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 EDAC D-62
 November 25, 1953

ECONOMIC DEFENSE ADVISORY COMMITTEE

Reference Manual on Economic Defense (First Revision)

Transmitted herewith are copies of a revised "Reference Manual on Economic Defense" for the attention of personnel in the EDAC agencies concerned with the various aspects of security trade control programs and policies. This document supersedes the Reference Manual on Economic Defense transmitted to EDAC member agencies and to overseas posts in May, 1952. Copies of the earlier Manual should be destroyed. Copies of the revised Reference Manual are being transmitted to overseas posts.

This manual is intended to provide a compilation of reference material, including the full text of basic policy directives, program documents and administrative regulations relating to the economic defense as of November 23, 1953. It is hoped that bringing this material together in a single document will be of assistance to operating officers in the preparation and interpretation of instructions and other communications. The Reference Manual has been compiled in FOA/EDAC in coordination with other EDAC agencies. It is supplementary to other reference documents and orientation material given general distribution and to Foreign Service Reporting instructions.

It is planned to issue supplements as necessary to keep the Reference Manual up to date.

Attention is directed to the need for appropriate security precautions in the handling of this document.

Irving I. Kramer
 Executive Secretary

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November 23, 1953

ECONOMIC DEFENSE ADVISORY COMMITTEE

REFERENCE MANUAL ON ECONOMIC DEFENSE
(First Revision)

Certain materials in this Manual contain information affecting the National Defense of the United States within the meaning of the Espionage Act, Title 18 USC, Sections 793 and 794. Transmission or revelation of their contents in any manner to an unauthorized person is prohibited by law.

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REFERENCE MANUAL ON ECONOMIC DEFENSE

(First Revision)

Introductory Note: This revised manual is intended to provide, to U.S. officials in Washington and in the field, a compilation of basic reference material on United States security trade control policies and programs. An earlier document of this nature was issued in May 1952; that document has been largely superseded by subsequent developments and should be destroyed. It is hoped that bringing this material together into a single volume and making it generally available will result in more widespread familiarity with the substance of the economic defense program and will be of assistance to operating officers in the preparation and interpretation of instructions and other communications. Supplements will be issued as necessary to keep this manual up to date.

An effort has been made to include in this manual the full text of the policy directives, important administrative regulations, and key program documents relating to economic defense. The table of contents also notes key reference documents and orientation material which are given widespread distribution in Washington and to overseas posts but which are not reproduced in the reference manual. This manual is supplementary to such materials and to Foreign Service Reporting Instructions.

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Note: a) International Lists I, II and III are reprinted by the Department of Commerce in its Correlation of Security Lists (Second Edition), June 1, 1953, referred to above in II. A.

b) A United States China Reference List has been prepared by the Department of Commerce and circulated June 1, 1953. It is not reproduced in this Manual.

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Note: Battle Act lists are reprinted in Correlation of Security Lists referred to in II.A. above; Battle Act "exceptions cases" are reprinted in semiannual reports to Congress; Foreign Service reporting instructions on "exceptions cases" are given in ERC 34

Appendix: (Printed Foreign Assets Control Regulations; see also Item II.D.)

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General Notes on Reference and Orientation Materials
Not Included in This Manual

- A. Foreign Service Reporting Instructions. The comprehensive instructions to overseas posts on Foreign Service reporting with respect to economic defense, including trade relations with Soviet bloc in the broad sense, are contained in Foreign Service Economic Reporting Circular No. 34, March 28, 1952. Reporting instructions with respect to Battle Act "exceptions cases" are also contained in ERC 34.
- B. Department of Commerce export control regulations are contained in the "Comprehensive Export Schedule" published by the Bureau of Foreign Commerce, Department of Commerce. The Comprehensive Export Schedule is supplemented periodically by the "Current Export Bulletin." The Secretary of Commerce's Quarterly Report to the President and to the Congress reports major policy changes and activities of the Department of Commerce in carrying out its export control activities.
- C. Semiannual Reports to Congress under P.L. 213. These reports are given general distribution in the U.S. and abroad. The first three were dated October 15, 1952, January 16, 1953, and September 27, 1953. The most recent of these reports represented the most up-to-date compilation of material of public information interest in this field, including trade statistics and general descriptions of trade control systems. Presidential determinations under Section 103(b) (exceptions cases) were reprinted in these reports.
- D. Economic Defense Newsletter reports periodically on current developments in the economic defense field as a whole, distributed as a Department of State circular instruction.
- E. Department of Commerce Export Control Digest (Circular Air-letter) reports periodically to overseas posts on current developments regarding U.S. export controls.
- F. Economic Defense Advisory Committee documents are given general circulation to posts in COCCOM/CHINCOM countries, Stockholm and Bern, and are sent to other posts on a selective basis.
- G. Documentation for economic defense officers' meetings (in Paris, November 1952, and Manila, June 1953) provided a comprehensive survey of current problems in the economic defense field.

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TEXT OF THE BATTLE ACT

Mutual Defense Assistance Control Act of 1951 (H.R. 4550), Public Law 213, Eighty-second Congress, 65 Stat. 644, Approved October 26, 1951

An ACT To provide for the control by the United States and cooperating foreign nations of exports to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mutual Defense Assistance Control Act of 1951."

TITLE I--WAR MATERIALS

Sec. 101. The Congress of the United States, recognizing that in a world threatened by aggression the United States can best preserve and maintain peace by developing maximum national strength and by utilizing all of its resources in cooperation with other free nations, hereby declares it to be the policy of the United States to apply an embargo on the shipment of arms, ammunition, and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items of primary strategic significance used in the production of arms, ammunition, and implements of war to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination, in order to (1) increase the national strength of the United States and of the cooperating nations; (2) impede the ability of nations threatening the security of the United States to conduct military operations; and (3) to assist the people of the nations under the domination of foreign aggressors to reestablish their freedom.

It is further declared to be the policy of the United States that no military, economic, or financial assistance shall be supplied to any nation unless it applies an embargo on such shipments to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination.

This Act shall be administered in such a way as to bring about the fullest support for any resolution of the General Assembly of the United Nations, supported by the United States, to prevent the shipment of certain commodities to areas under the control of governments engaged in hostilities in defiance of the United Nations.

Sec. 102. Responsibility for giving effect to the purposes of this Act shall be vested in the person occupying the senior position authorized by subsection (e) of section 400 of the Mutual Defense Assistance Act of 1951.

1949, as amended, or in any person who may hereafter be charged with principal responsibility for the administration of the provisions of the Mutual Defense Assistance Act of 1949. Such person is hereinafter referred to as the "Administrator"

Sec. 103. (a) The Administrator is hereby authorized and directed to determine within thirty days after enactment of this Act after full and complete consideration of the views of the Departments of State, Defense, and Commerce; the Economic Cooperation Administration; and any other appropriate agencies, and notwithstanding the provisions of any other law, which items are, for the purpose of this Act, arms, ammunition, and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and those items of primary strategic significance used in the production of arms, ammunition, and implements of war which should be embargoed to effectuate the purposes of this Act: Provided, That such determinations shall be continuously adjusted to current conditions on the basis of investigation and consultation, and that all nations receiving United States military, economic, or financial assistance shall be kept informed of such determinations.

(b) All military, economic, or financial assistance to any nation shall, upon the recommendation of the Administrator, be terminated forthwith if such nation after sixty days from the date of a determination under section 103(a) knowingly permits the shipment to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination, of any item which he has determined under section 103(a) after a full and complete investigation to be included in any of the following categories: Arms, ammunition, and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items of primary strategic significance used in the production of arms, ammunition, and implements of war: Provided, That the President after receiving the advice of the Administrator and after taking into account the contribution of such country to the mutual security of the free world, the importance of such assistance to the security of the United States, the strategic importance of imports received from countries of the Soviet bloc, and the adequacy of such country's controls over the export to the Soviet bloc of items of strategic importance, may direct the continuance of such assistance to a country which permits shipments of items other than arms, ammunition, implements of war, and atomic energy materials when unusual circumstances indicate that the cessation of aid would clearly be detrimental to the security of the United States: Provided further, That the President shall immediately report any determination made pursuant to the first proviso of this section with reasons therefor to the Appropriations and Armed Services Committees of the Senate and of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives, and the President shall at least once each quarter review all determinations made previously and shall report his conclusions to the foregoing committees of the House and Senate, which reports shall contain an analysis of the trade with the Soviet bloc of countries for which determinations have been made.

Sec. 104. Whenever military, economic, or financial assistance has been terminated as provided in this Act, such assistance can be resumed

only upon determination by the President that adequate measures have been taken by the nation concerned to assure full compliance with the provisions of this Act.

Sec. 105. For the purpose of this Act the term "assistance" does not include activities carried on for the purpose of facilitating the procurement of materials in which the United States is deficient.

TITLE II-OTHER MATERIALS

Sec. 201. The Congress of the United States further declares it to be the policy of the United States to regulate the export of commodities other than those specified in title I of this Act to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination, in order to strengthen the United States and other cooperating nations of the free world and to oppose and offset by nonmilitary action acts which threaten the security of the United States and the peace of the world.

Sec. 202. The United States shall negotiate with any country receiving military, economic, or financial assistance arrangements for the recipient country to undertake a program for controlling exports of items not subject to embargo under title I of this Act, but which in the judgment of the Administrator should be controlled to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination.

Sec. 203. All military, economic, and financial assistance shall be terminated when the President determines that the recipient country (1) is not effectively cooperating with the United States pursuant to this title, or (2) is failing to furnish to the United States information sufficient for the President to determine that the recipient country is effectively cooperating with the United States.

TITLE III-GENERAL PROVISIONS

Sec. 301. All other nations (those not receiving United States military, economic, or financial assistance) shall be invited by the President to cooperate jointly in a group or groups or on an individual basis in controlling the export of the commodities referred to in the title I and title II of this Act to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination.

Sec. 302. The Administrator with regard to all titles of this Act shall-

(a) coordinate those activities of the various United States departments and agencies which are concerned with security controls over exports from other countries;

(b) make a continuing study of the administration of export control measures undertaken by foreign governments in accordance with the provisions of this Act, and shall report to the Congress from time to time but not less than once every six months recommending action where appropriate; and

(c) make available technical advice and assistance on export control procedures to any nation desiring such cooperation.

Sec. 303. The provisions of subsection (a) of section 403, of section 404, and of subsections (c) and (d) of section 406 of the Mutual Defense Assistance Act of 1949 (Public Law 329, Eighty-first Congress) as amended, insofar as they are consistent with this Act, shall be applicable to this Act. Funds made available for the Mutual Defense Assistance Act of 1949, as amended, shall be available for carrying out this Act in such amounts as the President shall direct.

Sec. 304. In every recipient country where local currency is made available for local currency expenses of the United States in connection with assistance furnished by the United States, the local currency administrative and operating expenses incurred in the administration of this Act shall be charged to such local currency funds to the extent available.

Sec. 305. Subsection (d) of section 117 of the Foreign Assistance Act of 1948 (Public Law 472, Eightieth Congress), as amended, and subsection (a) of section 1302 of the Third Supplemental Appropriation Act, 1951 (Public Law 45, Eighty-second Congress), are repealed.

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EDAC D-57

August 26, 1953

ECONOMIC DEFENSE ADVISORY COMMITTEE

U.S. Policy Directive on Economic Defense

Attached for information and guidance is a statement of the new economic defense policy which was approved by the Executive Branch effective July 31, 1953.

The new directive places increased emphasis on the multilateral approach to security trade problems, with more account to be taken of economic and political impacts and conditions in participating countries. In the future, the emphasis will be on better enforcement of already agreed controls rather than on major extensions of these controls. More attention will be directed to the objective of strengthening the bargaining position of free nations and lessening their economic dependence on the Soviet Bloc.

E. M. Christensen
Executive Secretary

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STATEMENT OF POLICY ON ECONOMIC DEFENSE

GENERAL CONSIDERATIONS

1. Broadly stated, the problem is the extent and degree of intensity with which the US should apply, and seek to have other countries apply, controls on trade with the Soviet bloc and with Communist China*, in order to reduce their relative economic potential for war.
2. The assumption underlying the problem is that we are faced with a long period of tension short of war and that, regardless of gestures made by the Soviet Bloc, the motives of the Communist countries are properly to be viewed with suspicion and skepticism. Our attitude and program, however, must be one which will not increase the possibility of war, but rather one which will keep open paths which might lead to a sounder basis for peace.
3. During this period the courses we take should be based upon the assumption that interference in the trade between the free world and the Soviet bloc should take place only where a clear advantage to the free world would accrue from such interference. They should also be based upon the assumption that the maintenance of some personal and commercial contacts between the free world and the Soviet bloc, particularly the satellites, may have positive advantages during this period of tension and watchfulness.
4. Over the long term, trade controls, though withholding a contribution to the over-all Soviet bloc economy, cannot seriously impair that economy. Over the short term and in selected areas, however, there probably is a retardation of the growth of Soviet war potential.
5. Controls on trade still pose economic, financial and political problems for many of our allies. These problems should be given appropriate weight and taken into account in determining the nature of the control which the free world must exercise in its economic relations with the Soviet bloc.
6. The system of controls already agreed among the United States and cooperating nations of the free world substantially satisfies our
economic

*Communist China as used throughout this statement includes North Korea.

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economic defense objectives of retarding the buildup of the Soviet bloc war potential and of strengthening the free world relative to the Soviet bloc. Extensions of the control lists should not be necessary except where clearly justified by new technology, intelligence or strategic evaluation. The principal future emphasis in improvement of the control system should be in the field of implementation and enforcement. US efforts should be devoted to establishing the control system on a narrower and more flexible basis by tightening the criteria so as to concentrate on commodities and services which contribute significantly to the war potential of the Soviet bloc.

7. There are indications that the USSR is changing its tactics with respect to its economic relations with the free world countries and is giving increased emphasis to trade with the West. There are signs, too, that economic interests within the free world, including the United States, are becoming more interested in increasing trade with the USSR and its satellites.

8. The pressures to trade with the East may also be expected to become stronger now that an armistice has been negotiated in Korea. Furthermore, the fact that US assistance to Western European countries is diminishing, lessens our influence and also may make them more dependent on non-dollar sources.

9. Our economic defense program must be framed and administered with full recognition of the fact that the economic defense system of the free world is part of the larger system of military and political alliances and, like them, depends upon the cooperative efforts of the free nations. Accordingly, in determining the measures which the United States should adopt and those to be urged on other nations, the impact upon the existing international system of economic defense as a whole, and upon the free world military and political alliances, must be taken into account. Similarly, in multilateral military and political discussions consideration should be given to the impact of courses of action on the economic defense program.

10. There is a continuing necessity for US controls over exports to the Soviet bloc. However, a gradual and moderate relaxation in the present practice of virtual embargo of shipments to the European Soviet bloc would be appropriate, provided that in the pace and timing of such relaxation due consideration is given to the effects on the total economic defense effort.

11. The United States

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11. The United States should exercise export controls with respect to destinations other than Soviet bloc countries, to the extent necessary to avoid the circumvention and frustration of US security controls. Such controls should not be applied, however, as a substitute device for negotiation in persuading friendly foreign countries to adopt adequate controls. It is important to avoid measures which reduce the willingness on the part of free world countries to cooperate in the international system of controls, or measures which do not significantly affect the supply of strategic commodities to the Soviet bloc.

12. The effectiveness of international controls over given commodities or services normally depends in part upon the controls imposed not only by the United States but also by other nations of the free world. In determining a particular course of action, the United States should take into account the economic and military vulnerability of the Bloc countries and the views and intentions of the other principal nations of the free world.

13. Two types of risks attend excessive dependence of free world countries on Soviet markets for non-strategic commodities and on Soviet sources of supply for essential commodities. Such excessive dependence places the Soviets in a better position:

a. To insist on the inclusion of strategic commodities or services as a condition for continuing or enlarging a profitable trade in non-strategic commodities; or

b. To influence the political policies or disrupt the economies of free world countries.

An essential element in reducing such excessive dependence is the development within the free world of alternative markets for commodities presently sold to the Soviet bloc and of alternative sources of supply for commodities presently acquired from the Soviet bloc.

14. Control over commodities should also be supplemented by ancillary controls, such as shipping, transit trade and transshipment, bunkering and chartering and repairs of ships where these will contribute to the effectiveness of the control system.

15. Trade is a vital element in the economy of the free world countries. Restrictive features of US import policy limit the entry into the United States of the commodities of friendly foreign countries. This has the over-all effect of making such countries look to the Soviet bloc as the alternative outlet for their commodities and of making them less receptive to trade control efforts.

16. Economic

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16. Economic defense policies toward Communist China differ from those toward the rest of the Soviet bloc since Communist China is a military aggressor.

17. The implementation of the policy set forth herein does not require a change at this time in the Mutual Defense Assistance Control Act (Battle Act), the Export Control Act, or related legislation.

GENERAL OBJECTIVES

18. With respect to the Soviet bloc excluding Communist China:

- a. To control selectively exports of commodities and supply of services from the free world which contribute significantly to the war potential of the Soviet bloc.
- b. To obtain the maximum net security advantage for the free world from economic intercourse which takes place between the free world and the Soviet bloc.
- c. To decrease the reliance of free world countries on trade with the Soviet bloc.
- d. To increase the political and economic unity of the free world.
- e. To decrease, through skillful flexibility in applying controls, the political and economic unity of the Soviet bloc.

19. With respect to Communist China, in the light of the Korean armistice, and pending a political settlement in Korea and a review of basic policies toward Communist China and Korea, maintain the present US level of controls on transactions with Communist China and continue intensified efforts to persuade our allies to refrain from relaxing their controls on trade with Communist China.

COURSES OF ACTION

Toward the Soviet Bloc Excluding Communist China

20. Control the export from the United States of commodities and technical data to the Soviet bloc with a view to avoiding a significant contribution

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contribution to the Soviet bloc war potential, by limiting or denying commodities and data which have strategic significance, but without imposing undue restraints on the shipment of non-strategic commodities to the Soviet bloc. Accordingly present US controls should be gradually re-adjusted with due regard to pace and timing and to effect on the total economic defense effort.

21. Continue the prohibition of all exports of the following destined for the Soviet bloc, either directly or indirectly: arms, ammunition, implements of war and atomic energy materials.

22. Limit or deny shipments of strategic commodities to destinations other than Soviet bloc countries when such shipments would contribute significantly to the ability of those countries to maintain or increase shipments of identical or similar commodities to the Soviet bloc, and when the limitation or denial will, in fact, significantly affect the supply of strategic commodities to the Soviet bloc. Do not take this action as a substitute for negotiations or in such a way that it is inconsistent with a cooperative international system of security controls.

23. Improve the availability and enhance the utilization of current intelligence in matters relating to enforcement of controls.

24. Tighten the criteria for the inclusion of commodities on our lists to provide for the selection of commodities which contribute significantly to Soviet war potential.

25. Concentrate on effective implementation and enforcement of the security control systems which have been agreed by the free world.

26. Improve implementation and enforcement of agreed control systems through the development of ancillary measures including, where appropriate, control over transit trade and transshipment, free port activities, use of transportation facilities, financial control, black-listing, and greater coordination among national control authorities.

27. Avoid proposals for extensions of controls which involve disproportionate expenditure of good will and bargaining power.

28. Maintain flexibility with respect to the modification of presently agreed controls.

29. Give greater weight in determining US actions to the impact of the control system on the economic, political and financial situation of our allies and to their views and intentions.

30. Consult

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30. Consult with other principal free world nations before entering into new major economic defense programs.

31. Seek to demonstrate to free world nations, on appropriate occasions, the risks of excessive reliance on the Soviet bloc as a trade partner for the free world.

