cargoes and acquisition of holdings in COMECON countries,
 - b) freedom of establishment in COMECON countries under the same legal conditions,
 - c) abolition of COMECON tax policies on Community transport enterprises,
 - d) transparency as regards cross-trade and transit transport,
 - e) fair shares with regard to Community-COMECON trade.
- vi) Points out that where unfair practices and unfair competition occurs, the principles of the market economy cannot be applied and that orderly competition with COMECON countries therefore requires a Community-coordinated policy on trade and transport;
- vii) Notes with satisfaction the decision of the European Council at the Milan Summit relating to the exploratory mandate given to the Commission but urges the Commission to uphold the principle of reciprocity in its negotiations with the COMECON.