

~~CONFIDENTIAL~~February 23rd, 1959COCOM Document No. 2869.83COORDINATING COMMITTEE*5. General*RECORD OF DISCUSSIONONREVIEW OF THE STRATEGIC EXPORT CONTROLS - EXCEPTIONS PROCEDURESFebruary 9th and 16th, 1959

Present: Belgium(Luxembourg), Denmark, France, Germany, Italy, Japan, Netherlands, United Kingdom, United States.

References: CH/1547, COCOM 471 (Revised), 1347, 1473, 2869.5, 2869.13, 2869.55, 2869.62, 2869.75, 2869.77, 2869.79, 2869.81, 3230, 3338, Secretariat Paper No. 104.

1. The CHAIRMAN recalled that at the last meeting all Delegations had undertaken to consider the joint proposal submitted by the Belgian, United Kingdom and United States Delegations and slightly amended in the Committee, for the revision of the COCOM 471 procedure (COCOM 2869.81, paragraph 1) together with his own proposal concerning the revision of the de minimis procedure (COCOM 2869.81, paragraph 17).

2. The UNITED KINGDOM Delegate stated that his authorities were in full approval of the joint proposal for revising the COCOM 471 procedure. They hoped that all other Delegations would be able to accept this text. Turning then to the "de minimis" procedure he said that both the German suggestion (COCOM 2869.81, paragraph 2) and the Chairman's proposal had been carefully considered but his authorities still felt that there was no need for any substantial changes in Annex A to COCOM 1473. In 1953, when "de minimis" cases were first discussed, the Committee were concerned in seeking a solution for "nuisance" cases; this was the beginning of a very useful procedure. The Delegate referred the Committee to the understanding reached in September 1953 that "in this context the term 'minimum shipments' is understood to mean shipments having a minimal security significance in that diversion to any strategic use would be either impracticable, unlikely or of no consequence from the strategic point of view" (COCOM 1347, paragraph 17 (b)). Part only of this concept had been retained in Annex A to COCOM 1473, i.o. the part dealing with diversion to any strategic use being impracticable etc. Except in the context of marking the point above which cases should be brought to the Committee there was no reference to monetary value in the Annex to COCOM 1473.

3. The Delegate said that in his opinion this proved that from the beginning the Committee had had minimal security significance in mind as the most important factor. He suggested that the Committee should now return to first principles, leaving the wording of Annex A to COCOM 1473 unchanged but reaffirming that the term "minimum shipments" should be understood to mean having a minimal security significance. It should then be sufficient to state that value or quantity were no bar to the consideration of a particular case under the provisions of the procedure. Finally, confident that the good sense of Member Countries would prevent the abuse of the procedure, the United Kingdom authorities were sure that this problem could be solved quickly and satisfactorily.

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4. The UNITED STATES Delegate said that he was much interested in the past history of the procedure which had been mentioned by the United Kingdom Delegate. He agreed that COCOM 1347 seemed to provide the basis for the provisions of COCOM 1473 and, subject to further study, he thought paragraph 17(b) was the proper statement of the intent of Annex A to COCOM 1473. He then made the following statement:

"After thorough consideration of all of the views expressed in the Committee during its recent discussions of Exceptions Procedures, my authorities have instructed me to say they believe that the purposes of all member governments should be adequately met by the following (leaving aside less basic questions of revision of the exceptions procedures):

(1) Adoption of the "tripartite proposal" for revision of COCOM 471, revised to substitute "situation" for "well-being", as shown in paragraph 1 of COCOM 2869.81. Pending overall reorganization of the exceptions procedures into a single new document (embracing also Administrative Principles), this language would replace the first paragraph ("General Principles") of COCOM 471.

(2) a. Adoption of the United States proposal for revision of the minimum shipment procedure as shown in paragraph III 2 of COCOM 2869.5 ("Exceptions may be made for de minimis shipments where the quantity of the item in relation to its strategic potential, the end-use cited, and the likelihood of diversion to a strategic end-use, indicate that the risk of strategic use is of no consequence from the security point of view.") Pending the overall reorganization of exceptions procedures cited above, this language would replace the existing introductory paragraph to Annex A of the Attachment to COCOM 1473 or,

b. Alternatively, leaving the existing procedure unchanged.