32. Encourage and facilitate the flow of trade within the free world, including the entry of commodities into the United States by reduction of trade barriers, particularly when the effect of such action would be to decrease the reliance of the free world on the Soviet bloc.

33. Encourage and support, by all reasonable means, the development of alternative markets and sources of supply within the free world, so as to reduce dependence of free world countries on Soviet bloc markets and sources of supply.

34. Seek to provide safeguards designed to minimize the immediate effects of a sudden reduction or cessation of trade initiated by the Bloc.

35. Administer current US programs such as economic development, military procurement, defense support, stockpiling and similar activities, in such a way as to take into account the impact on the economic defense program, and, particularly, the objective of decreasing the free world's reliance on Soviet bloc trade.

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Amendment

In the foregoing document, the following amendments, approved by the Executive Branch November 6, 1953, should be inserted as new paragraph No. 17 (old paragraph 17 renumbered to become No. 18 and subsequent paragraphs renumbered accordingly) and paragraphs Nos. 37 and 38:

17. Hong Kong and Macao are colonies of friendly countries and their economic needs should be viewed in that light. However, the relationship of the economies of Hong Kong and Macao with that of Communist China is so close that the risk of the circumvention and frustration of economic defense controls toward Communist China is greater through transactions with these western colonies than through similar transactions with other free world countries. This danger is greater in the case of Macao because of its history of uncontrolled trade and the unreliability of its export controls. It is therefore necessary to take special care in the control of transactions with Hong Kong and Macao.

Toward Special Areas

37. In applying controls, accord to Hong Kong treatment consistent with that generally accorded cooperating countries while employing such special care as may be necessary to prevent frustration of economic defense controls on transactions with Communist China.

38. To the same end apply more stringent controls on trade with Macao as may be appropriate.

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AN ACT

To provide for continuation of authority for
the regulation of exports, and for other
purposes

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled, That this Act may be cited as the "Export Control
Act of 1949."

FINDINGS

SEC. 1. (a) Certain materials continue in short supply at home and abroad so that the quantity of United States exports and their distribution among importing countries affect the welfare of the domestic economy and have an important bearing upon the fulfillment of the foreign policy of the United States.

(b) The unrestricted export of materials without regard to their potential military significance may affect the national security.

DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the policy of the United States to use export controls to the extent necessary (a) to protect the domestic economy from the excessive drain of scarce materials and to reduce the inflationary impact of abnormal foreign demand; (b) to further the foreign policy of the United States and to aid in fulfilling its international responsibilities; and (c) to exercise the necessary vigilance over exports from the standpoint of their significance to the national security.

AUTHORITY

SEC. 3. (a) To effectuate the policies set forth in section 2 hereof, the President may prohibit or curtail the exportation from the United States, its Territories, and possessions, of any articles, materials, or supplies, including technical data, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, such rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person.

(b) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.

(c) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils, during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy, except to the extent required to effectuate the policies set forth in clause (b) or clause (c) of section 2 hereof.

CONSULTATION AND STANDARDS

SEC. 4. (a) In determining which articles, materials, or supplies shall be controlled hereunder, and in determining the extent to which exports thereof shall

be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports.

(b) In authorizing exports, full utilization of private competitive trade channels shall be encouraged insofar as practicable, giving consideration to the interests of small business, merchant exporters as well as producers, and established and new exporters, and provisions shall be made for representative trade consultation to that end. In addition, there may be applied such other standards or criteria as may be deemed necessary by the head of such department, or agency, or official to carry out the policies of this Act.

VIOLATIONS

SEC. 5. In case of the violation of any provision of this Act or any regulation, order, or license issued hereunder, such violator or violators, upon conviction, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

ENFORCEMENT

SEC. 6. (a) To the extent necessary or appropriate to the enforcement of this Act, the head of any department or agency exercising any functions hereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443), shall apply with respect to any individual who specifically claims such privilege.

(c) No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

EXEMPTION FROM ADMINISTRATIVE PROCEDURE

ACT

SEC. 7. The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237), except as to the requirements of section 3 thereof.

QUARTERLY REPORT

SEC. 8. The head of any department or agency or official exercising any functions under this Act shall make a quarterly report, within forty-five days after each quarter, to the President and to the Congress of his operations hereunder.

DEFINITION

SEC. 9. The term "person" as used herein shall include the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

EFFECT ON OTHER ACTS

SEC. 10. The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tinsplate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

EFFECTIVE DATE

SEC. 11. This Act shall take effect February 28, 1949, upon the expiration of section 6 of the Act of July 2, 1940 (54 Stat. 714), as amended. All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under said section 6 of the Act of July 2, 1940, shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

TERMINATION DATE

SEC. 12. The authority granted herein shall terminate on June 30, 1953, or upon any prior date which the Congress by concurrent resolution or the President may designate.

NOTE

Public Law 33, 82nd Congress, extended this Act until June 30, 1953.

Public Law 62, 83rd Congress, extended this Act until June 30, 1956.

November 12, 1953

ACEP PROGRAM DETERMINATION NO. 1100

To: Director
Bureau of Foreign Commerce

Subject: U.S. Master Export Security List, Attributes and
Standards (ACEP Document No. 100)

There are hereby established:

- (a) The U.S. Master Export Security List; and
- (b) Attributes and Standards for placing items on
U.S. Master Export Security List

The new Attributes and Standards shall supersede immediately the present export security criteria. The establishment of the new list and transfer of items from present U.S. Department of Commerce "U.S. Security Export Control Lists" shall proceed in accordance with the procedure set forth on page 11 of this Program Determination.

ACEP PD No. 238 and Amendment 1 and the provisions of ACEP PD No. 28 Amendment 60 with respect to criteria are hereby revoked.

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I. U. S. MASTER EXPORT SECURITY LIST

The single U. S. Master Export Security List shall consist of the parts described below:

- Part A Atomic Energy Material - includes source material, fissionable material and facilities for the production of fissionable material as defined by the Atomic Energy Commission. Such listing concurrently reflects the coverage in this area provided in Title I, Categories A and B of the Battle Act Lists as adapted from the AEC List for that purpose.
- Part B Arms, Ammunition and Implements of War - includes the arms, ammunition and implements of war listings as established by the Office of Munitions Control of the Department of State. These listings reflect the coverage provided in Title I, Categories A and B of the Battle Act Lists as adapted for that purpose.
- Part C Other Items Controlled by the U.S. to the Soviet Bloc - includes the various security listings employed by the Department of Commerce in its control to the Soviet Bloc (except for certain additional control to Communist China and North Korea which is provided for in Part D of the list) and Title I, Categories A and B, and Title II of the Battle Act Lists as adapted for that purpose and also reflecting agreed international controls as reflected in I/L I (not covered in Parts A and B above), I/L II and I/L III. Part C shall be divided into three sections as follows:
- Section I Includes items for which agreements are in force in CoCom for effective embargo to the Soviet Bloc, including the five IA items appearing on Category B of Title I even though formal multilateral agreement to embargo was not reached by CoCom countries as compared to other acceptances of the Title I, Category B List..

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Section II Includes items for which agreements are in force in CoCom for effective quantitative control to the Soviet Bloc, including the listing of items agreed internationally for quantitative control even though they may be separately listed in Section III below for a more stringent control by the U.S.

Section III Includes items (a) which are the subject of strictly bilateral export control action, (b) which are the subject of unilateral control action, (c) which are regarded as negotiable for either multilateral or bilateral export control (whether or not such negotiation has in fact been undertaken) and as to which provisional unilateral action may or may not be currently taken.

Part D Items Controlled to Communist China - includes the listing for control to Communist China and North Korea. This part is to be divided into three sections which would be similar in type to those described under Part C, and a Part D, Section IV listing the items excepted from control. This Part D may be further utilized for special listings keyed to particular area problems in situations either of international tension involving a threat of imminent war, or of limited warfare in defiance of the U. S. or U. N. security interest.

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II. ATTRIBUTES FOR DETERMINATION OF ELIGIBILITY OF ITEMS
FOR PLACEMENT ON THE U.S. MASTER EXPORT SECURITY LIST

The sole function of the security attributes is to determine eligibility of an item for consideration for placement on the U.S. Master Export Security List.

- A. One or more of the following attributes shall be possessed by materials or equipment (including technical data and services) if such are to be considered for restrictive control for security reasons in a situation of international tension not involving the threat of imminent war in defiance of the U. S. or of the U. N.
1. Atomic Energy Materials and Equipment:
 - a. Any material (raw or processed) containing by weight 0.05% or more of uranium, thorium, or any combination thereof; 1/
 - b. Any fissionable material; 1/
 - c. Any equipment or device capable of the production of fissionable material and any important component part especially designed for such equipment or device. 1/
 2. Arms, Ammunition, and Implements of War. 2/5/
 3. Materials and equipment (by types and grades) which are designed specially or used principally for the development, production or utilization of arms, ammunition, implements of war, and atomic energy materials. 3/4/5/
 4. Materials and equipment (by types and grades) which incorporate advanced technology or unique technological know-how (including production know-how), having important direct or indirect military or atomic energy application, the acquisition of which may reasonably be expected to permit a significant advance in Soviet Bloc technology over the level of development already achieved or expected to be achieved within a period of short duration. 3/4/
 5. Materials and equipment (by types and grades) in which the Soviet Bloc has an actual or potential deficiency (a) that is of a magnitude or nature constituting an important obstacle to the maintenance of or increase in activities of high importance, direct or indirect, to its military power and (b) that the Soviet Bloc cannot overcome through its own resources within a period of short duration.

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- B. In a situation of international tension involving a threat of imminent war, or in a situation of limited warfare, in defiance of the U. S. or of the U. N., all material or equipment (including technical data and services) which meet the attributes listed in (A) above shall be considered for restrictive control for security reasons, and in addition thereto other items shall be considered for restrictive control for security reasons based upon such further attributes as may be pertinent and appropriate or for reasons of overriding U. S. policy. 3/6/

Footnotes

- 1/ This attribute is applicable to the implementation of the Atomic Energy Act of 1946 which is under the jurisdiction of the Atomic Energy Commission and related to the implementation of the Battle Act by the Director of Foreign Operations.
- 2/ This attribute is applicable to the development of the Munitions List which is administered by the Department of State and related to the implementation of the Battle Act by the Director of Foreign Operations.
- 3/ These attributes relate to the implementation of the Export Control Act of 1949 as amended, and are related to the implementation of the Battle Act by the Director of Foreign Operations.
- 4/ The target area currently involved in these attributes is the Soviet Bloc, (excluding Communist China and North Korea) which is currently defined to include Albania, Bulgaria, Czechoslovakia, Estonia, Eastern Germany, Hungary, Latvia, Lithuania, Poland and Danzig, Rumania, U.S.S.R.
- 5/ Materials and equipment should not generally be deemed to possess this attribute if they are materials or equipment primarily intended for civilian use unless they possess high military importance and are readily convertible into arms, ammunition or implements of war.
- 6/ The target area currently involved is Communist China and North Korea.

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III STANDARDS FOR PLACEMENT OF ITEMS ON U.S. MASTER EXPORT SECURITY LIST

The function of the standards is to provide tests which must be met in a reasonable demonstrable manner, for the placement (including retention or deletion) of an eligible item on the U. S. Master Security List and the appropriate part thereof.

A. Placement of Items on Part A (Atomic Energy) of U. S. Master Export Security List.

An item shall be placed on Part A of the List if it possesses Attribute No 1 and is listed for export control by the Atomic Energy Commission.

B. Placement of Items on Part B (Arms, etc.) of U. S. Master Export Security List.

An item shall be placed on Part B of the List if it possesses Attribute No 2 and is listed for export control by the Department of State.

C. Placement of Items on Part C-I (Embargo) of U. S. Master Export Security List. 1/

An item shall be placed on Part C-I if it meets all of the following Standards:

Standard No. 1. The item possesses one or more Attributes Nos 3, 4 and 5, and provided that:

(a) With respect to Attribute No. 4;

(1) The know-how is extractable from the material or equipment involved; and

(2) The application of the know-how is not confined to items predominantly of civilian uses; and

(3) The Soviet Bloc is not reasonably expected to achieve the advance in technology afforded by the material or equipment to be embargoed within the period of time required to obtain multilateral agreement on embargo and its effective implementation; and

(4) A lesser degree of restriction than embargo cannot reasonably be expected to prevent the extraction of the know-how from the material or equipment involved.

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(b) With respect to Attribute No. 5:

- (1) The deficiency is not judged to be of a character that would induce the Soviet Bloc to remedy it with a speed or to a degree that would make the net effect of an embargo unfavorable to the security interests of the free world; and
- (2) A lesser degree of restriction than embargo cannot reasonably be expected to create or maintain a Soviet Bloc deficiency as defined in the Attribute; and
- (3) The embargo will create or maintain a Soviet Bloc deficiency either in the material or equipment to be embargoed or in other materials or equipment as defined in the Attribute; and
- (4) The Soviet Bloc is not reasonably expected to be able to overcome the deficiency during the time involved in establishing the necessary embargo control and achieving its effective implementation, except by diversion of materials or facilities of comparable or greater importance to its military power; and
- (5) The embargo is not reasonably expected to induce the Soviet Bloc to overcome the deficiency without causing serious impairment of activities other than those related to that deficiency but which are of comparable or greater importance to its military power.

Standard No. 2. The coverage already afforded by the placement of related items on the U. S. Master Export Security List is inadequate to achieve U. S. Security objectives.

Standard No. 3. An agreement is in force in CoCom for effective embargo of the item to the Soviet Bloc.

D. Placement of Items on Part C-II (Quantitative Control) of U. S. Master Export Security List. 1/

An item shall be placed on Part C-II if it meets all of the following Standards:

Standard No. 1. The item possesses either Attribute No. 4 or Attribute No. 5, provided that:

- (a) With respect to Attribute No. 4, the Attribute as conditioned under (a) (1) and (2) of Standard No. 1 for Part C-I is met but:

1/ If a listed item is reopened by CoCom for change of control,

it shall be reviewed in terms of the Standards of C-II.

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- (1) The technology cannot be effectively separated by designing types or grades of commodities to permit embargo listing but is susceptible to a licensing guide approach which may reasonably be expected to succeed in preventing the transmission of the technology; or
 - (2) A lesser degree of restriction than embargo can reasonably be expected to prevent the extraction of the technology from the material or equipment involved; and
 - (3) The Soviet Bloc is not reasonably expected to achieve the advance in technology afforded by the material or equipment to be quantitatively controlled within the period of time required to obtain multilateral agreement on quantitative control and its effective implementation.
- (b) With respect to Attribute No. 5:
- (1) The deficiency is not judged to be of a character that would cause the Soviet Bloc to remedy it with a speed or to a degree that would make the net effect of quantitative control unfavorable to the security interests of the free world; and
 - (2) A lesser degree of restriction than embargo can reasonably be expected to create or maintain a Soviet Bloc deficiency as defined in the Attribute; and
 - (3) Quantitative control will create or maintain a Soviet Bloc deficiency either in the material or equipment to be embargoed or in other materials or equipment as defined in the Attribute; and
 - (4) The Soviet Bloc is not reasonably expected to be able to overcome the deficiency during the time involved in establishing the necessary quantitative control and achieving its effective implementation, without diversion of materials or facilities of comparable or greater importance to its military power; and
 - (5) Quantitative control is not reasonably expected to induce the Soviet Bloc to overcome the deficiency without causing serious impairment of activities other than those related to that deficiency but which are of comparable or greater importance to its military power.

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Standard No. 2. The coverage already afforded by the placement of related items on the U. S. Master Export Security List is inadequate to achieve U. S. security objectives.

Standard No. 3. An agreement is in force in CoCom for effective quantitative control of the item to the Soviet Bloc.

E. Placement of Items on Part C-III (Individual Item Control) of U. S. Master Export Security List.

(Explanatory Note: This Part comprises items the export of which to the Soviet Bloc the U. S. has determined should be subjected to control and for which there is no current multilateral agreement by CoCom to controls identical with those of the U.S.)

An item shall be placed on Part C-III if it meets both Standards No. 1 and 2 and either Standard No. 3 or 4.

Standard No. 1. The item possesses one or more of Attributes Nos. 3, 4, and 5, and Standard No. 1 under Part C-I or Standard No. 1 under Part C-II is met.

Standard No. 2. The coverage already afforded by the placement of related items on the U. S. Master Export Security List is inadequate to achieve U. S. security objectives.

Standard No. 3. It can be reasonably expected that U.S. negotiations would be successful in obtaining satisfactory multilateral control by CoCom provided, however, it is reasonably clear that such negotiations or resulting control would not cause:

- (a) An expenditure of good will or bargaining power disproportionate in terms of U. S. national security interests; or
- (b) An undue impact on the economic, political, or financial situations of the member countries.

Standard No. 4. Where the U. S. does not intend to seek multilateral control by CoCom or has not been successful in obtaining adequate control agreement by CoCom:

- (a) It is reasonably demonstrated that U. S. controls would be effective in the light of available world supplies and the controls imposed by other nations; or
- (b) There are overriding U. S. policy considerations.

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NOTE: The degree of control to be applied to an item on Part C-III shall be determined on the merits of each item in terms of (a) the possibility of achieving effective control, including the use of licensing guides, and (b) any overriding considerations of U.S. policy.

F. Placement of Items on Part D (Communist China Control) of the U.S. Master Export Security List.

(Explanatory Note: This Part is divided into four Sections: China Embargo; D-II, China Quantitative Control; D-III, China Individual Item Control and D-IV, Exceptions.)

Part D-I (China Embargo). An item shall be placed on Part D-II of the U.S. Master Export Security List if it meets the following Standard:

Standard No. 1 The item is listed on Parts A, B, C-I, C-II, or International List III, or the special China List.

Part D-II (China Quantitative Control). An item shall be placed on Part D II of the U S Master Export Security List if it meets the following standard:

Standard No. 1. An agreement is in force multilaterally for effective quantitative control of the item to Communist China.

Part D-III (China Individual Item Control). An item shall be placed on Part D-III of the U.S. Master Export Security List if it meets one of the following standards and is not listed in Part D-I or D-II:

Standard No. 1. The item is considered appropriate for control in view of (a) the nature of aggression or threat of aggression, or (b) overriding considerations of U.S. policy.

Standard No. 2. An agreement is in force with Japan for effective restriction of the item to Communist China.

Part D-IV (Exceptions). An item shall be placed on Part D-IV if it has been determined that the item is not to be restricted to Communist China.

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ACEP Program Determination No. 1100

DEVELOPMENT OF NEW U.S. MASTER EXPORT SECURITY LIST

The new U.S. Export Security List shall be maintained by the Department of Commerce. The AEC and the Office of Munitions Control, Department of State, are to review the items presently controlled by them, and advise the Department of Commerce what items are to be included in Parts A and B of the new list.

LISTING OF ITEMS

In order to expedite transition to the new list -

1. The following items shall be placed on Part C-I without further review, for the time being:

- (a) All items presently on U.S. List I.
- (b) The five Battle Act Title I, Category B items now on I/L II.
- (c) All other Battle Act Title I items not included in Parts A or B of the U.S. Master Security List.

2. All items on U.S. II shall be placed on part C-II (the five Battle Act items shall show the appropriate cross-reference to Part C-I). For any other items on I/L II for which the U.S. has determined more restrictive controls are essential, there shall be appropriate cross-references to Part C-III wherein the U.S. control will be described.

3. Part C-III. Subject to an early review as to whether any particular item possesses the new attributes and meets the standards, the following shall be placed on Section III:

- (a) The I-A items (not covered by the Battle Act).
- (b) The U.S. List II-B items.
- (c) Such additional items as are in process of negotiation, or for which decisions have been made for unilateral action.

The degree of U.S. control for each item on Section III shall be that called for by the particular program determination or notice of action.

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4. Likewise in establishing the new Part D, Sections I, II and III applicable to Communist China, the items presently agreed for multilateral embargo shall be immediately listed in D-I, with post facto review scheduled for an early date. Similarly, Part D-II shall list the item or items presently agreed for multilateral quantitative control.

With reference to Part D, Section III, and subject to a later review as to whether retention of any particular item is in order, shall be listed immediately:

1. The uncovered residue of U.S. List C-III and former I-A and II-B items.
2. Unagreed residual of U.K. supplemental China List.
3. The confirmed residual as to the 400 embargo items of Part III-A of the Japanese Bilateral List as currently agreed.
- 4.* Items covered by Part III-B of the Japanese Bilateral List as currently agreed.
- 5.* N.E.S. category excluding minor exceptions to U.S. control to China.

(* Includes items controlled for overriding U.S. policy reasons.)

Part D-IV. Items excepted from control to Communist China shall be listed in this Section.

IDENTIFICATION OF ITEMS

1. In designating the particular listings on the new U.S. Master Export Security List, the present identification numbering of items shall be retained in so far as practicable to minimize confusion.

2. Wherever an item appears on two sections of the list there shall be appropriate cross-references clearly indicating which listing governs the U.S. control.

3. Items listed in Part C-III shall contain coded references showing (a) the international control status; (b) character of U.S. control to the Soviet Bloc; and (c) character of U.S. control to friendly countries.

/s/ John D. Garrett
John D. Garrett
Executive Secretary
Advisory Committee on Export
Policy

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ACEP PROGRAM DETERMINATION NO. 502

April 25, 1951

To: Director
Office of International Trade

Subject: Export Policy for Licensing Commodities to R Subgroup A Destinations other than Communist China and North Korea (see PD-361 and Amendments Thereto for the Latter Areas) (OC Doc. 596, 596.1 and Staff Memorandum dated April 16, 1951)

Program Determination No. 472 and Supplement 1 are consolidated and revised to read as follows:

"A validated export license shall be required for the export to Subgroup A destinations of any commodity whether or not included on the Positive List.

The following policies shall govern the licensing of commodities for export to R Subgroup A destinations other than Communist China and North Korea:

1. Items in short supply shall be denied.
2. Items on U.S. Lists I and IA shall be denied.
3. All other commodities on the Positive List which are destined for such areas, whether shipped directly or indirectly, shall be denied; however, the OIT may refer to the R Procedure Subcommittee for its recommendation applications for such commodities which in its opinion should be approved.
4. U.S. Class IC items which are not on the Positive List shall be denied by OIT if the export is in excess of minimum quantities; the OIT shall approve the export of minimum quantities of such commodities.
5. All other commodities not on the Positive List shall (a) in general be approved; though (b) the OIT may in any specific case reduce or deny licenses for particular shipments.
6. The OIT shall report monthly to the Executive Secretary of ACEP the licenses applied for, the quantities approved, and the quantities denied for all commodities which are not on the Positive List and all IC commodities on the Positive List, for export to these destinations. The ACEP will recommend the future policy to govern the licensing of these items, including the possible transfer of the items to other controls categories and advice to OIT as to whether any item on the U.S. IC List should be dealt with more stringently or more leniently in the future."

John D. Garrett
Executive Secretary
Advisory Committee on Export Policy

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August 13, 1953

ACEP PROGRAM DETERMINATION NO. 361 Amendment 10

To: Director
Office of International Trade

Subject: Policy, Procedure and Licensing Criteria for
Processing Export License Applications for
Hong Kong and Macao (OC Document No. 1083)

(This Amendment supersedes PD 361 Amendment 9; Part A has been revised; Part B remains unchanged.)

The Office of International Trade is authorized to take the required actions with respect to processing export license applications in order to implement the U.S. Licensing Policy for Hong Kong and Macao as set forth below:

A. U.S. LICENSING POLICY FOR HONG KONG

1. All Positive List Items and any Rated Items not on the Positive List

Validated licenses may be issued for items in this category within the limits of availability* for consumption in Hong Kong, and for transshipment or resale to non-Soviet Bloc destinations provided shipments do not involve:

- (a) accumulation of inventories beyond normal levels;
- (b) other questionable security risks;
- (c) materials, (or identical items), regardless of source, which will be utilized in Hong Kong as raw materials or as capital equipment in the production of any item a significant quantity** of which is being exported directly or indirectly to Communist China, North Korea, Macao or Far Eastern destinations of the USSR.
- (d) rated materials (or identical items) which, regardless of source, are being exported from Hong Kong to Communist China, North Korea, Macao or Far Eastern destinations of the USSR in significant quantity.**

* Hong Kong requirements for short supply items shall be determined in accordance with the usual procedure in effect for non-Soviet Bloc countries taking into consideration Hong Kong's other sources of supply and Hong Kong's exports authorized or unauthorized to all destinations.

** In determining such quantities OIT should consult as appropriate the Committee on Export Policy structure.

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Shipments to Hong Kong of any rated or Positive List item should be denied if any of the conditions in (a) thru (d) above is involved.

2. Items neither Rated nor on the Positive List

Licenses for commodities in this category shall normally be validated, or shipment may be permitted under general license, unless available evidence indicates:

- (a) an abnormal accumulation of inventories in Hong Kong, or
- (b) the commodity of U.S. origin is likely to move from Hong Kong to Communist China, North Korea, Macao or Far Eastern Destinations of the USSR, or
- (c) materials (or identical items) will be utilized in Hong Kong for the production of any item a significant quantity of which is being exported, directly or indirectly, to Communist China, North Korea, Macao or Far Eastern destinations of the USSR.

3. General Provisions

- (a) Notwithstanding the provisions of Paragraphs 1 and 2 above, OIT is authorized to approve individual cases of \$1,000 or less where, in its judgment, such shipments would not frustrate U. S. export licensing policy to Communist China, North Korea, Macao or Far Eastern destinations of the USSR.
- (b) License applications for shipment of any Positive List or any rated item to Hong Kong shall be denied where there is reasonable evidence that the particular shipment is likely to be transshipped directly or indirectly to any Soviet Bloc destinations.

License applications for shipment of non-Positive List, nonrated items to Hong Kong shall be denied where there is reasonable evidence that the particular shipment is likely to be transshipped directly or indirectly to Communist China, North Korea, Macao, or Far Eastern destinations of the USSR.

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- (c) For purposes of this Program Determination, shipments by Hong Kong to Macao are to be regarded in the same manner as shipments to Communist China unless they are determined by the U.S. to be necessary to meet minimum essential short-term requirements for local consumption in Macao. (See U.S. Licensing Policy for Macao below.)

B. U.S. LICENSING POLICY FOR MACAO

1. Treatment of Rated and Short-Supply Items Appearing on the Positive List and IC Items not on the Positive List

Exports to Macao of items in this category directly or via Hong Kong or other intermediate points shall be denied except where they are judged to fall within the limits of availability and meet all of the following criteria:

- (a) they are found necessary to meet minimum essential short-term local requirements;
- (b) they are supported by formal requests of the Portuguese Government, backed by evidence of Macao's total requirements and proposed sources of supply; and
- (c) an investigation has demonstrated that there is no likelihood the proposed export will be made available to the Soviet Bloc.

2. Treatment of Residual Items

- (a) All other items may be licensed directly or via Hong Kong or other intermediate points only to meet demonstrated short-term requirements for local consumption. Otherwise exports should be denied.
- (b) License applications for items in this category should be denied where there is a probability that unauthorized diversion of proposed shipments may occur, directly or indirectly, to communist China, North Korea, or Far Eastern destinations of the USSR.
- (c) License applications for items in this category should also be denied where the item or any identical item is utilized in Macao for the production of any item which is being exported, directly or indirectly, to Communist China, North Korea, or Far Eastern destinations of the USSR.

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- (d) Shipments of any such commodity should be denied where there is evidence that:
- (1) it will be transshipped, directly or indirectly, or
 - (2) this item or any identical item is utilized in Macao for the production of any item which is being exported directly or indirectly, to Subgroup A destinations (other than Communist China, North Korea, and Far Eastern destinations covered in (b) and (c) above) unless the proposed transshipment or transaction is clearly indicated on the export application and the item and quantity thereof are such as would be approved by OIT for direct shipment from the United States to the appropriate Subgroup A destinations.

/s/ John D. Garrett
John D. Garrett
Executive Secretary
Advisory Committee on Export
Policy

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SECURITY INFORMATION

ACEP PROGRAM DETERMINATION NO. 810 (Revision 1)

August 3, 1953

To: Director
Office of International Trade

Subject: U.S. Security Export Policy and Procedure Governing U.S. Strategic Exports to Friendly Foreign Countries (ACEP Program Determination No. 810 (Consolidated Reports 3 and 4))

I. Purpose

This program determination sets forth the U.S. security export policy and procedure governing the treatment of export license applications for shipment of items on U.S. Lists I, IA, II and IIB from the United States to friendly foreign countries, except those for which equivalent security export policies and procedures are, or may be subsequently, separately set forth in other program determinations or notices of action.

II. Effect

This program determination supersedes all other program determinations and notices of action (including amendments, revisions and supplements) inconsistent herewith, particularly Program Determinations 381, 660 and 280-R, and Notices of Action in the 77 and 79 series.

III. Explanation of Terms

A. "Soviet Bloc" shall be understood to include: U.S.S.R. (inclusive of Latvia, Esthonia and Lithuania); Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, Soviet Zone of Germany (including Soviet Sector of Berlin), Communist China (including Manchuria), and North Korea.

B. "Friendly Foreign Countries" shall be understood to include all countries other than Soviet Bloc countries. Countries for which equivalent security export policies and procedures are separately set forth currently include South Korea, Formosa, Hong Kong, Macao, Finland and Yugoslavia.

C. "Item and Identical Item" shall be understood to mean the item as defined in a particular listing on a U.S. Security Export Control List issued by the Department of Commerce. Where a listing includes commodities distinctly different from the item in question, it shall be understood to include only that part of the definition which covers the prospective export and other commodities within the listing, if any, which could be substituted for it with reasonably equal effect.

D. "Assurances and Adequate Assurance" shall be understood to mean either an express commitment from the government of the country of destination that it will exercise the degree of control referred to elsewhere in this program determination over shipments of identical items to the Soviet Bloc; or a reasonable presumption of the existence of such de facto controls or conditions of trade drawn from information provided by the government concerned or other available information. This presumption should be communicated to the country concerned if it is considered by the appropriate agencies that this would be

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IV. Items on U.S. Lists I and IA

A. General Policy

In general, OIT shall approve export license applications for the shipment of items on U.S. Lists I and IA to friendly foreign countries (1) where there is adequate assurance that the country of destination will not knowingly permit exportation of identical items to the Soviet Bloc, directly or indirectly, or (2) where it is clear that the non-approval of such license applications will have no significant effect in elimination or decreasing such exports.

B. General Procedure

1. Where OIT is not satisfied that there is an adequate assurance of embargo of a particular item to the Soviet Bloc by the country of destination, OIT shall consult with other U.S. Government agencies as appropriate, to determine whether there is an adequate assurance or whether it would be desirable to request such an assurance from the government of the country concerned.

a. Where OIT and the agencies consulted agree that there is an adequate assurance of embargo from a country, OIT may approve export licenses to that country for the item covered by the assurance, or OIT may take such other licensing action as is agreed by the consulting agencies.

b. Where OIT and the agencies consulted agree that there is not an adequate assurance and that the government of the country concerned should be approached for an assurance, OIT shall approach the country's Mission in Washington. If, after a reasonable effort has been made by OIT, an adequate assurance is not received, OIT shall further consult the relevant agencies to determine if a more formal approach by the Department of State is necessary.

c. Where OIT and the agencies consulted agree (1) that there is not an adequate assurance, (2) that the government of the country concerned should not be approached for an assurance, and (3) that export license applications for the item to the country of destination should be denied, then OIT shall deny export applications for the particular item to the country of destination until such time as an adequate assurance is received.

d. When OIT and the consulting agencies do not reach unanimous agreement, concerning the adequacy of an assurance or the course of action to be pursued, or when OIT or any of the consulting agencies deem it appropriate, particular cases and problems shall be referred by OIT to the ACEP structure for review and advice. Where such referral is made, OIT shall hold without action the particular case or cases involved pending final resolution.

2. Where adequate assurance of embargo is not received, the following procedures shall be applied as appropriate:

a. Where OIT and the consulting agencies agree that all of the following conditions prevail, license applications shall be approved in the absence of an assurance:

Approved For Release 2000/05/23 : CIA-RDP79-01203A000100020001-2
(1) where discussion of the item with the country involved clearly shows that an assurance cannot be expected from the subject country.

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(2) Where it is judged that the continued withholding of approval on relevant license applications will have no significant effect in eliminating or decreasing the subject exports, and

(3) Where it is clear that the willingness of the subject country to provide assurances on other items will not be materially reduced by the approval of the subject cases.

b. Where OIT or any of the consulting agencies, for reasons other than in a. above, recommend approval of export licenses for the item involved despite the absence or inadequacy of assurance, OIT shall submit to the ACEP structure an appropriate document explaining why the assurance cannot be obtained or why the assurance is inadequate, setting forth relevant information including that supplied from the government concerned, and indicating justification for the recommended approval action.

c. Where OIT and the consulting agencies agree to the desirability of continuing to withhold approval of license applications and agree that outright denial action would have an adverse effect on the possibility of receiving non-frustration assurances, OIT shall continue to withhold both approval and denial action.

d. Where OIT and the consulting agencies agree that actual denial action on the subject cases should be taken, OIT shall document the item problem concerned and submit it to the ACEP structure for action. A determination that export licenses for any item should be denied shall be made by the ACEP structure only if the effectiveness of such action in reducing exports of the item from the country of destination to the Soviet Bloc would be of greater significance to the security interest of the United States than the significance of the adverse effects of the denial on the country concerned. OIT shall thereafter process export license applications to the country concerned for the item involved in accordance with the program determination resulting from such review by the ACEP structure.

3. Whenever, as a result of continuing review, there should be reasonable indication that a country is not observing its embargo assurance for an item, OIT shall subject export license applications for the item to that country to review in accordance with the policy and procedures of this program determination.

C. Special Provisions

1. CG/COCOM Countries. These countries shall be deemed to have rendered adequate assurances of embargo on all I/L I items, unless there is reasonable evidence that a particular country is shipping or may ship an I/L I item to the Soviet Bloc contrary to CG/COCOM principles.

2. Coordination with MDAC Act. Care shall be taken to achieve maximum feasible consistency with activities of the MDAC Administrator. In general, OIT shall be guided by the following principles:

a. When a country's reply to the United States is deemed an adequate assurance of embargo policy or the existence of a de facto embargo for an item, this shall be deemed adequate assurance under this program determination, unless there is reasonable evidence that the country is shipping or may ship the item to the Soviet Bloc contrary to its assurance.

b. Where an item is shipped by a country to the Soviet Bloc and U.S. aid is terminated under the MDAC Act, OIT may either deny export license applications for the item to that country, or OIT may hold export license applications without action pending referral to the ACEP structure under paragraph IV, B, 2, hereof.

c. Where an item is shipped by a country to the Soviet Bloc and an exception is granted under the MDAC Act, OIT should review export license applications for the item to that country, seeking advice of the consulting agencies. In those cases where OIT and the agencies consulted agree that export license applications for the item to the country should be approved on the basis of the substantive reasons leading to the MDAC exception, OIT may approve export licenses accordingly. In all other instances, export license applications shall be handled under either of paragraphs IV, B, 1, c or d as appropriate.

3. Austria. It is recognized that the Austrian Government cannot now render adequate assurances within the requirements of the program determination. The Vienna Screening Committee should be notified that it will be expected to carry out this policy in so far as practicable. Its favorable recommendations on export applications involving shipments of U.S. List I and IA items from the United States to Austria shall generally be accepted by OIT as adequate assurances.

4. Commitments by Foreign Governments. It should be understood, with respect to any assurances which may be given by a friendly foreign country, that there is no commitment on the part of the foreign government to prevent the fulfillment of specific shipments under governmental obligations, contracts or trade agreements entered into prior to the date of the request for assurance; provided that such prior commitment is specific as to the item or items involved, that the foreign government undertakes to minimize shipments of such items to the Soviet Bloc. Notwithstanding this general rule, particular cases involving specific problems may be reviewed by OIT in accordance with the general procedure under IV, B.

5. Exceptions for Small Cases. As an exception to this policy, OIT is authorized to approve export license applications involving U.S. List I and IA items for shipment to friendly foreign countries where the total dollar value of the items in an individual export application does not exceed \$1,000; provided, however, that OIT shall exercise diligence to assure that this exception provision is not used to contravene the objectives of this policy.

6. New Strategic Items. For new items added to the U. S. Lists I and IA, items raised to this strategic classification from a lower strategic classification, and items which receive this strategic classification as a result of changes in definition, the foregoing policy and procedure generally shall not be applied until after the request for parallel action has been made to friendly foreign countries and they have had a reasonable time in which to give a definitive response, or shall be applied in accord with the provisions of the program determination authorizing the strategic action.

7. Parts and Components. As an exception to the foregoing procedure, OIT is authorized to approve export license applications involving parts and components which are of U. S. Lists I or IA strategic classification for friendly foreign countries provided the following criteria are met:

a. The parts and components are for machines or equipment being produced for or used by the United States Armed Forces, or for direct use by the Armed Forces of a NATO country, or for the combined commands of such countries; or for direct use by the Armed Forces of such other friendly countries, or for the combined commands of such other friendly countries, as may be determined in consultation with the Department of Defense and other appropriate agencies.

b. The parts are for use in the maintenance, repair or operation of machinery or equipment required for defense or other essential purposes, and which is already in use and will remain in the country of destination.

c. The parts will not be used in the assembly of new machines or equipment except for purposes in paragraph a., above.

d. The parts (including accessories and attachments) are such as normally find use with the parent equipment to permit its fullest normal utilization (e.g., drag line equipment for an excavator shovel) which is already in use and will remain in the country of destination, for use in defense or other essential activity.

e. In the case of spare parts which are on U. S. Lists I and IA, and which otherwise would be subject to the procedure set forth in this program determination, a further criterion shall be imposed, namely: The parts must not be readily interchangeable with a similar product of domestic manufacture in the country of destination.

V. Items on U.S. Lists II and IIB

A. General Policy

In general, OIT shall approve export license applications for the shipment of items on U.S. Lists II and IIB to friendly foreign countries (1) where there is adequate assurance that the country of destination will not knowingly permit the exportation of identical items to the Soviet Bloc in quantities or under arrangements which contravene the security objectives of an export control program mutually agreed upon between the United States and the country concerned, or (2) where it is clear that the non-approval of such license application will have no significant effect in eliminating or decreasing such exports.

B. General Procedure

1. OIT shall approve export licenses of U.S. List II and IIB items to friendly foreign countries, except in the circumstances described below.

2. OIT shall review U.S. List II and IIB items in order to identify those which are problem commodities. In addition, OIT shall review the relevant export data of friendly foreign countries in U.S. List II and IIB items to determine situations where there are circumstances with respect to exports from a country which indicate that the security interests of the United States may be adversely affected. A list of such situations by commodities and countries shall be kept on a current basis as a guide to the categories of export license applications which require review. This review shall be for the purpose of determining whether shipments from the United States would contribute significantly to the export of such items to the Soviet Bloc.