(3) Adoption of the following United States proposal relating to "ad hoc" exceptions as stated originally in paragraph II f of COCOM 2869.5:

"Under special and unusual circumstances, requests for exceptions not falling under the specific types described below will be examined by the Committee on the merits of the individual case, taking into account such considerations as the exporting country may wish to put forth including the requirements of its basic economy."

5. "With respect to minimum shipments, the fact that all cases above a certain value (\$100 in the past, and the United States agrees to \$150 in the future) must be submitted to the Committee for prior consultation is itself an indication of the historical and, in the United States view, proper concept of minimum shipments. The United States has in the past, as a rough "rule of thumb", thought of \$1,000 as the approximate value above which cases would normally no longer be "minimal". This had not, as the Committee knows, prevented the United States from considering cases of a higher value submitted under this procedure, or approving them under another procedure or as "ad hoc" cases where circumstances seemed to warrant.

6. "(1) The United States authorities have carefully reviewed their policy with respect to minimum shipments in the light of the recent discussions in this Committee. In the light of this review, I am authorized to say the following: we are prepared to consider under the "de minimis" procedure certain exceptions of more than a minimal value or quantity; we do not propose to set a limit, in value or quantity, to cases that may be submitted under this procedure; the

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basis of consideration of minimum shipment proposals as well as other exceptions should be evaluation of strategic impact of the proposed export; obviously quantity or value will nevertheless be an important guide to evaluation of strategic impact.

(2) Further, the United States does not believe that there is a need to fill a "gap" between "minimum shipments" and COCOM 471 cases. We see no merit or justification in revising the former procedure so as to cover both minimal shipments and shipments which are more than minimal. We do consider, however, that member governments should be free to submit cases of more than a minimal value or quantity under the minimum shipments procedure provided that the exporting country believes it can demonstrate to the satisfaction of the other member governments that the proposed export is of no consequence from a strategic point of view. Obviously the reactions of other member governments will be governed by the adequacy of such demonstrations.

7. "We believe that the proposals made in paragraph 4, above, will permit COCOM consideration of all exceptions requests involving valid considerations (1) relating to damage to the economic, political or social situation of a member country, (2) serving to show that shipments are of no consequence from a strategic point of view, and (3) justifying shipments which can qualify under neither the revised COCOM 471 procedure nor the de minimis procedure (as it stands or as the United States would revise it) but with respect to which there are very special circumstances justifying their approval as ad hoc cases.

8. "Finally, the Committee is well aware of the recent sharp reduction in the embargo lists. The United States has made important concessions in the 1958 List Review and since. We believe that modernization and clarification of the exceptions procedures are warranted but that broadening of the exceptions procedures, and thereby further relaxing the control system, would be inconsistent with the purpose of this Committee."

9. The GERMAN Delegate said that he had listened with great interest to the statements made by the United Kingdom and United States Delegates. The German authorities could agree to the Chairman's compromise proposal as stated in paragraph 17 of COCOM 2869.81, although they still thought it would have been useful to have had a more explicit written reference. The views of the United States authorities were identical with those of his own authorities on the question of substance that the cases should be judged in the light of their strategic importance rather than on grounds of value or quantity. He did not contest the point made by the United States Delegate that the strategic value of an item was sometimes linked with its value or quantity but this was another problem and not a question of principle. The German authorities maintained that no submission should be refused on purely procedural grounds. As the United States Delegate had made it clear that each case would be considered on its merits (paragraph 6 above), he thought that this would probably take care of his authorities' own concern. His Government maintained that the full burden of proof should rest with the country submitting the request and he was glad to note that the United States did not insist on setting an upper limit for submissions under the minimum shipments procedure. He also noted that the United States still thought there was a place for the ad hoc procedure in cases where there were very special circumstances. He appreciated that in their ad hoc proposal the United States had come back to the quid pro quo element. The German authorities would not refuse to consider this element in ad hoc cases and would even consider it under the COCOM 471 procedure. Summing up, the Delegate said that his authorities would have preferred to have a clear procedural understanding, but it seemed that agreement could not be reached in this direction and they were therefore satisfied with the understanding that any Delegation was

free to submit cases under the minimum shipments procedure which would be considered on their merits and not rejected on grounds of procedure alone.