3. Where OIT has identified a case in accordance with the provisions of the preceding paragraph where it believes that it may be inappropriate to approve such case, OIT shall consult other U.S. Government agencies as appropriate to determine (a) whether there is an adequate assurance for this purpose, (b) whether it would be desirable to request such an assurance from the government of the country concerned, (c) whether export license applications for the item to the country concerned should be denied, or (d) whether other appropriate licensing action should be taken.

a. Where OIT and the agencies consulted agree that there is an adequate assurance or condition of trade within the terms of this policy, OIT may approve export licenses to the country of destination for the item covered by the assurance, or OIT may take such other licensing action as is agreed by the consulting agencies.

b. Where OIT and the agencies consulted agree that there is not an adequate assurance and that the government of the country concerned should be approached for an assurance, OIT shall approach the country's Mission in Washington. If, after a reasonable effort has been made by OIT, an adequate assurance is not received, OIT shall further consult the relevant agencies to determine if a more formal approach by the Department of State is necessary.

c. Where OIT and the agencies consulted agree (1) that there is not an adequate assurance, (2) that the government of the country concerned should not be approached for an assurance, and (3) that export license applications for the item to the country of destination should be denied, then OIT shall copy export applications for the particular item to the country of destination until such time as an adequate assurance is received.

d. When OIT and the consulting agencies do not reach unanimous agreement concerning the existence of an assurance, its adequacy, the likelihood or degree of contribution from U.S. exports of an item, or the course of action to be pursued, or when OIT or any of the consulting agencies deem it appropriate, particular cases and problems shall be referred by OIT to the ACEP structure for review and advice. Where such referral is made, OIT shall hold without action the particular case or cases involved pending final resolution.

4. Where adequate assurance is not received, the following procedures shall be applied as appropriate:

a. Where OIT and the consulting agencies agree that all of the following conditions prevail, license applications shall be approved in the absence of an assurance:

(1) Where the negotiating history of the item clearly shows that an assurance cannot be expected from the subject country.

(2) Where it is judged that the continued withholding of approval on relevant license applications will have no significant effect in eliminating or decreasing the subject exports, and

(3) Where it is clear that the willingness of the subject country to provide assurances on other items will not be strongly affected by the approval of the subject cases.

b. Where OIT or any of the consulting agencies, for reasons other than in a. above, recommend approval of export licenses for the item involved despite the absence of or inadequacy of assurance, OIT shall submit to the ACEP structure an appropriate document explaining why the assurance cannot be obtained or why the assurance is inadequate, setting forth relevant information including that supplied from the government concerned, and indicating justification for the recommended approval action.

c. Where OIT and the consulting agencies agree to the desirability of continuing to withhold approval of license applications and agree that outright denial action would have an adverse effect on the possibility of receiving non-frustration assurances, OIT shall continue to withhold both approval and denial action.

d. Where OIT and the consulting agencies agree that actual denial action on the subject cases should be taken, OIT shall document the item problem concerned and submit it to the ACEP structure for action. The ACEP structure shall review the problem and evaluate the balance of net security interest on the basis of relevant factors including: (a) the effectiveness of denial in restricting exports of the item from the country of destination to the Soviet Bloc; (b) the likelihood and extent of contribution of the proposed U.S. export to the country's ability to maintain or increase its shipments of the item to the Soviet Bloc; (c) the effectiveness of denial in preventing the contravention of U.S. security export controls; (d) the adverse effects of denial upon the country concerned and the U.S. security interest. A determination that export licenses for any item to be denied shall be made by the ACEP structure only if the effectiveness of such action in reducing exports of the item from the country of destination to the Soviet Bloc would be of greater significance to the security interest of the United States than the significance of the adverse effects of the denial on the country concerned. OIT shall thereafter process export license applications to the country concerned for the item involved in accordance with the program determination resulting from such review by the ACEP structure.

5. Whenever, as a result of continuing review, there is reasonable indication that a country is not observing its assurance for an item, or that additional U.S. exports of an item may contribute importantly to the country's ability to maintain or increase its exports of the item to the Soviet Bloc, OIT shall subject export license applications for the item to the country concerned to review in accordance with the policy and procedures of this program determination.

C. Special Provisions

1. Coordination with MDAC Act. Care shall be taken to achieve maximum feasible consistency with activities of the MDAC Administrator.

2. Austria. Favorable recommendations of the Vienna Screening Committee on export applications involving shipment of U.S. Lists II and IIB items from the United States to Austria shall generally be accepted by OIT as adequate assurances.

3. Prior Commitments. Due regard should be given to prior commitments of a friendly foreign government to ship identical items to the Soviet Bloc.

4. Exceptions for Small Cases. The provisions of paragraph IV, C, 5 shall be applicable to items on U.S. Lists II and IIB.

5. New Strategic Items. The provisions of paragraph IV, C, 6 shall be applicable to items on U.S. Lists II and IIB.

6. Parts and Components. The provisions of paragraph IV, C, 7 shall be applicable to items on U.S. Lists II and IIB.

VI. Capital Equipment and Production Materials

A. General Policy

In addition to the requirements of IV and V above, when capital equipment or production materials on U. S. Lists I, IA, II, IIB bear a close, direct and important relationship to, and will be used for, the production of I, IA, II or IIB end-items, export licenses for such capital equipment or production materials in general shall be issued where the requirements of IV and V above are satisfied with respect to the end-items.

B. General Procedure

1. OIT shall establish lists of capital equipment and production materials on U. S. Lists I, IA, II and IIB and correlated products on these security lists which bear a close, direct and important relationship to the capital equipment and production materials. These lists shall be reported to the ACEP structure and OIT shall use them as guides in carrying out the general security export policy in this program determination. These lists shall be kept under continuing review by OIT. Subsequent additions, deletions and modifications shall be reported to the ACEP structure.

2. OIT shall utilize the advice of the consulting agencies as appropriate in carrying out this policy. Where OIT and the consulting agencies are not in agreement concerning particular cases, problems or the course of action to be pursued, OIT shall submit the cases or problems to the ACEP structure for review and advice. Where such referral is made, OIT shall hold without action the particular case or cases involved.

VII. Transshipment

A. General Policy

OIT shall deny export license applications for shipment to any destination of items on U. S. Lists I, IA, II, IIB, and IC which are on the Positive List, and short supply items which are on the Positive List, where there is reasonable evidence that the particular shipment may be transshipped, directly or indirectly, to the Soviet Bloc. This policy shall be applied even though otherwise the exportation would be approvable under this program determination.

B. General Procedure

1. In determining whether transshipment may take place, due consideration should be given (a) to the extent of export controls exercised in the country of destination, (b) to the effectiveness of these controls, including controls over transit shipments and free trade areas, and (c) to the appearance in the export transaction of a party or parties found by OIT to be so unreliable as to require denial of export license applications in which they are involved.

2. OIT shall utilize the advice of the consulting agencies as appropriate in carrying out this policy. Questionable cases should be referred to the ACEP structure for advice.

VIII. General

Nothing herein shall conflict with the authority of OIT to deny export license applications on grounds of non-conformance with export regulations, or to return without action (RWA) or otherwise process cases in accordance with general administrative practice. Nor shall this program determination alter in any way the authority of OIT to process export license applications in accordance with short supply principles.

IX. Reports

OIT shall submit to the ACEP structure quarterly reports on its activities in carrying out this program determination.

/s/

John D. Garrett

John D. Garrett
Executive Secretary
Advisory Committee on Export Policy

T-1

December 8, 1950

U. S. DEPARTMENT OF COMMERCE

Office of the Under Secretary

Washington 25, D. C.

TITLE 32A--NATIONAL DEFENSE, APPENDIX

Chapter IX -- Under Secretary for Transportation, Department of Commerce

[Transportation Order T-1]

Part 1101--Shipping Restrictions

This order is found necessary and appropriate to promote the national defense and is issued pursuant to the authority granted by section 101 of the Defense Production Act of 1950. Consultation with industry in advance of the issuance of this order has been rendered impracticable by the need for immediate issuance.

Sec.

- 1101.1 Prohibited transportation and discharge.
- 1101.2 Applications for adjustment of exceptions.
- 1101.3 Reports.
- 1101.4 Records.
- 1101.5 Defense against claims for damages.
- 1101.6 Violations.

Authority: §§ 1101.1 to 1101.6, issued under sec. 704, Pub. Law 774, 81st Cong. Interpret or apply secs. 101, 705, Pub. Law 774, 81st Cong. sec. 101, E.O. 10161, Sept. 9, 1950, 15 F. R. 6105.

§ 1101.1 Prohibited transportation and discharge. No person shall transport in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States any commodity at the time on the Positive List (as amended from time to time) of the Comprehensive Export Schedule of the Office of International Trade, Department of Commerce (15 CFR Parts 370-399), any article on the list of arms, ammunition, and implements of war coming within the meaning of Proclamation No. 2776 of April 15, 1948, issued pursuant to section 12 of the Joint Resolution approved November 4, 1939 (54 Stat. 10; 22 U.S.C. 462), or any commodity, including fissionable materials, controlled for export under the Atomic Energy Act of 1946 (10 CFR Parts 40 and 50), to any destination at the time in Sub-Group A of the Comprehensive Export Schedule (15 CFR 371.3 (a)), to Hong Kong, or to Macao, and no person shall discharge from any such ship or any such aircraft any such commodity or article at any such port or at any other port in transit to any such destination, unless a validated export license under the Export Control Act of 1949 or under section 12 of said Joint Resolution approved November 4, 1939, has been obtained for the shipment, or unless authorization for the shipment has been obtained from the Under Secretary for Transportation. This prohibition applies to the owner of the ship or aircraft, the master of the ship or aircraft, and any other officer, employee or agent of the owner of the ship or aircraft who participates in the transportation. The consular officers of the United States shall advise whether commodities are currently on that List.

§ 1101.2 Applications for adjustment or exceptions. Any person affected by any provision of this part may file an application for an adjustment or exception upon the ground that such provision works an exceptional hardship upon him, not suffered by others, or that its enforcement against him would not be in the interest of the national defense program. Such an application may be made by letter or telegram addressed to the Under Secretary for Transportation, Washington 25, D.C., reference T-1. If authorization is requested, any such application should specify in detail the material to be shipped, the name and address of the shipper and of the recipient of the shipment, the ports from which and to which the shipment is being made and the use to which the material shipped will be put. The application should also specify in detail the facts which support the applicant's claim for an exception.

§ 1101.3 Reports. Persons subject to this part shall submit such reports to the Under Secretary for Transportation as he shall require, subject to the terms of the Federal Reports Act.

§ 1101.4 Records. Each person participating in any transaction covered by this part shall retain in his possession, for at least two years, records of shipments in sufficient detail to permit an audit that determines for each transaction that the provisions of this part have been met. This does not specify any particular accounting method and does not require alteration of the system of records customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

§ 1101.5 Defense against claims for damages. No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this part or any provision thereof, notwithstanding that this part or such provision shall thereafter be declared by judicial or other competent authority to be invalid.

§ 1101.6 Violations. Any person who wilfully violates any provisions of this part or wilfully conceals a material fact or furnishes false information in the course of operation under this part is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this part.

This part shall take effect on December 8, 1950.

[Seal]

PH:LIP B. FLEMING

Under Secretary for Transportation

[F. R. Doc. 50-11490; Filed, Dec. 8, 1950; 12:20 p.m.]

Comm--7276

December 16, 1950

U. S. DEPARTMENT OF COMMERCE

Under Secretary for Transportation

TITLE 32A--NATIONAL DEFENSE, APPENDIX

Chapter IX--Under Secretary for Transportation, Department of Commerce.
Transportation Order T-2

Part 1302--Shipping Restrictions; Communist China

This order is found necessary and appropriate to promote the national defense and is issued pursuant to the authority granted by section 101 of the Defense Production Act of 1950. Consultation with industry in advance of the issuance of this order has been rendered impracticable by the need for immediate issuance.

Sec.

- 1302.1 Prohibition of movement of American carriers to Communist China.
- 1302.2 Prohibition on transportation of goods destined for Communist China.
- 1302.3 Persons affected.
- 1302.4 Reports.
- 1302.5 Records.
- 1302.6 Defense against claims for damages.
- 1302.7 Violations.

Authority: §§ 1302.1 to 1302.7 issued under sec. 704, Pub. Law 774, 81st Cong. Interpret or apply secs. 101, 705, Pub. Law 774, 81st Cong. sec. 101, E.O. 10161, Sept. 9, 1950, 15 F. R. 6105.

§ 1302.1 Prohibition of movement of American carriers to Communist China. No person shall sail, fly, navigate, or otherwise take any ship documented under the laws of the United States or any aircraft registered under the laws of the United States to any Chinese Communist port or to any other place under the control of the Chinese Communists.

§ 1302.2 Prohibition on transportation of goods destined for Communist China. No person shall transport, in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States, to Communist Chinese ports or to any other place under the control of the Chinese Communists, any material, commodity, or cargo of any kind. No person shall take on board any ship documented under the laws of the United States or any aircraft registered under the laws of the United States any material, commodity, or cargo of any kind if he knows or has reason to believe that the material, commodity, or cargo is destined, directly or indirectly, for Communist China. No person shall discharge from any ship documented under the laws of the United States or from any aircraft registered under the laws of the United States, at any place other than the port where the cargo was loaded, or within territory under the jurisdiction of the United States, or in Japan, any material, commodity, or cargo of any kind which he knows or has reason to believe is destined for Communist China.

§ 1302.3. Persons affected. The prohibitions of this part apply to the owner of the ship or aircraft, to the master of the ship or aircraft, and to any other officer, employee, or agent of the owner of the ship or to any other person who participates in the prohibited activities.

§ 1302.4 Reports. The owner of any ship documented under the laws of the United States or any aircraft registered under the laws of the United States which is making a voyage to Communist China at the time this part is issued shall report this fact promptly to the Under Secretary for Transportation, Department of Commerce, Washington 25, D.C., and advise what steps he has taken to comply with the requirements of § 1302.1. The owner of any ship documented under the laws of the United States or any aircraft registered under the laws of the United States which, at the time this part is issued, is carrying any material, commodity, or cargo which the owner, the master of the ship or aircraft, or any other officer, employee or agent of the owner, knew or had reason to believe was destined for Communist China shall report this fact promptly to the Under Secretary for Transportation, Department of Commerce, Washington 25, D.C., and advise what disposition has been or will be made of such cargo. Persons subject to this part shall submit such reports to the Under Secretary for Transportation, Department of Commerce, as he shall require, subject to the terms of the Federal Reports Act.

§ 1302.5 Records. Each person participating in any transaction covered by this part shall retain in his possession, for at least two years, records of voyages and shipments in sufficient detail to permit an audit that will determine for each transaction that the provisions of this part have been met. This provision does not require any particular accounting method and does not require alteration of the system customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

§ 1302.6. Defense against claims for damages. No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this part or any provision, thereof, notwithstanding that this part or such provision shall thereafter be declared by judicial or other competent authority to be invalid.

§ 1302.7. Violations. Any person who wilfully violates any provisions of this part or wilfully conceals a material fact or furnishes false information in the course of operation under this part is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this part.

Amendments. This part may be amended by the Under Secretary for Transportation, Department of Commerce, pursuant to delegation previously made to him (15 F.R. 8739).

This part shall take effect immediately, subject to section 7 of the Federal Register Act (49 Stat. 502, 44 U.S.C. sec. 307).

Note: The reporting requirements of this part have been approved by the Bureau of the Budget under the Federal Reports Act.

[SEAL]

CHARLES SAWYER
Secretary of Commerce

Dec. 16, 1950

[F.R. Doc. 50-12029; Filed, Dec. 18, 1950; 11:01 a.m.]

TITLE 46 - SHIPPING

Chapter II - Federal Maritime Board, Maritime Administration,
Department of Commerce

SUBCHAPTER B - REGULATIONS AFFECTING MARITIME CARRIERS

Part 221 - Documentation, Transfer or Charter of Vessels

General Order 58, 2nd Revision

Notice and public procedure on the following order are impracticable and contrary to the public interest, because the immediate revision of General Order 58 is required to prevent the transfer of control of vessels to aliens contrary to the interest of the national defense of the United States.

Revised General Order 58 (Section 221.6 of this Part), published in the Federal Register issue of November 17, 1945 (10 F. R. 14210), is hereby revised and divided into two new sections, designated Section 221.5 and Section 221.6, which shall read as follows:

Sec. 221.5 Approval of certain sales, mortgages, leases, charters, deliveries, or transfers of vessels of less than 40 feet overall length and less than 50 horsepower to aliens or agreements therefor; of transfer to foreign registry and flag; of contracts for construction of such vessels for aliens; of the transfer of control of corporations owning such vessels; and of the departure of such vessels from United States ports before United States documentation. Subject to the exceptions stated in Sec. 221.6 hereof, the Department of Commerce, Maritime Administration, hereby grants the approval required by Sec. 37 of the Shipping Act, 1916, as amended (40 Stat. 901; 46 U.S.C. 835), to the following transactions:

(a) the sale, mortgage, lease, charter, delivery, or transfer, and agreement for the sale, mortgage, lease, charter, delivery or transfer to any person not a citizen of the United States of any vessel or interest therein, owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States or of any State, Territory, District, or Possession thereof, which vessel is under forty (40) feet overall length and less than 50 horsepower and is not documented under the laws of the United States or the last documentation of which was not under the laws of the United States;

(b) the transfer to, or placing under, any foreign registry or flag of any such vessel;

(c) the entrance into any contract, agreement, or understanding to construct a vessel of less than forty feet overall length and less than 50 horsepower within the United States for, or to be delivered to,

a person not a citizen of the United States;

(d) the making of agreements or the effecting of understandings whereby there is vested in or for the benefit of any person not a citizen of the United States the controlling interest or the majority of the voting power in a corporation which is organized under the laws of the United States or any State, Territory, District, or Possession thereof and which owns no vessel of 40 ft. or more overall length or of more than 50 horsepower and which transaction is not otherwise subject to the provisions of Section 37 of the Shipping Act of 1916, as amended; and

(e) the departure from any port of the United States of any vessel of less than forty feet overall length and less than 50 horsepower which was constructed in whole or in part within the United States, has not been documented under the laws of the United States, and has never cleared for any foreign port.

As used in this section, the term "overall length" shall mean the length of the vessel as measured from end to end over the deck excluding sheer; the term "horsepower" shall mean manufacturer's rated horsepower; and the term "documented" shall mean registered, enrolled, or licensed.

Sec. 221.6--Exceptions to approvals granted by Sec. 221.5. Approval granted by Sec. 221.5 shall not apply to:

(a) demise or bareboat charters;

(b) any transaction involving the transfer of the ownership, possession, or control of any vessel, or of any interest therein (including charters), to any person (not a citizen of the United States) residing in the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, North Korea, the Soviet Zone of Germany, Manchuria, or Communist China;

(c) any transaction involving the transfer of the ownership, possession, or control of any vessel, or of any interest therein (including charters), to nationals of, or citizens of the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, North Korea, the Soviet Zone of Germany, Manchuria, or Communist China;

(d) the transfer of any vessel to the registry of or the placing of any vessel under the flag of the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, North Korea, the Soviet Zone of Germany, Manchuria, or Communist China.

Effective Date: The effective date of this order shall be the date of publication in the Federal Register.

Dated June 13, 1951

(Sgd.) E.L. Cochrane

E. L. Cochrane
Maritime Administrator
Maritime Administration
Department of Commerce

Authority: Secs. 221.5 and 221.6
issued under sec. 19, 41 Stat. 995,
sec. 204, 49 Stat. 1987, as amended;

TITLE 46 - SHIPPING

Chapter II - Federal Maritime Board, Maritime Administration
Department of Commerce

SUBCHAPTER B -- REGULATIONS AFFECTING MARITIME CARRIERS
AND RELATED ACTIVITIES

Part 221 - Documentation, Transfer or Charter of Vessels

General Order 58, 2nd Revision, Supp. 17

Section 221.5(e) of General Order 58, 2nd Revision (Section 221.5(e) of this Part), published in the Federal Register issue of June 16, 1951 (16 F. R. 5768) is hereby superseded and revised to read as follows:

"(e) The departure from a United States port, without any transfer to foreign ownership or registry being involved, whether to another United States port or to a foreign port, before it has been documented under the laws of the United States, of any vessel owned by a citizen or citizens of the United States, constructed in whole or in part within the United States, which has never cleared for any foreign port:

- (1) regardless of size, to be used wholly for pleasure;
- (2) of less than five (5) net tons, for use in fisheries or trade."

Effective Date: This order shall be effective on the date of Publication in the Federal Register.

(sgd) Louis S. Rothschild

Louis S. Rothschild
Maritime Administrator
Maritime Administration
Department of Commerce

Dated: August 20, 1953

Authority: Sec. 19, 41 Stat. 995, Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114, 876. Interpret or apply sec. 37, 40 Stat. 901, as amended; 46 U.S.C. 835. Published in the Federal Register Sept. 2, 1953 (18 FR 5296).

August 4, 1952

Dear Sirs:

As you know, the Secretary of the Treasury on December 17, 1950, issued the Foreign Assets Control Regulations under Section 5(b) of the Trading with the Enemy Act, as amended. A copy of these Regulations is enclosed for your information.

The Treasury Department is aware that for some time in the past, foreign branches and foreign subsidiaries of American oil companies, including foreign companies controlled by two or more American oil companies, have been cooperating with the Department of State on a voluntary basis with a view to insuring that petroleum products, made available for bunkering and other purposes to vessels in the Far East, would be furnished only in accordance with the security interests of the United States. It is understood that such voluntary cooperation in this respect has from time to time presented policy, administrative and legal difficulties for American interests involved. The Treasury Department has accordingly been requested by the Department of State to advise American oil companies of the effect of the Foreign Assets Control Regulations upon the delivery and sale by the companies of bunkers and other petroleum products to vessels carrying cargo destined for Communist China or North Korea.

The Foreign Assets Control Regulations prohibit United States oil companies and their foreign branches and foreign subsidiaries, except as appropriately authorized, from supplying bunkers and other petroleum products to vessels destined for Far East Communist ports or Macao or to vessels, which though not so destined, are carrying cargo destined for Communist China or North Korea. Accordingly, your company and its foreign branches and foreign subsidiaries, including any foreign company controlled by your company jointly with another American oil company or companies, are hereby directed under the Regulations to deny at Pacific Ocean, Indian Ocean, Red Sea and at Eastern Mediterranean ports in the Levant area including Cyprus, bunkers and other petroleum products to (a) any vessel which the company involved has reasonable cause to believe may be sailing for Far East Communist ports or Macao, and (b) any vessel not so destined but which the company involved has reasonable cause to believe is carrying cargo ultimately destined for Communist China or North Korea.

If, as respects (a) above, the company involved has reason to believe that the vessel is carrying solely cargo not of a strategic nature or, as respects (b) above, if the company has reason to believe that the cargo ultimately destined for Communist China or North Korea is not of a strategic nature, application may be made to the local United States Consul for special authorization to allow the delivery

TITLE 46 - SHIPPING

Chapter II - Federal Maritime Board, Maritime Administration,
Department of Commerce 1/

SUBCHAPTER B - REGULATIONS AFFECTING MARITIME CARRIERS

Part 221 - Documentation, Transfer or Charter of Vessels

General Order 59, Revised

General Order 59 (Sec. 221.7 Approval of charters of certain vessels to aliens) is hereby revised as set forth below. General Order 59 (10 F.R. 14969) and General Order 59, Amendment 2 (15 F.R. 6964), heretofore in effect, are superseded by this revision. Other amendments to General Order 59 were heretofore revoked (14 F.R. 829).

General Order 59, Revised, shall read as follows:

Sec. 221.7 Approval of charters of certain vessels to aliens.
The Department of Commerce, Maritime Administration, hereby approves under Sections 9 and 37 of the Shipping Act, 1916, as amended (52 Stat. 964; 40 Stat. 901; 46 U.S.C. 808 and 835) the charter to a person not a citizen of the United States of any vessel (including space in such vessel) documented under the laws of the United States, or the last documentation of which was under the laws of the United States, or owned in whole or in part by any person a citizen of the United States, or by a corporation organized under the laws of the United States or of any State, Territory, District or possession thereof, for a period not more than six (6) months, or for a voyage or voyages the duration of which will probably not exceed six (6) months, except

- (1) demise or bareboat charters;
- (2) a tank vessel for an ocean voyage or voyages between foreign ports, or from United States to foreign ports, excluding, however, voyages from United States or Caribbean ports to Canadian ports;
- (3) for the carriage of cargoes of any kind to or from the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, North Korea, the Soviet Zone of Germany, Manchuria, or Communist China;
- (4) extension or renewals of a charter approved by this General Order 59, Revised. The Maritime Administration

will consider each request for such an extension or renewal on its merits.

(5) for use in the fisheries.

A copy of any such charter, as executed, which is approved by this General Order 59, Revised, shall be filed with the Secretary of the Maritime Administration as soon as may be practicable but in any event not later than twenty (20) days after the beginning of the charter period or within such further time as may be permitted by the Maritime Administration.

This General Order 59, Revised (Sec. 221.7) shall be effective as to all charters entered into on and after January 24, 1951.

E. I. Cochrane,
Maritime Administrator
Maritime Administration
Department of Commerce

January 22, 1951

Authority: Sec. 19, 41 Stat. 995
Sec. 204, 49 Stat. 1987,
as amended; 46 U.S.C. 1114,
876, Reorg. Plan No. 21 of
1950, 15 F.R. 3178. Interpret
or apply sec. 9, 39 Stat. 730,
as amended, sec. 37, 40 Stat. 901, as
amended; 46 U.S.C. 808, 835.

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of the bunker supplies or other petroleum products involved. For purposes of this letter, cargo shall be deemed to be of a strategic nature if it is (a) any commodity on the list of arms, ammunitions, and implements of war coming within the meaning of Proclamation No. 2776, April 15, 1948; (b) any commodity, including fissionable materials, controlled for export under the Atomic Energy Act of 1946; or (c) any item on the United States Positive List. In approved cases the United States Consul will issue an authorization in writing to the company involved to bunker the vessel and supply such other petroleum products as may be desired. If an application is not approved, the United States Consul will issue a statement to that effect in writing.

The application to the Consul will be regarded as constituting a request for a license under the Regulations and approval thereof by the Consul as constituting a license thereunder, while a denial thereof by the Consul will be regarded as denial of the application for a license.

Very truly yours,

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TREASURY LETTER TO U.S. OIL COMPANIES ON BUNKERING

April 15, 1953

Reference is made to our letter of August 4, 1952, to your company relating to the impact of the Foreign Assets Control Regulations on deliveries of bunkers and other petroleum products by United States oil companies and their foreign branches and subsidiaries to vessels bound for Far East communist ports or Macao or to vessels not so destined but carrying cargo destined for Communist China or North Korea.

It is understood that at the present time a number of United States oil companies and their foreign branches and subsidiaries are cooperating with the Department of State on a voluntary basis, insofar as they consider themselves able to do so, with a view to insuring that petroleum products made available for bunkering and other purposes to vessels on return voyages from the Far East would be furnished only in accordance with the security interests of the United States. The policy of voluntary cooperation in this field, it is understood, has from time to time created policy, administrative, and legal difficulties for the American interests involved. The Treasury Department has accordingly been requested by the Department of State to advise American oil companies of the effect of the Foreign Assets Control Regulations upon the delivery and sale by the companies of bunkers and other petroleum products to vessels returning from voyages to Far East ports.

The Foreign Assets Control Regulations prohibit United States oil companies and their foreign branches and foreign subsidiaries, except as appropriately authorized, from supplying bunkers and other petroleum products to vessels returning from voyages to Far East communist ports or Macao or to vessels returning from voyages on which, although they did not call at any communist Far East port or Macao, the company involved has reasonable cause to believe that they were refused bunkers or other petroleum products by United States oil companies or their foreign branches or subsidiaries on the outbound voyage in compliance with the instructions contained in our above-mentioned letter of August 4, 1952. Accordingly, your company and its foreign branches and foreign subsidiaries, including any foreign company controlled by your company jointly with another American oil company or companies, are hereby directed under the Regulations to deny at Pacific Ocean, Indian Ocean, Red Sea, and Eastern Mediterranean ports in the Levant area, including Cyprus, bunkers and other petroleum products to (a) any vessel which the company involved has reasonable cause to believe is returning from any Far East communist port or Macao, and (b) any vessel returning from a voyage to any other Far East port if the company involved has reasonable cause to believe that such

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vessel was refused bunkers or other petroleum products on its outbound voyage by United States oil companies or their foreign branches or subsidiaries in compliance with the instructions contained in our letter of August 4, 1952.

If, as respects (a) above, the company involved has reason to believe that the vessel carried solely cargo not of a strategic nature on its outbound voyage, application may be made to the local United States Consul for special authorization to allow the delivery of the bunker supplies or other petroleum products involved unless the company involved has reasonable cause to believe that such vessel was refused bunkers or other petroleum products on its outbound voyage by United States oil companies or their foreign branches or subsidiaries in compliance with Treasury instructions to United States oil companies set forth in our letter of August 4, 1952. Cargo shall be deemed to be of a strategic nature for the purposes of this letter if it is deemed to be of a strategic nature under our above-mentioned letter of August 4, to wit, if it is (a) any commodity on the list of arms, ammunitions, and implements of war coming within the meaning of Proclamation No. 2776, April 15, 1948; (b) any commodity, including fissionable materials, controlled for export under the Atomic Energy Act of 1946; or (c) any item on the United States Positive List. In approved cases the United States Consul will issue an authorization in writing to the company involved to bunker the vessel and supply such other petroleum products as may be desired. If an application is not approved, the United States Consul will issue a statement to that effect in writing.

The application to the Consul will be regarded as constituting a request for a license under the Regulations and approval thereof by the Consul as constituting a license thereunder, while a denial thereof by the Consul will be regarded as denial of the application for a license.

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February 9, 1953

ACEP PROGRAM DETERMINATION NO. 955

To: Director
Office of International Trade

Subject: Restriction of Exportation, Including Bunkering, of
Petroleum and Petroleum Products to Foreign Vessels
and Planes in the United States
(OC Document No. 798 and Supplements 1, 2 and 3)

1. OIT is authorized to limit or deny the exportation, including bunkering, of petroleum and petroleum products to foreign vessels and planes in the United States, its territories and possessions, as required to avoid significant U.S. contribution to the ability of such vessels and planes to carry on trade and traffic contrary to the security export controls and objectives of the United States.
2. Specifically, OIT shall limit or deny, as appropriate to achieve this purpose, deliveries of these commodities to
 - (a) vessels or planes registered in, or under charter to, any country or national of Subgroup A; and
 - (b) vessels or planes of any other foreign registry when
 - (1) bound for or from Macao or any Far Eastern Communist port, or
 - (2) carrying any commodities manifested or destined, directly or indirectly, to those destinations.
3. To implement this determination, OIT is authorized to institute such export control regulations and take such export control actions as are necessary and appropriate, including: (1) to revoke, amend or otherwise change General Licenses Ships' Stores and Plane Stores; (2) to require submission of certifications by authorized agents of the carriers located in the United States; and (3) to take appropriate actions on export license applications.

/s/

John D Garrett

John D. Garrett
Executive Secretary
Advisory Committee on Export Policy

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DEPARTMENT OF STATE INSTRUCTION

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No. CA-691 August 12, 1953

Subject: FOREIGN ASSETS CONTROL, PART 505.

To: Certain American Diplomatic and Consular Posts.

EXCON

The Department has been requested by the Treasury Department to transmit the following information. The information and the attached Regulations should serve as a basis both for answering inquiries and for reporting to the Department any alleged violations of the Regulations:

"The Secretary of the Treasury, effective June 29, 1953, issued new Regulations entitled 'Regulations prohibiting transactions involving the shipment of certain merchandise between foreign countries' published as Part 505 of Title 31 of the Code of Federal Regulations. Two copies of the new Regulations, amended as of July 22, 1953, are enclosed.

"Under these Regulations persons in the United States are prohibited from participating in the purchase or sale of certain commodities for ultimate shipment from any foreign country to any country of the Soviet bloc except pursuant to Treasury license. The commodities affected are those which are included on the United States Positive List and followed on that List by the letter A. (This list of items is equivalent to international list I and list II.) The prohibition is also specifically applicable to arms, ammunition, implements of war, helium, gold, narcotics and atomic energy materials.

"This action, taken by the Treasury as a part of its Foreign Assets Control program, supplements the United States export control laws. The export control laws cover exportations from the United States to the Soviet bloc, but up to now it has not been illegal under United States law or Regulations for persons in this country to participate in the supplying of strategic goods from a third country to a Soviet bloc country other than Communist China or North Korea.

"The new order by the Treasury prohibits persons in the United States from purchasing or selling, or arranging the purchase or sale, of commodities outside the United States for ultimate shipment to the Soviet bloc, when the transactions would be inconsistent with the controls of this country and of friendly foreign nations.

"It is desired that each addressee transmit to the Foreign Assets Control, via the Department, any information coming to addressee's attention which indicates that any person within the United States has, in the manner specified in the Regulations, participated, or is likely to participate, in any transaction, including any transshipment, involving the shipment of the specified commodities from any foreign country to the Soviet bloc. It is desired that any such information be as detailed as

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possible setting forth in full, to the extent feasible, the names and addresses of all parties concerned, including the names and addresses of intermediaries and financial establishments which are in any way engaged in the transaction. Information forwarded by addressee should also include, if possible, the names and sailing dates of the vessels or aircraft involved, the numbers of relevant bills of lading and the marks and numbers of crates and packages involved.

"Details are also desired as to the method of financing such transactions, i.e., financial institutions concerned, amounts involved, accounts used (including the names in which such accounts are held, or, if they are numbered accounts, the numbers), whether payments were or are to be made by letter of credit (and if so the number) by documentary draft, clean draft, telegraphic transfer, etc.

"It is, of course, recognized that in many instances complete information as requested above may not be obtainable but it is requested that as full information as possible be supplied."

Any information which might come to your attention on violations of the above mentioned Regulations of the Treasury Department should be reported promptly in reproducible despatch form. The despatch should be addressed to the Department in accordance with standard instructions.

The Department of Defense concurs in the foregoing instruction.

For your background information: It should be noted that the regulations are not aimed at Soviet bloc trade legitimately conducted under strict regulation of the International Security Control system, although it is recognized that certain such transactions by residents of the United States will now be subject to Treasury license. The newly issued regulations are intended to fill a gap in U.S. controls under which heretofore traders in the United States, without violating any U.S. regulation, could have arranged transactions whereby strategic goods would reach the Soviet bloc -- either in contravention of other countries' security controls, through loopholes in the existing control system, or via countries without adequate controls.

You will note that the regulations have been worded in such a way as to cover United States residents who are effectively controlling the operations of an overseas firm. What constitutes effective control in this sense must be determined on the facts of each case, but it is not believed that this will present any major difficulties.

DULLES

Enclosures:

Two copies of Treasury Regulations
amended as of July 22, 1953.

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EXCERPTS FROM COCOM MANUAL

General Rules of Procedure:

12. These have been developed informally and have not been codified. Generally speaking, however, they are as follows:

- a) Although in general it is envisaged that the CG will meet quarterly (CoCom Doc 53), a special meeting will be convened at the request of any member (CoCom Doc 66).
- b) CoCom is competent to examine any question within the CG's terms of reference at the request of any PC (CoCom Doc 66).
- c) When all CoCom delegates are authorized by their respective governments to accept a recommendation of CoCom, that recommendation takes effect forthwith without waiting for the next meeting of CG (CoCom Docs 66 and 180).
- d) Recommendations agreed to by CoCom will be assumed to be accepted by all PCs unless a reservation is entered within 30 days (CoCom Doc 180). This period may be shortened in specific cases by general agreement.
- e) There must be unanimous agreement on all CoCom final recommendations (CoCom Doc 53). In view of principles (c) and (d) above, this is understood to mean that final recommendations do not become binding on PCs unless they have been unanimously accepted by governments. This does not apply to separate understandings among various PCs, such as the Tripartite Agreement.
- f) Although it is not a formal principle, it is generally understood that agreements reached in CG/CoCom represent a minimum level of control and that any PC has the right in its own interest to impose more restrictive controls and to take unilateral measures to enforce such controls. The U.S. position in this respect was stated in CoCom Doc 212, concerning the Tripartite Agreement. In general, the U.S. controls are more extensive than those agreed to in CoCom and, to a lesser extent, this is true of some other PCs.

INTERNATIONAL LISTS

7. Formal criteria have never been established by CoCom to govern the inclusion of items in I/L I, II or III. The initial I/L I was based on the U.S. I-A list as partially accepted and modified into the Anglo-French List. Subsequent additions to I/L I and I/L II up until the time of the Tripartite Agreement, were based on ad hoc considerations.

8. As described in Section VIII, the U.S. proposed in January and March 1950, that the criteria for the U.S. I-B List be adopted by CoCom for I/L II. This proposal was not accepted.

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9. At the London Tripartite conference, the criteria for the U.S. I-A and I-B lists were used in developing the Tripartite embargo and quantitative control lists. New criteria were drawn up for the exchange-of-information lists. In submitting the Tripartite Agreement to the CG on November 29, 1950, the tripartite powers outlined the criteria employed in drawing up the three control lists (CoCom Doc 213). As a matter of interest, these criteria are given below:

a) Embargo:

- (1) Items which are designed or used principally for the production and/or development of arms, ammunition and implements of war.
- (2) Items which would contribute significantly to the war potential of the Soviet Bloc where the items incorporate advanced technology or unique technological know-how. This applies only to goods sufficiently important to the war potential of the Soviet Bloc that the absence of an embargo would permit a significant advance in Soviet Bloc technology over its present level of development.
- (3) Items which would contribute significantly to the war potential of the Soviet Bloc in that the items, if embargoed, would maintain or create a critical deficiency in the war potential of the Soviet Bloc.

b) Quantitative Control:

Items which are highly important from the point of view of their contribution to the war potential of the Soviet bloc and of which the high strategic character is directly related to the quantitative extent to which they may be exported to the Soviet bloc.

c) Exchange of Information:

Items of potential strategic significance for which information presently available on the Soviet Bloc needs is insufficient to establish clearly the necessity for control on types indicated.

Note: The words "war potential" used in the above criteria should be interpreted as meaning the following: war potential is to be viewed from both the short term and the long term aspects. It includes (a) items of direct military application. It may also include amongst others, selected items which represent (b) sectors of industry in which strategic and industrial interests are very closely mingled and where the items concerned can easily and quickly be turned over from peaceful uses to the manufacture of war equipment or other direct military application; and (c) other industrial fields which serve to support the basic economy of a country and which therefore support either a peacetime or wartime economy.

March 31, 1951

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ADMINISTRATION PRINCIPLES CONCERNING LISTS

1. The following administrative principles concerning lists have been agreed to: (CoCom Doc 167, November 1, 1950, et seq.):

- a) Second-hand items: The description of any item on the International Lists includes that item in either new or second-hand condition.
- b) Varieties of items: When the description of any item on the lists contains no qualifications or specifications, it is regarded as including all varieties of that item. Category and sub-category captions are only for convenience in reference and do not affect the interpretation of item definitions.
- c) Components: Any item (including plants) containing one or more List I components should generally be treated as though it were on List I when the List I component or components are a principal element of the item in value or quantity and can be feasibly removed or used for other purposes.
- d) Component Parts: The object of the List I and II controls should not be defeated by the export of component parts.
- e) Design data etc.: The object of the List I and II controls should not be defeated by the export of design data, manufacturing technique, and specialized tools for making any controlled items.