10. The FRENCH Delegate stated that his authorities could accept both the joint proposal for the revision of the COCOM 471 procedure and also the Chairman's proposal on the de minimis procedure. The latter they wished to see incorporated as a note to the procedure. He expressed his thanks to the United Kingdom Delegate for having recalled the understanding recorded in COCOM 1347 as to the importance of the security significance of an item as opposed simply to its monetary value. He felt that it was necessary to be clear on the ad hoc procedure and he felt that the quid pro quo element should be considered as an additional optional element of appreciation. The German Delegate had said that his authorities were willing to consider the quid pro quo element in cases submitted under the COCOM 471 procedure but he wished to point out in this context that his authorities deemed the judgement of the exporting country to be sovereign in such cases.

11. The JAPANESE Delegate recalled that his authorities had already accepted the joint proposal for the revision of the COCOM 471 procedure. Referring then to the COCOM 1473 procedure, he pointed out that his Delegation had from the beginning supported the United Kingdom proposal to leave the procedure unchanged with the exception of an adjustment in the cut-off figures. This was still the Japanese position. The Japanese authorities, however, disagreed with the United Kingdom suggestion that there should be a reaffirmation that value or quantity were no bar to the consideration of a particular case, since, in their view, such was not a reaffirmation but a broadening of the existing procedure. It had been understood by most, if not all, Delegations that both strategic and monetary considerations decided the cases. He referred to the discussion which had taken place in July 1956 (COCOM 2238 and 2243) on a proposal to revise the de minimis procedure to refer to strategic considerations only. At that time the Belgian, Canadian, Netherlands and United States Delegations had stated that the procedure covered cases of small monetary value as well as those of small strategic significance. The discussion had been adjourned sine die without agreement to change the procedure. It was the Delegate's own understanding that most Delegations in fact interpreted the procedure to cover both considerations. He reminded the Committee of the fact that there were a few instances in the past when the United Kingdom had objected to exception requests simply on their face value, stating that the monetary value was too high to be considered under the de minimis procedure. In view of the positions they had adopted at the previous discussion in 1956, he would be much interested to hear the present views of the Belgian, Canadian and Netherlands Delegations. Finally the Delegate said that both the German suggestion and the Chairman's proposal for revising the COCOM 1473 procedure were still under study by his authorities and he had no final instructions on these points.

12. The BELGIAN Delegate reaffirmed that his authorities could accept the joint proposal for the revision of the COCOM 471 procedure. As for the COCOM 1473 procedure, they thought that the reduction which had been made in the International Lists in 1958 should mean that there would be fewer exceptions submissions and they therefore felt that it was unnecessary to change the provisions of COCOM 1473, as these basic principles seemed sufficient to take care of the present situation and it was already possible to submit cases above a fixed minimum value. In addition, the United States Delegate had reminded the Committee that an ad hoc submission could always be made where exceptional circumstances outside the framework of the COCOM 1473 procedure were concerned. The Delegate said that he could support the Chairman's proposal for a note to be added to COCOM 1473, although he doubted that it would make very much difference in the judgement of exceptions cases because, in his opinion, past cases had been examined primarily in the context of their strategic importance.