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Informal Summary of Procedures for Reporting Trade Agreement Negotiations and Shipments of International List Items by COCOM Countries to the Soviet Bloc

A. International List I Items

COCOM Document 471 (revised) dated January 31, 1952 sets forth the principles and procedures for the discussion in COCOM for the shipment to the Soviet Bloc of items of embargo nature. The types of transactions affected are of two kinds: (1) Future Commitments and (2) Prior Commitments. With respect to future commitments, member governments are obligated to inform the Coordinating Committee in advance of the proposed trade negotiations with the Soviet Bloc country concerned and must present the information in detail in accordance with the guide contained in Annex B of Document 471 (revised). In all cases the proposed trade negotiations need not be discussed in COCOM in advance of the negotiations with the Soviet Bloc country. However, this can only apply in a few exceptional cases where the circumstances of the trade negotiations make it impossible to inform the Committee before the member government enters into definite commitments involving exceptions. In these cases, the member government is required to inform the Committee of the full details of the transaction entered into as soon as possible after the negotiations are completed. In such cases the guide contained in Annex B of Document 471 (revised) must also be followed.

A slightly different procedure applies with respect to shipments of List I items classified as prior commitments. The definition of a prior commitment is "contractual or other obligations entered into prior to the date of introduction of control of the item concerned". When shipments of prior commitment items occur, the appropriate monthly statistical returns to the Coordinating Committee should indicate the considerations regarding the decision reached to ship the item concerned. With respect to information filed with the Coordinating Committee concerning the shipment of prior commitment items, any member government may request further amplifying details of each transaction.

B. International List II Items

COCOM Document 470 contains the principles agreed to by COCOM for the reporting of shipments of List II items. COCOM Document 777 (or 1277) amplifies these principles in more detail. There are several categories of items falling under List II each with a different method of reporting. The description for the reporting to COCOM of shipments made in each category is as follows:

(1) Exports in Excess of Agreed Quota Limits

Proposed exports by any country in excess of the agreed quota limits with respect to List II items that have been assigned definite quotas will only be permitted in accordance with the principles and procedures governing exceptions as set forth in COCOM Document 471 (revised). The latter document is the one which describes the exceptions procedure for International List I items.

(2) Prior Notification Items

At the Consultative Group meeting held in January 1952 it was agreed that certain List II items were of such importance that it would be desirable to require the exporting country to notify COCOM in advance of any definite commitment to ship the item. This special treatment is accorded the four List II items, contained on the Title II Category B list of the Battle Act, but which had not been accepted by COCOM for addition to International List I. These items are: 2470, 2475, 2480 and 2635.

It must be fully realized that the procedure adopted for these four items only require prior notification to the Coordinating Committee and not prior consultation as is the case with respect to International List I items involving future commitments. However, in practice, the term 'prior notification' in this case has resulted in COCOM actually discussing the proposed commitment. This is true in the case of the shipment of aluminum (Item 2635) by Norway to various Soviet Bloc countries.

(3) Prior Consultation Items

In the case of one International List II item COCOM has agreed that the member governments should be consulted in advance before the item is exported. This procedure applies to various kinds of ships as described in item 2415 (a) and (b). However there is no definite procedure prescribed for the method of reporting of these items. Presumably the exporting countries need not report to COCOM the full details of the trade agreement or barter transaction under which the items are to be exported, but again, in practice, as is true in the case of the prior notification items, member governments present fairly full details regarding the trade agreements under which the items are to be exported.

(4) 3 (d) Items (quid pro quo)

The relevant paragraph of COCOM Document 470 applying to III D items reads as follows:

"items will be controlled with full regard to their strategic importance, as revealed by discussion in the Coordinating Committee, and in keeping with the principle that exports will be permitted only to the extent required in order to obtain imports from the Soviet bloc which are essential to sustain the basic economy and thereby support the defence effort. Exports of these items will not be permitted for the purpose of maintaining or developing export markets in the Soviet bloc or for similar purposes. Where trade agreements exist governing the exchange of goods between particular countries, exports of these items will not be permitted outside the framework of the trade agreements, except in the case of officially-approved barter or compensation arrangements."

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Transactions involving the export of 3(d) items may be authorized by the government concerned without prior discussion in the coordinating committee, but the government should inform the committee of the considerations on which this decision was based, preferably at the time that the approval of the export is reported to the committee in monthly statistical terms. When the export transaction is included under the terms of a trade agreement which has already been discussed in the Committee, it is sufficient merely to refer to the appropriate COCOM Document describing the trade agreement. Member governments may be asked, however, whether the trade agreement is being carried out in accordance with the general pattern envisioned at the time when it was signed.

The main criticism of this procedure is that there is no definite understanding as to what may be considered an adequate justification for the shipment of a 3(d) item. As explained in the above paragraph the member government may refer to a trade agreement previously discussed by the committee as a justification, but, in cases where this does not occur the member government may submit whatever justification it considers necessary. Since the principle covering 3(d) items only require that an adequate quid pro quo be received in return, member governments can merely indicate what item or groups of items they consider was received as the quid pro quo.

(5) Quota Items

Most of the International List II items fall into this category. When a member country keeps its shipments of these items within its national quota it need not justify the export in any respect. It merely has to report to the Committee either the licenses issued during a specific month or actual exports made during the same period.

(6) Unallocated Reserve Quota

In all cases where quotas have been established there is a small unallocated quota which is part of the global quota. Exports authorized against the reserve quota should be reported to the Committee immediately. In the event any government desires to use more than twenty-five per cent of the reserve quota, it should consult the committee in advance of exporting the item concerned. In the latter instance the member government may be requested to supply some details regarding the transaction, but this is not necessarily true in all cases.

(7) Other Reports to the Committee

Member governments are required at six month intervals, to submit statements to the Committee setting forth the export policy which each government is following with respect to individual List II items. The statements are usually due on April 1st and October 1st of each year but this may vary by a few weeks if the Committee so decides. These semi-annual statements are intended to be more comprehensive than the monthly statistical reports to include

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future trends if possible and to provide the basis on which further decisions on the maintenance or alteration of the existing controls can be made. These statements do not usually contain much detail regarding individual trade agreements which the member countries have with the Soviet Bloc.

C. International List III Items

The principles and procedures governing this group of items are contained in COCOM Document no. 207, Annex C, and reprinted in Document 922. Member governments are required to submit monthly returns of exports or licenses issued for these items. No justification regarding the circumstances surrounding the shipment of the item need be supplied to the Committee. However, the Committee is supposed to review the quantities exported for each item, whenever necessary, with the view of restricting further exports if it appears that the strategic rating has been altered due to an increased demand by the Soviet Bloc.

D. China Embargo List

All Reference Munitions List items, International Lists I, II, III and certain supplementary items are embargoed to Communist China and North Korea. Exceptions for the shipment of International List I and II items must be justified in accordance with procedures prescribed in COCOM Document 471 (revised). For International List III and the supplementary items, a different exceptions procedure is in effect. For these items, a member country can make an exception to the embargo rule without prior consultation with the China Committee. However, an *ex post facto* justification is required on the basis of the following criteria:

"Exports to Communist China of items on List III and the supplementary list should be permitted only in only in very special circumstances and when the exporting Member country considers that the item exported will not contribute to Communist China's military strength and will be used for civilian purposes. Such exceptions should be reported to the Coordinating Committee as promptly as possible after the fact and in any event in the Monthly Statistical Returns with an indication of the considerations governing the shipment of the item. It is understood that any participating government may avail itself of the facilities of the China Committee for a full advance discussion of special cases which may arise. With respect to information filed with the Committee concerning shipment of any such items to Communist China any member government may request further details."

E. Exchange of General Information on Trade Agreements

Participating Countries agreed at the CG meeting on November 29, 1950 (COCOM Doc. 218), to give COCOM general information concerning the results of trade negotiations with Soviet bloc countries and any other information that would be helpful, particularly as to the demand in the Soviet bloc for particular items. It is left to each Participating Country to decide on the best way of making this information available, bearing in mind the advantages of making the actual negotiations available.

QUANTITATIVE CONTROL - PRINCIPLES AND PROCEDURES

(NOTE: For convenience in reference, this Document reproduces below the final text of the agreed "Directive for the Disposal and Treatment of Items on International List II." The text is as proposed in Annex B to Consultative Group Paper IV and as subsequently modified and approved pursuant to paragraphs 16-22 of Consultative Group Paper V.)

A - GENERAL PRINCIPLES.

1. Exports to the Soviet bloc of items on List II should be limited with full regard to the strategic importance of the item and to the objective of preventing any increase in the Soviet war potential, it being understood that the strategic character of these items is directly related to the quantities which may be exported to the Soviet bloc. (This reaffirms principles already agreed in COCOM.)
2. The export of List II goods should not exceed the minimum quantity which the exporting country finds to be required in order to ensure the continued importation from the Soviet bloc of goods which are essential to sustain its basic economy and thereby support its defense effort.

B - PROCEDURE.

1. Any items on List II which on the basis of the latest information available meet the agreed embargo criteria will be placed on List I.
2. Any items on List II which on the basis of the latest information available do not meet the criteria agreed for List II will be placed on List III for continued exchange of information and the prevention of excessive shipments.
3. Items remaining on List II thereafter, or subsequently placed on List II, will be treated as follows:
 - a) Quantitative limits will be set for individual items wherever the available information permits a reasonably accurate and defensible judgment from a security viewpoint. These limits will be apportioned among the participating countries in relation to their exports to the Soviet bloc in the post-war period, except where such a period is agreed to be manifestly inequitable to one or more of the participating countries.

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- b) In accordance with existing practice, where it is agreed that the item may be comparable in strategic importance to the items already on List I, no exports will be permitted until the strategic rating of the item has been clarified.
 - c) Where it is agreed that recent exports have been above the estimated critical level to such an extent that any further exports in the near future can reasonably be expected to contribute directly to an increase in the war potential of the Soviet bloc, the Coordinating Committee shall examine whether as a temporary measure exports should be more severely restricted and, if necessary, denied.
 - d) Where the latest available information does not permit agreement on reasonably accurate and defensible quantitative limits, from a security viewpoint, the items will be controlled with full regard to their strategic importance, as revealed by discussion in COCOM, and in keeping with the principle that exports will be permitted only to the extent required in order to obtain imports from the Soviet bloc which are essential to sustain the basic economy and thereby support the defense effort. Exports of these items will not be permitted for the purpose of maintaining or developing export markets in the Soviet bloc or for similar purposes. Where trade agreements exist governing the exchange of goods between particular countries, exports of these items will not be permitted outside the framework of the trade agreements, except in the case of officially-approved barter or compensation arrangements.
- 4. Quantitative limits may be revised or reapportioned among the participating countries by agreement in the Coordinating Committee.
 - 5. Exports by any country in excess of the limits agreed will only be permitted in accordance with the principles governing exceptions to the security controls as set out in COCOM Document 471.
 - 6. Each Government will submit to the Coordinating Committee in addition to the monthly statistics on all List II exports in accordance with existing arrangements, a semi-annual statement setting forth the export policies which it is following with respect to individual List II items in its trade with individual countries or the Soviet bloc. Any major changes in export policies will be reported without delay.

* * * * *

JAN. 31, 1952

EXCEPTIONS TO SECURITY CONTROLS - PRINCIPLES AND PROCEDURES
(As revised January 21, 1952 - CG Paper VIII, paragraph 26)

GENERAL PRINCIPLES

1. Subject to the special considerations involved in prior commitments, exceptions to the general rule of embargo in respect of List I items and to agreed quantitative limits in respect of List II items will be made only when an exporting country would otherwise face the loss of supplies from the Soviet bloc which are essential to sustain its basic economy and thereby support its defense effort.

FUTURE COMMITMENTS

2. Governments will inform the Coordinating Committee, in advance and in detail, regarding any trade negotiations or proposed transactions which may result in such exceptions and will invite the views of other members of the Committee. (It is recognized that there may be a few exceptional cases where the exigencies of the trade negotiations make it impossible to inform the Committee before entering into commitments involving exceptions. If such cases occur, the Committee will be informed as soon as possible thereafter.)

PRIOR COMMITMENTS

3. It is recognized that prior commitments, i.e., contractual or other obligations entered into prior to the date of introduction of the control of the item concerned, may have to be fulfilled if an official commitment of a participating government is involved, or if, in the absence of an official commitment, that government decides, having due regard to the strategic importance of the goods and to the probable consequences of not allowing the commitment to be honoured that the export should not be prevented. Where a trade agreement provides for the supply of goods under general headings, the government concerned will make every effort to meet its commitments by supplying only those goods to which there is no security objection. In all cases where exceptions are made in order to fulfill prior commitments, the appropriate monthly statistical returns to the Coordinating Committee will indicate the considerations governing the decision reached. With respect to information filed with the Coordinating Committee concerning prior commitments, any Government may request further amplifying details.

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NOTE: The following Annexes were agreed in the Coordinating Committee on January 28, 1952:

Annex A - Procedure for Submission of Exceptions.

Annex B - Guide for informing the Coordinating Committee con-

COCOM Doc. No. 1277

COORDINATING COMMITTEE
CONTROL OF LIST II ITEMS

1. General. List II items are controlled on the basis of the general principles set out in COCOM Document No. 470. The Coordinating Committee's recommendations in respect of individual items for the year 1953 are shown in the attached sheets. Any subsequent additions or amendments will be circulated for insertion in this document. The controls for 1952 were shown in COCOM Document 777.
2. Quotas. The Coordinating Committee has fixed global and individual national quotas in cases where available information permitted a reasonably accurate and defensible judgment from a security viewpoint. The Committee will at any time consider a readjustment of these quotas on the basis of new information brought before it. Quotas apply to the calendar year 1953.
3. Control under paragraph 3(d) of COCOM Document No. 470.

The relevant paragraph of COCOM Document No. 470 reads as follows: -

"Items will be controlled with full regard to their strategic importance, as revealed by discussion in the Coordinating Committee and in keeping with the principle that exports will be permitted only to the extent required in order to obtain imports from the Soviet Bloc which are essential to sustain the basic economy and thereby support the defense effort. Exports of these items will not be permitted for the purpose of maintaining or developing export markets in the Soviet Bloc or for similar purposes. Where trade agreements exist governing the exchange of goods between particular countries, exports of these items will not be permitted outside the framework of the trade agreements, except in the case of officially-approved barter or compensation arrangements."

The Coordinating Committee has agreed statements, as shown in the attached sheets, on the strategic importance of some of these items in the form of "licensing guides" for the use of control authorities or in the form of notes reflecting points made in discussion.

4. For certain items, for special reasons, it has been agreed that no exports will be allowed, save in exceptional cases, without prior notification to the Coordinating Committee in some cases or prior consultation in others.
5. Modified 3(d) treatment. In certain other cases resulting from disagreement as to the size of a quota defensible from a security point of view, it has been agreed that exports may be authorized up to the limits shown herein and will be controlled according to the 3(d) procedure (paragraph 3 above) in excess of those limits.

6. Exceptions. Proposed exports by any country in excess of the agreed quota limits will only be permitted in accordance with the principles and procedures governing exceptions as set out in COCOM Document No. 471 (Revised) and COCOM Document No. 623.
7. Unallocated Reserve Quota. In all cases where quotas have been established there is a small unallocated quota. This allows flexibility for Governments which find it necessary to exceed their national quotas by small amounts or for Governments which have no national quota and wish to make unforeseen or token shipments. Exports authorized against the reserve quota should be reported to the Committee immediately. Any Government desiring in the course of 1953 to use more than 25% of the reserve quota (or such other percentage as the Committee may fix in individual cases), should consult the Coordinating Committee.* The Committee's Secretariat will circulate figures fortnightly to show what quantities of the unallocated quotas for particular items have been used, what quantities still remain to be used, and any decision of the Committee to change the above-mentioned figure of 25% in respect of any particular item.
8. Justifications of 3(d) Exports. Transactions involving the export of 3(d) items may be authorized by the Government concerned without prior reference to the Coordinating Committee, but the Government should inform the Committee of the considerations on which its decision was based, preferably at the time that the approval of the export is reported to the Committee in monthly statistical reports. In the case of small continuing exports which are part of a larger order, the considerations governing the order as a whole should preferably be reported at the time the first shipment appears in the monthly return sheets. When the export transaction has been envisaged under the terms of a trade agreement which has already been discussed in the Committee, it will be sufficient to refer to the appropriate COCOM Document concerning the trade agreement. Governments may be asked, however, whether the trade agreement is being carried out in accordance with the general pattern envisaged at the time when it was signed.
9. Maintenance of Quota Records. Formal records of quantities of List II items exported under quota are kept on the basis of monthly statistical returns to the Committee. These returns should be compiled and forwarded to the Committee as quickly as possible after the month concerned and should show in each case whether they are based on export licences approved (or renewed) or actual shipments.
10. Other Reports to the Committee. Statements setting out the export policy which each Government is following with respect to individual List II items will be submitted to the Coordinating Committee at six-monthly intervals. These statements are intended to be more comprehensive than the monthly statistical returns, to indicate future trends if possible and to provide a basis on which further decisions on the maintenance or alteration of the existing controls can be made. Discussion of quotas for 1954 is intended to follow proposals made by 15th September 1953 (see COCOM Doc. No. 1270).
11. The control of some items as shown in the following pages is provisional or pending and may be modified as a result of decisions later in the year. Such decisions will be made the subject of revised pages for this document.

* NOTE: It is understood that Governments will not raise objections unless either they have serious grounds to believe that they themselves would want to use the quota for their own purposes or that the acceptance of the request would leave a margin too small for contingencies that could reasonably be expected to arise.

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NOTE: International List II, as amended from time to time, constitutes the only official listing and definition of the items under quantitative control. For convenience in reference, the attached sheets contain the definitions currently appearing in that List but do not replace it as the official text. In so far as feasible, new sheets will be issued periodically to bring this document up-to-date.

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SUMMARY of

IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM

(Prepared in the U.S. Delegation to CG/COCOM/CHINCOM, August 18, 1953)

1. Summary
2. Operational Details (as of August 15, 1953)
 - a) Issuance of ICs and DVs
 - b) Responsibility of exporting country when a valid IC has been presented
 - c) Means of transmitting ICs and DVs
 - d) Penalties
 - e) Recommended standard forms
 - f) Names and addresses of issuing authorities
 - g) Commodity coverage of IC/DV system
3. Cooperation with Third Countries
 - a) Switzerland
 - b) Sweden
 - c) Austria
 - d) Yugoslavia
 - e) Latin America
 - f) Dependent Overseas Territories.

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1. Summary:

For all International List I items and the majority of International List II items, the authorities of the exporting country make the issuance of an export license to another participating country conditional upon the presentation of an Import Certificate (IC) issued by the importing country on the basis of a formal declaration by the importer to the authorities of his own country that the goods in question will enter the economy of the importing country or be diverted only with the approval of the authorities issuing the Import Certificate. Upon request of the exporting country, the importing country will also verify that the goods have been delivered by issuing a Delivery Verification (DV). This scheme, adopted in May 1951 (COCOM Doc. 370) as a compromise solution to the transit trade problem is still in operation.

2. Operational details:

a. Issuance of ICs and DVs:

(i) Participating Countries have agreed to issue a certificate certifying that an importer resident in their country intends to bring certain strategic commodities (see sub-item 2 g below) into the customs jurisdiction of that country, or, if not to be imported, that he will not divert the commodity to another destination without approval of his Government. This certificate is made available to the prospective importer for transmission to the exporter who, in turn, presents the certificate to the authorities in his own country in order to obtain an export license.

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Participating countries have also agreed to issue a form upon the request of an exporting country verifying that certain strategic commodities have arrived within the customs jurisdiction of the importing country. This form is made available to the importer for transmission to the exporter who, in turn, presents it to the authorities in his own country as proof that the transaction was completed in accordance with the terms and conditions of his export license.

(ii) Participating Governments have agreed that the arrangements which they might make with their own traders with regard to the way in which these forms should be applied for was entirely a matter for themselves but certain suggestions were made concerning the points to be included in declarations to be made by applicants for these forms. These suggestions can be found in Annex A to COCOM Doc. 378. The procedures followed by participating countries before issuing Import Certificates can be found in COCOM Doc. #1279.

b. Responsibility of exporting country when a valid IC has been presented:

COCOM affirmed the responsibility of the exporting country for assuring itself that shipments of strategic goods are not intended for diversion. Whenever reasonable doubt exists as to the bona fide nature of a transaction, a check by the exporting country is considered most appropriate, even though valid ICs were produced. When the exporting country has evidence that the goods will be diverted even though a valid IC has been presented, it is incumbent upon the exporting country to refuse the license application and, at its discretion, notify the importing country of the reasons for its action. (COCOM DOC. 1279).

c. Means of transmitting ICs and DVs:

It was agreed that, in general, the forms should be despatched through commercial channels from trader to trader. In some cases, however, these certificates might pass through diplomatic or some other government to government channel (COCOM Doc. 371). In cases where an exporting country decides to refuse a license application because of suspected diversion even though a valid IC has been presented, COCOM agreed it may be appropriate for the exporting country to return the IC to the importing country through government channels for invalidation (COCOM Doc. 1279).

d. Penalties:

The requirement that the IC/DV system be based on penalties is implied in the agreement that if the exporter cannot produce a DV, an examination should take place and if a diversion has occurred, the exporter or importer -- whoever is responsible -- should be prosecuted (Appendix B to COCOM Doc. #304). A brief description of the penalties imposed in the participating countries is contained in COCOM Doc. #1279).

e. Recommended standard forms:

The Committee agreed (COCOM Doc. 378) to recommend the use of standard forms or as near standard as possible. It was also agreed that the forms should be printed in the language of the issuing country but in all cases should include an

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English or French version or both. Copies of the recommended IC and DV forms are annexed to COCOM Doc. 378. Specimens of the actual forms in use in all participating countries except Japan have been distributed as annexes to COCOM Doc. 407. The Japanese forms have been distributed as COCOM Doc. 1187.

f. Names and addresses of issuing authorities:

The names and addresses of the authorities in all participating countries where ICs and DVs may be obtained are compiled in COCOM Doc. 953 (including one corrigendum dated November 25, 1952 and annex number 2 dated April 13, 1953).

g. Commodity Coverage of the ICDV System:

Participating Governments have agreed that with the exception of cases where they have received all necessary guarantees as to the end use of the strategic goods for which export licenses have been requested. Governments should require import certificates and delivery verification forms to be presented for all items on the Munitions List and on List I, for certain List II items selected by them, and for items which, owing to marginal differences in definition between national lists and the International Lists, did not appear to be covered by the latter. (COCOM Doc. 946) The exceptional cases mentioned above (where all necessary guarantees have been received) have generally been interpreted to cover consignments to a government or semi-government agency; in such cases, bilateral governmental arrangements can be made in lieu of the ICDV system (COCOM Sub-C/52/17). The Committee has recognized the fact that the import certificate in itself offered little security unless it were followed up by a request for a delivery verification form, which provides an a posteriori check (COCOM Sub-C/53/31 Revised).

3. Cooperation with third countries:

The Committee has agreed to seek the cooperation of a number of third countries in applying the ICDV system, either by issuing ICs upon request of a participating country or requiring an IC before exporting strategic goods to a participating country or both.

(a) Switzerland:

The ICDV system as adopted in COCOM is based in part on a system unilaterally adopted by Switzerland in 1950. For strategic imports from participating countries the Swiss issue "Blue Certificates" which are comparable to the ICs used by COCOM countries (Appendix B COCOM Doc. 304) and COCOM has agreed to make use of these forms (Doc. 303). Switzerland does not, however, issue Delivery Verification forms. In January 1953, the Committee agreed to invite Switzerland to require ICs and DVs for Swiss strategic exports to participating countries. The Committee has not yet been informed of the Swiss response to this proposal. The Committee has agreed, however, to issue ICs and DVs if requested by the Swiss and the Committee has requested that Switzerland consult the original exporting participating country before permitting the re-export of strategic goods to third countries (COCOM Doc. 1123).

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(b) Sweden:

The Committee agreed to invite Sweden to cooperate fully in the ICDV system (COCOM Doc. 1123). The Committee has not yet been informed of the Swedish response.

(c) Austria:

The Committee agreed to request Austria to issue "import certificates" for shipments of items on the Munitions List, List I and List II (COCOM Docs 1141 and 1215). The Austrian version of the Import Certificate is known as an "Endverwendungsbescheinigung" and is issued by the Bundesministerium fur Handel und Industrie (COCOM Doc. 1279). The Committee also agreed to make use of the Austrian watch list (COCOM Doc. 982) when approving export licenses based on an Austrian import certificate in order not to approve exports to Austrian enterprises which have been confiscated by USIA (Russian abbreviation for Administration of Soviet Enterprises in Austria).

(d) Yugoslavia:

COCOM agreed to inform Yugoslavia of the purpose of the ICDV system and to inform Yugoslavia that all participating countries will issue ICs and DVs upon request for all goods common to the Yugoslav control lists (contained in Doc. 1093) and the Paris Group Munitions List, List I and List II (COCOM Doc. 1214 Revised). The Committee has not yet been informed of the Yugoslav response to this approach.

(e) Latin America:

COCOM agreed that the U.S. should approach the governments of other American countries with a view to bringing these countries into the ICDV system on a limited basis, namely that they should require ICs and DVs before exporting a limited number of commodities (COCOM Doc. 647). In February 1953, the Committee was informed that only three Latin American countries -- Colombia, Costa Rica and Haiti -- had thus far agreed to use the ICDV system; some governments either had no strategic exports or considered their existing controls adequate, namely the Dominican Republic, El Salvador, Honduras, Nicaragua, Uruguay and Venezuela. Other Latin American countries have the problem under study (COCOM Doc. 1123).

(f) Dependent Overseas Territories:

The Committee has agreed to make use of the ICDV system when exporting strategic commodities to certain Dependent Overseas Territories. A list of the names and addresses of authorities in 28 U.K. Dependent Overseas Territories to whom requests for ICs and DVs should be sent is contained in COCOM Doc. 1096 (including 5 Addenda). It should be noted that a special system of documentation similar to the IC is used in Hong Kong (COCOM Doc. 755 and Addendum). ICs and DVs are also available in Macao (COCOM Doc 919).

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DOCUMENTS RELATING TO THE IC/DV SYSTEM

COCOM DOCUMENTS

*304, 353, *371, *378, 406, *407
411, 412, 417, 429, 434, 465
479, 518, 565, 635, 644, 647
678, 688, *755 and Addendum, 861
897, 933, *946, *953 and Addenda
954, 996, 999, 1011, 1062, 1073
1089, 1093, 1096, 1116, *1123, 1141
1142, 1159, 1187, 1207, 1214 Revised,
1218, 1224, 1230, 1232, *1279.

COCOM SUB-COMMITTEE DOCUMENTS

Sub-C(51)1
Sub-C(51)15
Sub-C(52)2 (Revised)
Sub-C(52)17
Sub-C(53)21
*Sub-C(53)31 (Revised)

* Most important documents.

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STATEMENT OF THE CHAIRMAN OF THE UNITED STATES
DELEGATION TO THE CONSULTATIVE GROUP

January 15, 1952

I deeply appreciate this opportunity to discuss with you some of the problems of mutual interest which have developed since our meeting here last July. You will recall, I am sure, my discussion of the Kem Amendment which had been adopted by the U.S. Congress a short time before and my emphasis on the political realities which that legislation reflected. (CG Paper IV B, Annex A, July 19, 1951)

I mentioned then that the President in signing the Kem Amendment called for more flexible and practicable legislation on the subject with which it dealt. After most careful and detailed Congressional review reflecting the serious concern of the Congress and the American people regarding the flow of strategic goods to the Soviet Bloc, Public Law 213, the Mutual Defense Assistance Control Act of 1951, was enacted by Congress.

This Act, the so-called Battle Act, provides, we believe, a realistic basis for U.S. participation in constructive measures for controlling trade with the Soviet Bloc in the mutual security interests of the free nations. Your governments are already familiar with the provisions of the Act. They have been described in detail in the aide memoire transmitting to your governments the initial determinations under the Battle Act. We are aware that your governments have been concerned that the Battle Act, by its terms or in its administration, might jeopardize the existing multilateral framework for dealing with security export control problems in the Consultative Group and the Coordinating Committee. This concern is understandable, particularly in view of the fact that the time limits set in the legislation necessitated certain decisions by the Administrator without opportunity for as full consultation with the Coordinating Committee countries as we would have wished. It was not the intent of the legislation, nor is it the intention of the Administrator, to impair multilateral efforts to obtain adequate security controls. The major purpose of the legislation is to strengthen the security control effort through further international cooperation. We, therefore, welcome this opportunity to discuss the Battle Act and the manner in which its administration and the operations of this group can be mutually supporting.

We wish it to be clearly understood that it is the intent of the United States Government to strengthen international cooperation in the field of mutual security. United States policy, as expressed in part in the Battle Act, looks toward increased cooperative action in the security control field not only among the Western European nations receiving United States assistance but among all other free nations as well.

The United States regards the Coordinating Committee as the forum in which to discuss problems relating to the control of strategic exports from Western Europe to the Soviet Bloc. The United States, to the fullest extent consistent with the provisions of the Battle Act, will take account of existing or future Coordinating Committee arrangements. In making the initial determinations as to the list of commodities of primary strategic significance which should be subject to embargo, the Administrator has, with few exceptions, adopted International List I and the arms and atomic energy categories already agreed by the Coordinating Committee countries for embargo to the Soviet Bloc. This was a clear recognition of the

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Careful and effective work done by the Coordinating Committee in developing lists of commodities the export of which to the Soviet Bloc would contribute significantly to its war potential.

In relating Coordinating Committee activities to U.S. administration of the Battle Act, it is necessary to have a clear understanding of the statutory requirements imposed on the Administrator and on the President. The Administrator is required to recommend to the President termination of aid to any country which knowingly permits the export of Title I commodities to the Soviet Bloc. With respect to Category A (the munitions and atomic energy list), it is mandatory that aid be terminated. No exception is permitted. With respect to items in Category B of Title I, the President may in his discretion direct the continuance of aid to a country which has exported such an item to the Soviet Bloc "when unusual circumstances indicate the cessation of aid would clearly be detrimental to the security of the United States." In making such a determination, the President will take into account "the contribution of such country to the mutual security of the free world, the importance of such assistance to the security of the United States, the strategic importance of imports received from countries of the Soviet Bloc, and the adequacy of such country's controls over the export to the Soviet Bloc of items of strategic importance." It is clear from the history of the legislation that this provision must be reserved for the truly exceptional circumstances.

Title II of the Act provides that the United States shall negotiate a program for controlling exports of strategic items not subject to embargo under Title I. The initial determination made under Title II includes 28 item listings which, in the view of the United States, particularly require the application of stringent export control measures. Although the United States has urged the addition of a number of these items to International List I, a major consideration in including them on the initial Title II List rather than Title I, was our recognition of the status of consideration of those items in the Coordinating Committee. The Title II List also includes certain items recently agreed for addition to International List I. Rubber and tin are included since they are of such importance to current Western defense efforts as to require the particular attention of the Administrator under the terms of the Act.

I think it will be clear from what I have said about the provisions of the Battle Act that there are a number of specific issues which our Governments must face if we are to achieve a maximum degree of harmony between the operations of the Coordinating Committee and the operations of the United States Government under the Battle Act. One such question relates to future changes in the lists; what procedures should be followed in considering additions to the lists under Title I or Title II of the Battle Act? A second has to do with publicity: How can the requirements of adequate publicity in administering the Battle Act best be met consistent with the need for security in the implementation of COCOM export controls? A third, and perhaps the most difficult question relates to the handling of exceptions under the Battle Act. On each of these points we have certain suggestions and statements which we wish to put before the members of this group for consideration.

1. Addition of Items to the Battle Act Lists

With respect to the addition of items to the Battle Act, the intent of the United States not to add further items to either the Title I

or Title II Lists until there has been an opportunity for discussion of the proposed addition in the Coordinating Committee. In making a final determination as to the addition of new items to the Battle Act Lists, the Administrator will take full account of the Coordinating Committee discussion and of the views of individual countries expressed therein. It is recognized by all, I am sure, that the Administrator has responsibility for making the final decision on the items which he will list.

2. Publicity

The Battle Act requires close consultation with a number of committees of Congress concerning actions taken under the Act. Aside from the formal requirements of the Act, the Administrator intends to cooperate closely with the Congress and to consult with the committees named in the Act regarding major problems with which he will be confronted. It will be necessary to advise the Congressional committees on various aspects of discussions with other governments concerning the Battle Act and their activities related to it. Such reports will be kept on a confidential basis to the maximum possible extent. With respect to the 7-page generalized listing of Title I, Category B, the United States has not made public disclosure of the list. However, at the time the aide memoire was presented we requested your views on the publication of that list. We would like to be in the position to release this list promptly, were compelling reasons to arise requiring a further disclosure of the Category B list than has been made heretofore. It is not now intended to publish the detailed Title I, Category B, list. Should publication later appear necessary we will, of course, consult with you.

It might be noted at this point that with respect to the general question of public relations in this field, we believe that there are important advantages to be gained from a positive effort to keep not only official circles fully informed but so far as possible the general public as well.

3. Exceptions

Finally, we have the problem of exceptions under Title I, Category B. We recognize that, under present circumstances, the urgency of Western requirements for a few commodities from the Soviet Bloc has enabled the Bloc in some cases to obtain items which are subject to the embargo provisions of Title I of the Battle Act. We believe we must find a way to avoid such shipments in the future and that together we can do so. Clearly, this calls for an immediate and more effective marshalling of our combined resources, through this and all other international agencies in which our governments are associated in mutual security endeavors.

The United States Government is prepared to consider exceptions when no feasible alternative to the shipment of Title I, Category B, items can be found. The ability of the Administrator to make a finding in accordance with the exception provisions of the Act will depend upon the availability of full and complete information on the circumstances involved. COCOM has had, of course, a procedure for considering exceptions to the embargo of International List I items. In view of our desire to have COCOM participate in the most meaningful way, we would welcome its information and views concerning the circumstances surrounding the proposed export of Title I, Category B item. Accordingly, we propose the following changes in the present COCOM procedure. The United States suggests that Coordinating Committee Document 471 be amended to provide for discussion on all proposed exports of items appearing on the Title I, Category B list, whether coming under the heading of

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prior or future commitments, before the shipment is made or the commitment is undertaken. This action should assure adequate discussion of all aspects of a prospective shipment; would provide interested countries and the Administrator with the views of participating governments regarding the case; and it is hoped, suggest a means of avoiding the proposed shipment.

Insofar as existing prior commitments are concerned, we are unable to express definitive views since details regarding the commitments and the problems they may present have not been available. However, it is only fair to state that it is our belief that there may be many prior commitments which the countries concerned do not need to fulfill and which, in line with the CUCOM understanding and changed circumstances should be voided. Moreover, it is likely that many of the shipments which might be made under the present prior commitment procedure of CUCOM would not meet the exception criteria of the Battle Act. In any case, an adequate appraisal of the problem of prior commitments and an acceptable means of dealing with it depends on the availability of full information. We hope that in the course of this meeting you will be able to present enough details so that together we can discuss means of handling the problem. It seems probable from the information we have already received, that more time is required to measure the problem accurately. Therefore, we wish to suggest that the Consultative Group countries agree to suspend shipments, that is, institute a "moratorium" on actual exports of Title I, Category B, items, to the Soviet Bloc for the necessary period. This suspension would be without prejudice to the eventual fulfillment of the commitments if it is determined that circumstances justified exceptional treatment under the Battle Act. We are particularly anxious that urgent problems be presented for discussion at the earliest possible moment.

In closing these remarks, I should like to emphasize that we wish to be as realistic and constructive as possible in seeking with you the proper answer to the problem of export controls in our mutual security interests. We believe that through cooperative action we can find the means of adequately controlling the flow of strategic goods to the Soviet Bloc. We are prepared to devote every effort to the attainment of this objective.

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Report on Advisory Group as Revised*

(Paris, 22 November 1949)

1. It was agreed to recommend that the informal Group, which has so far consisted of Belgian, French, Italian, Netherlands, United Kingdom and United States representatives, should continue to meet in an advisory capacity. The Governments of Denmark and Norway should be invited to become members of the Group and the Governments of Sweden and Switzerland should also be asked to participate. The general feeling of the Delegates was that the Group should continue to meet in Paris. The Group should meet as often as might be required.

2. Between meetings, the Chairman in consultation with representatives of the governments concerned and with the assistance of a Secretary, an Assistant Secretary or secretaries together with appropriate working committees would make necessary arrangements for the accomplishment of the objectives of the Group.

3. The future work of the Group should be:

(a) to consider matters arising from the implementation of an agreed policy for the control of exports on grounds of security with the object of achieving the greatest possible uniformity and efficacy of action amongst the governments which adopt this agreed policy, and

(b) to provide for the exchange of the information necessary to this end.

* Netherlands reserved decision on recommendation Para. 2

Paris
22nd November 1949

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C.G.X ANNEX B

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CONSULTATIVE GROUP RESOLUTION

ON THE CHINA COMMITTEE

(September 19, 1953)

1. ESTABLISHMENT OF THE CHINA COMMITTEE

The Consultative Group directs the Coordinating Committee to establish a permanent working group, to be termed the China Committee, with the terms of reference and membership set out below.

2. GENERAL TERMS OF REFERENCE

The China Committee will be responsible for the development of the detailed aspects of security export control policy relating to China* as laid down by the Consultative Group, and for ensuring the putting into effect of such policy. The China Committee may also submit to the Consultative Group proposals for changes in policy in the field covered by their general terms of reference, and may institute such studies as they deem desirable on particular problems relevant to their work.

3. MEMBERSHIP AND SECRETARIAT

(a) All governments of the Consultative Group are entitled to participate fully in the deliberations and decisions of the China Committee with respect to any issues in which they consider they have a genuine interest. In order to ensure that the China Committee can deal speedily and efficiently with the problems relating to China, and in order to avoid unnecessarily burdening some delegations with the problem of increased representation, the following governments who were responsible for preparing the Washington recommendations will undertake to be permanently represented and to initiate the work of the China Committee: Canada, France, Japan, United Kingdom, United States. The above arrangements will be applied for a preliminary period of 6 months, after which the arrangements for membership of the China Committee will be reviewed. The China Committee will select its own Chairman.

(b) Adequate Secretariat services will be supplied from the Secretariat established by the Consultative Group.

4. ACTIVITIES OF THE CHINA COMMITTEE

In order to ensure the speedy and efficient handling of problems relating to China, the following will apply:

* For purposes of this decision, the term "China" is intended to include Communist China, North Korea, and such other areas, excluding Soviet territory, as may be agreed. Wherever the term "China trade" is used, it is intended to cover not only direct trade subject to security export controls with those areas, but also similar trade through third countries to the extent necessary to accomplish the Committee's work.

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(a) Matters which apply to security export control problems relating to China, such as lists of items to be denied to China alone, shipping and transshipment questions relating to the China trade within the security export control framework, will be dealt with by the China Committee.

(b) Matters which, while involving China, also have direct application to the Soviet Bloc as a whole, will be dealt with in the Coordinating Committee.