13. The ITALIAN Delegate stated that he could accept both the joint proposal for the COCOM 471 procedure and the Chairman's proposal for the COCOM 1473 procedure ad referendum. He felt that the Chairman's proposal embodied the main area of agreement in the Committee, namely that no case should be refused on procedural grounds alone. He did not think it was necessary to reaffirm the principle stated in COCOM 1347 as had been suggested by the United Kingdom Delegate. Finally he stressed the need for the unification of the exceptions procedures in simplified form in one document.
14. The DANISH Delegate said that his position was similar to that of the Japanese Delegate in that he supported the original United Kingdom proposal to leave COCOM 1473 unchanged except for raising cut-off figures. He did not feel that reference to COCOM 1347 was very relevant at this point because during the last five years the Committee had used the COCOM 1473 procedure in a different way and he did not wish to alter the present interpretation of COCOM 1473 as it had evolved during those years.
15. The NETHERLANDS Delegate said that he could accept both the proposal concerning the COCOM 471 procedure and that concerning the COCOM 1473 procedure ad referendum.
16. The UNITED KINGDOM Delegate commented on his Japanese colleague's reference to COCOM 2243. His reasons for referring to discussions in 1953 were to support the German proposal for the intermediate range of cases. The United Kingdom authorities were in agreement with the German reasoning that all types of cases should be covered by the Committee's procedures and they had therefore pointed out that the word "minimum" referred to strategic importance. The value cut-offs were a convenient way to establish the point at which the Committee should be consulted. This did not mean that the value or quantity factors should not be taken into consideration at all.
17. The UNITED STATES Delegate said that he subscribed to much of what had been said by his United Kingdom colleague, and also the general philosophy of the Japanese Delegate's statement. A gap had always existed between the COCOM 471 and COCOM 1473 procedures but, particularly in view of the 1958 reduction in the Lists, the United States did not consider that this gap had to be filled. He agreed that the minimum shipments procedure had been developed to take care of "nuisance" cases, such as that cited by the United Kingdom Delegate in paragraph 2 above, when denial would have brought the control system into disrepute. If there were specific cases in the so-called "intermediate" area that Member Countries were convinced could qualify as of no strategic importance, the United States authorities were certainly willing to consider them. The Delegate concluded that he was becoming somewhat pessimistic on the possibility of reaching written agreement on this matter and suggested that the most appropriate course of action might be simply to see what kinds of cases were submitted to the Committee and what decisions were reached on them and later to return to the question of a written agreement if it was still felt necessary in the light of further experience.
18. The FRENCH Delegate emphasized that there was a definite connection between quantity and value on one hand and strategic importance on the other. One gram of uranium 235, for example, would probably be of very small strategic importance whereas the export of 10 kilos of the same material could be strategically dangerous to the West.
19. The GERMAN Delegate then commented on the statement which had been made by the United States Delegate. He noted that the United States authorities were prepared to consider certain exceptions of more than a minimal value or quantity and that they considered Member Countries free to submit such cases provided the exporting country could demonstrate that

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the proposed export was of no consequence from the strategic point of view (paragraph 6 above). He fully agreed with this point of view since the German Delegation had always maintained that the burden of proof should rest with the applicant. He did not think that his authorities would have any objection to the new codified proposal on ad hoc exceptions (paragraph 4(3) above) although he was not sure that his own authorities' understanding on this point was the same as that of the United States: the German authorities thought that this would close all gaps but the United States said that they were satisfied that a gap should remain. As to the minimum shipments procedure, the intention of the German authorities was merely to have a new procedural framework, not to change the strategic appreciation of the de minimis procedure. In conclusion, the Delegate said that his authorities could accept the Chairman's proposal for a note to COCOM 1473 and he was glad to note that the United Kingdom also agreed to it. He found it difficult to understand why the United States could not accept this proposal also.

20. After further discussion, the JAPANESE Delegate gave his personal opinion that there was a possibility of his authorities' accepting a note to COCOM 1473 along the lines of that proposed by the Chairman. He would in any case report the present discussion fully to his authorities.

21. The CHAIRMAN summed up the discussion by saying that he felt the Committee was close to agreement. There was virtually unanimous acceptance of the joint proposal concerning the statement of general principles applying to the COCOM 471 procedure. As far as minimum shipments were concerned, in addition to value and quantity, each case had various particular features which together formed the basis for the evaluation of the security risk and the Committee seemed ready to give due consideration to these other elements.

22. The COMMITTEE agreed that the Secretariat would draw up a single draft document (Secretariat Paper No. 104) embodying the existing exceptions procedures as contained in COCOM 471 (Revised) and COCOM 1473 and as amended by the points already tentatively agreed upon in the earlier rounds of the discussion together with notes to the section on minimum shipments which would state, along the lines of the Chairman's proposal, that exceptions of more than minimal value or quantity might be submitted to the Committee under that procedure. It was further decided that the Chairman should collaborate informally with the United States Delegation in drawing up these notes.

23. On February 16th the CANADIAN Delegate informed the Committee that his authorities could accept the Chairman's proposal (COCOM 2869.81, paragraph 17) for a note to COCOM 1473.

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