(c) The Coordinating Committee or any individual government of the Paris Group, may propose items for the agenda of the China Committee.

(d) The Chairman of the China Committee will maintain close working relationship with the Chairman of the Coordinating Committee.

5. RECOMMENDATIONS AND DECISIONS

(a) The China Committee will refer the results of its work either to the Coordinating Committee, to the Consultative Group, or to governments, depending in each case upon the nature of the subject matter and of the Committee's action upon it. If a member of the China Committee requests the convening of the Consultative Group, the Chairman of the China Committee shall transmit the request to the Chairman of the Consultative Group through the Chairman of the Coordinating Committee.

(b) The China Committee will circulate its recommendations to all members of the Paris Group. Decisions will be reached in one of the following ways:

(i) If no objection is received within a time limit (normally of 30 days) the recommendations will be regarded as decisions accepted by the whole group.

(ii) The governments which have participated in the discussion in the China Committee may agree that they themselves will, either at once or within a specified time, put into force the recommendations subject to their being put into force by certain other governments.

(iii) The governments which have participated in the discussion in the China Committee may agree that, either at once or within a specified time, they will themselves in any case put into force the recommendations.

6. OPERATING PROCEDURES

(a) The China Committee will adopt operating procedures appropriate to its work, basing them on those adopted by the Coordinating Committee where these are appropriate.

(b) The Secretariat will circulate all documents of the China Committee to all governments of the Paris Group.

7. AMENDMENTS AND REVIEW

The provisions above may be amended by the Consultative Group and, in the event

UNITED NATIONS
GENERAL
ASSEMBLY

ATTACHMENT D

GENERAL

A/1805
21 May 1951

ORIGINAL: ENGLISH

Fifth Session
Agenda item 76

500(V). ADDITIONAL MEASURES TO BE EMPLOYED TO MEET
THE AGGRESSION IN KOREA 1/

Resolution adopted by the General Assembly at its 330th plenary
meeting on 18 May 1951

(adopted on the report of the First Committee (A/1802))

The General Assembly,

Noting the report of the Additional Measures Committee dated
14 May 1951, 2/

Recalling its resolution 498 (V) of 1 February 1951, 3/

Noting that:

(a) The Additional Measures Committee established by that resolution has considered additional measures to be employed to meet the aggression in Korea,

(b) The Additional Measures Committee has reported that a number of States have already taken measures designed to deny contributions to the military strength of the forces opposing the United Nations in Korea,

(c) The Additional Measures Committee has also reported that certain economic measures designed further to deny such contributions would support and supplement the military action of the United Nations in Korea and would assist in putting an end to the aggression,

1. Recommends that every State:

(a) Apply an embargo on the shipment to areas under the control of the Central People's Government of the People's Republic of China and of the North Korean authorities of arms, ammunition and implements of war, atomic energy materials, petroleum, transportation materials of strategic value, and items useful in the production of arms, ammunition and implements of war;

1/ Resolutions of the fifth session of the General Assembly adopted after 15 December 1950 will be published as an addendum to the volume of resolutions (Official Records of the General Assembly, Fifth Session, Supplement No. 20).

2/ A/1799.

3/ A/1771.

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(b) Determine which commodities exported from its territory fall within the embargo, and apply controls to give effect to the embargo;

(c) Prevent by all means within its jurisdiction the circumvention of controls on shipments applied by other states pursuant to the present resolution;

(d) Co-operate with other States in carrying out the purposes of this embargo;

(e) Report to the Additional Measures Committee, within thirty days and thereafter at the request of the Committee, on the measures taken in accordance with the present resolution;

2. Requests the Additional Measures Committee:

(a) To report to the General Assembly, with recommendations as appropriate, on the general effectiveness of the embargo and the desirability of continuing, extending or relaxing it;

(b) To continue its consideration of additional measures to be employed to meet the aggression in Korea, and to report thereon further to the General Assembly, it being understood that the Committee is authorized to defer its report if the Good Offices Committee reports satisfactory progress in its efforts;

3. Reaffirms that it continues to be the policy of the United Nations to bring about a cessation of hostilities in Korea, and the achievement of United Nations objectives in Korea by peaceful means, and requests the Good Offices Committee to continue its good offices.

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COMMENT OF UN ADDITIONAL MEASURES COMMITTEE ON
OPERATIVE PARTS OF THE RESOLUTION ADOPTED BY UN GA
RECOMMENDATION (C)

Circumvention of controls may take place mainly through trans-shipment of re-export.

As regards trans-shipment, the practical difficulties of instituting trans-shipment licensing in each state over all items controlled by every other state in pursuance of this resolution are recognized and it is therefore agreed that the primary responsibility for guarding against such circumvention must lie with the states in which the goods originate, and that this responsibility could best be discharged by obtaining assurances about end-use prior to shipment. Other states will be expected to give every assistance to the country of origin in obtaining and checking such assurances. The Additional Measures Committee should, in the exercise of its review function, recognize that the extent to which the movement of goods can be controlled once they have left the country of origin depends in present circumstances on the statutory powers possessed and exercised by the governments of the states through which they pass; and that such powers differ.

Similarly in the case of re-exports it is recognized that the institution of export licensing in each state to cover items embargoed by every other state in pursuance of this resolution may not be practicable; and it is agreed, therefore, that the primary responsibility for taking preventive measures must likewise rest with the country of origin.

RECOMMENDATION (D)

In addition to the measures described under Recommendation (c) above, the cooperation required of each state by Recommendation (d) would include the avoidance of any such expansion of its trade with China and North Korea in items embargoed by other states in pursuance of this resolution as would nullify or impair the effect of the controls applied by the latter to those items.

RECOMMENDATION (E)

Measures to be reported will include measures already applied as well as those which will be taken after the adoption of the resolution by the General Assembly.

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COMMENT OF UN ADDITIONAL MEASURES COMMITTEE ON
OPERATIVE PARTS OF THE RESOLUTION ADOPTED BY UN GA.
RECOMMENDATION (D)

In addition to the measures described under Recommendation (c) above, the cooperation required of each state by Recommendation (d) would include the avoidance of any such expansion of its trade with China and North Korea in items embargoed by other states in pursuance of this resolution as would nullify or impair the effect of the controls applied by the latter to those items.

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ORGANIZATION OF AMERICAN STATES
FINAL ACT OF THE
FOURTH MEETING OF CONSULTATION OF MINISTERS OF FOREIGN AFFAIRS

WASHINGTON MARCH 26 - APRIL 7, 1951

XV

DEFENSE AND SECURITY CONTROLS

WHEREAS:

It is essential for the American Republics, as a part of the free world, to build up their economic strength relative to that of the forces supporting international aggression,

The Fourth Meeting of Consultation of Ministers of Foreign Affairs

DECLARES:

1. That the American Republics agree to cooperate fully with one another in the adoption of effective measures of economic defense and security controls in the field of their international economic relations, including measures to increase the availability of products in short supply to the countries of the free world.

2. That where one country imposes security controls which affect activities of private entities located in another country, full opportunity for consultation shall be afforded between the two countries with the purpose of developing cooperative measures to attain the objective of the security controls with a minimum economic dislocation in the country where the affected private activities are carried on or the respective asset is located.

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United States - Japan Bilateral Agreement

An understanding with respect to the control of exports to China was negotiated in Washington during August. The agreed documents, (attached), initialed for each government September 5, 1952 are:

- (a) Understanding Between Japan and the United States Concerning the Control of Exports to Communist China (Attachment I).
- (b) Interpretative Notes with Respect to the Understanding Between Japan and the United States Concerning the Control of Exports to Communist China (Attachment II).

To implement the requirements of paragraph 3(a) of the Understanding, a task group selected a list of approximately 400 items subject to further technical study and review. The Japanese delegation returned to Tokyo for this purpose and a similar technical review was undertaken in Washington by the appropriate U.S. Government agencies.

(Attachment I)

UNDERSTANDING BETWEEN JAPAN AND THE UNITED STATES
CONCERNING THE CONTROL OF EXPORTS TO COMMUNIST CHINA

1. The commodities enumerated in any International Control List shall be embargoed.
2. The commodities included in the U.S. Security Lists (including the Battle Act Lists) but not listed in the International Control Lists will continue to be embargoed.
3. The commodities included in the list attached to the existing Export Trade Control Order but not falling under the above-sautioned lists will be controlled in one of the following ways:
 - (a) Until a more definitive determination is made, items which are found to be readily determinable as of strategic significance to Communist China will be embargoed by Japan to Communist China. Where proposed shipments of any such item to China would, in the opinion of the Japanese Government, involve their exchange for items of a character and quantity of such importance to the basic economy of Japan or the defense production programs in the free world, including Japan, as clearly to represent a highly favorable exchange, such transactions would be made the subject of bilateral discussions between Japan and the U.S. prior to any definitive action by the Japanese Government.
 - (b) Until a more definitive determination is made, items which are suspected to be of strategic importance to Communist China or concerning which there is real uncertainty as to the strategic importance to Communist China will be licensed to Communist China only upon the review of individual transactions by the Japanese Government

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under strict quantitative control and where, in the opinion of the Japanese Government, the goods which are to be received in exchange clearly would contribute to the basic economy of Japan or the defense production programs in the free world, including Japan. The Japanese Government and the U.S. Government will exchange information periodically as to their shipment of goods to Communist China in this category.

- (c) Until a more definitive determination is made, items which are determined to be of limited if of any strategic importance to Communist China will be licensed for export to Communist China by Japan but within reasonable quantities so as to exclude their use by the Communist Chinese for conversion to direct or indirect military support uses. The Japanese Government and the U.S. Government will exchange information periodically as to their shipments of goods to Communist China in this category.

Washington, D.C.
September 5, 1952.

(Attachment II)

INTERPRETATIVE NOTES WITH RESPECT TO THE UNDERSTANDING
BETWEEN JAPAN AND THE UNITED STATES CONCERNING THE CONTROL OF
EXPORTS TO COMMUNIST CHINA

1. It is recognized that determinations of strategic significance involve constant review of commodities in their relationship to specific areas under varying conditions. It is understood that neither the U.S. Security Lists nor the International Control Lists as approved or under consideration reflect a detailed technical analysis of the strategic worth of goods insofar as they apply to Communist China, such lists having been developed primarily for application against the more highly developed economies of Eastern European countries which are not in open conflict with free world military forces.

2. In the range of commodities not now covered by U.S. Lists or by any International Control List the earliest determinations of strategic significance respecting China are necessary. It is understood that international (multilateral) consideration involving Japan, the United States and other countries with substantial Far Eastern interests will be begun in order to arrive at determinations with respect to the strategic importance of commodities to Communist China. These discussions should be brought to a conclusion at the earliest possible date.

3. As a preliminary step and to meet the immediate problem facing Japan, the Japanese Government will examine jointly with the U.S. the residual items

described above in order to make preliminary and tentative determinations as to their strategic significance respecting Communist China. This examination will begin immediately and be completed at the earliest possible time.

4. With these determinations in mind, the two governments will jointly endeavor to strengthen the international level of controls on exports of items of strategic importance to Communist China.

5. With respect to Paras. 1 and 2 of the agreed paper it is understood that the Japanese Government will continue to embargo to Communist China all items on these lists at least so long as there is Communist aggression in the Far East.

6. With references to the phrase "until a more definitive determination is made" indicated in paragraph 3(a), (b) and (c) of the agreed paper, it is hereby understood that taking into account any relevant discussions in the China Committee of the COCOM with respect to the list of items which should be controlled to China alone, the United States and Japan, upon the request of either Government, will consult to consider the method and degree of control over the items described in these paragraphs concerning which the China Committee has made no determination within a reasonable period or has made determinations different from those tentatively agreed upon in accordance with these paragraphs. In no event, however, will the Japanese Government be required to take the actions referred to in paragraphs 3(b) or (c) in cases where the COCOM has made determinations different from those tentatively agreed upon in accordance with these paragraphs.

7. In implementing paragraph 3 of the agreed paper it is understood that the following action program will be followed:

- a. For action under para 3(a) the initial list will be composed of the items being considered in COCOM for embargo to China which are not on the International Control Lists or the U.S. Security Lists and such items as the two governments may agree should also be embargoed to China on the basis of an immediate review of the uncovered commodity areas to be undertaken by technicians of the two governments.
- b. The commodities on the Japanese Control List which will not have been covered by the U.S. Security Lists, the International Control Lists or Para. a. above will be reviewed by the Japanese Government in Tokyo and recommendations made as to the control of such commodities under Para. 3(b) and (c). These recommendations will then be discussed between the two governments. During the period of such examination and discussion the Japanese Government will treat all these commodities under the provisions of paragraph 3(b).

Washington, D.C.
September 5, 1952

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DRAFT MASTER

AIDE MEMOIRE FOR BATTLE ACT DISCUSSIONS
WITH FOREIGN EMBASSIES
FOLLOWING DETERMINATIONS OF BATTLE ACT
TITLE I LISTS IN NOVEMBER 1951

On October 26, 1951 the Mutual Defense Assistance Control Act of 1951 was enacted. This Act establishes it as the policy of the United States to terminate all military, economic, or financial assistance to any nation that knowingly permits shipment of certain stated categories of strategic commodities to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination. Effective the same date, the Act repealed Section 1302(a) of the Third Supplemental Appropriations Act, 1951 (the so-called Kem Amendment), and Section 117(d) of the Foreign Assistance Act of 1948, as amended.

In accordance with the provisions of Title I of the Act, the Administrator under the Act determined on November 25 the list of items, known as Category A of Title I, which are to be considered "arms, ammunition, and implements of war and atomic energy materials" for the purposes of the Act. A copy of the list of Category A items, which has today been made available to you on a confidential basis, will be released publicly in the near future. With respect to the items included on this list, the Act makes termination of all military, economic, or financial assistance mandatory if a country after January 24, 1952 knowingly permits shipment of any of these items to the Union of Soviet Socialist Republics or countries under its domination.

In addition to the above-named items, the Administrator determined on November 25 a further list of items, known as Category B, which are for the purposes of Title I of the Act "petroleum, transportation materials of strategic value, and those items of primary strategic significance used in the production of arms, ammunition, and implements of war". A copy of this list of Category B items has been made available to you in a detailed secret version and in a generalized confidential version. Consideration is being given to the question of whether or not it will be necessary later to publish either or both of these versions. The Act requires the Administrator to recommend to the President termination of assistance to any country which after January 24, 1952 knowingly permits the shipment to a Soviet bloc country of any item included on this list. Under the Act the President may direct the continuance of assistance when unusual circumstances indicate that cessation of aid would clearly be detrimental to the security of the United States. Such exceptions by the President must be reported immediately to the appropriate committees of the Congress together with the reasons why

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such action is necessary. (Insert for COCOM countries: The United States Government will seek the advice of the Paris Coordinating Committee regarding the merits of any proposed exception on behalf of a COCOM country and will give the fullest possible weight to such advice. At the same time, it is, of course, clear that the United States cannot be bound by such advice.)

With regard to the aforementioned lists, the Government of the United States requests that prior to January 24, 1952, and preferably by January 1, 1952, it be informed of the measures which your Government will take to apply an embargo on shipments of the items appearing on lists A and B from the area under its jurisdiction to the Soviet bloc.

Title II of the Mutual Defense Assistance Control Act requires the United States to negotiate arrangements by which countries receiving assistance undertake a program of controlling exports to Soviet bloc destinations of other items, which, in the judgment of the Administrator, should be controlled in the interest of security. The Administrator has designated certain items under Title II which this Government believes it is particularly important to control. A list of these items has been made available to you on a secret basis. In accordance with the provisions of Title II of the Act, the Government of the United States at a future date will wish to discuss with your Government arrangements for controlling exports to the Soviet bloc of these items and of other items falling under Title II.

A list of the countries and territories which are deemed for purposes of this Act to comprise "the Union of Soviet Socialist Republics and all countries under its domination" is appended hereto.

The following paragraphs are excerpted from a confidential letter which has been sent by the Administrator to certain Congressional committees:

"For the sake of present and future clarity at home and abroad, I have divided my list determination under Title I of the Act into two categories. Category A specifies 21 items listings which I have determined are, for the purposes of this Act, arms, ammunition, and implements of war and atomic energy materials to be embargoed to effectuate the purposes of the Act. The statute provides that military, economic, and financial assistance to any nation shall, upon my recommendation, be terminated forthwith if such nation, after 60 days from the date of my determination under section 103(a) of the Act, knowingly permits the shipment of these items to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination.

"Category B contains 264 item listings, including petroleum items, transportation materials of strategic value, and those items of primary strategic significance used in the production of arms, ammunition and implements of war which should be embargoed

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to effectuate the purposes of this Act. The statute provides that United States military, economic, or financial assistance shall be terminated to any country knowingly exporting these items to the Soviet bloc unless the President, after receiving the advice of the Administrator, shall direct the continuance of such assistance when unusual circumstance indicate that the cessation of aid would clearly be detrimental to the security of the United States. The statute requires that the President, in making any exceptions, shall take into account the contribution of such country to the mutual security of the free world, the importance of such assistance to the security of the United States, the strategic importance of imports received from countries of the Soviet bloc, and the adequacy of such country's controls over the export to the Soviet bloc of items of strategic importance.

"Section 202 of Title II of the Act provides that the United States shall negotiate with any country receiving military, economic, or financial assistance arrangements for the recipient country to undertake a program for controlling exports of items not subject to embargo under Title I, but which, in my judgment, should be controlled. Section 203 provides that all United States military, economic, or financial assistance shall be terminated to a recipient country when the President determines that such country is not effectively cooperating with the United States pursuant to Title II or is failing to furnish information sufficient for the President to determine that the recipient country is effectively cooperating with the United States. Determination C-I, made pursuant to Title II, initially includes 28 item listings which, in my judgment, particularly require the immediate application of stringent export control measures.

"As required by the statute, these lists will be adjusted by making further determinations from time to time on the basis of investigation and consultation. As experience is gained in the operation of the Act, it will undoubtedly be necessary, not only to include new items and to delete certain items from these initial lists, but particularly to refine definitions of items in order to exert the desired degree of control over the most strategic parts of an item listing.

"With respect to Determinations A-I and B-I, it is my purpose to interpret strictly the embargo provisions of the Act. Recognizing the realities of the current international trade situation, I fully anticipate, in regard to Category B, that it will be necessary to recommend to the President some exceptions, as provided by the Act, from the penalties established by Title I in order to protect the security interest of the United States. I believe, however, that the number and scope of such recommendations must be strictly limited. I intend recommending such exceptions only after all other reasonable means for limiting shipments have been exhausted and it is evident that the

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cessation of aid would clearly be detrimental to the security of the United States.

"With respect to the items listed under Determination C-I, the United States, Canada, and most of the Western European nations have, as you probably know, through an informal committee already undertaken to control exports to the Soviet bloc of a list of items many times longer than the initial C-I list. However, in order to effectuate the purposes of this Act, it is my judgment that it is best initially to single out the most important items for concentrated attention. For these selected items, we will negotiate for the maximum degree of control possible and give careful consideration to additional types of security measures. With respect to other items, I will be giving continuous consideration as to how best to achieve effective controls, whether by additions to the C-I list or otherwise."

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"Knowingly Permits"

In the following types of cases a country would be deemed to have knowingly permitted shipments of strategic materials to Soviet bloc countries:

1. Where a country affirmatively licenses such shipment after January 24, 1952.

2. Where a country has affirmatively licensed shipment of such material before January 24, 1952, and declines to take appropriate steps to withdraw such an outstanding license where the shipment has not been made by January 24, 1952.

3. Where a country has had brought to its attention after January 24, 1952 that a shipment of such material has taken place since that date and declines to take steps to prevent its recurrence, the recurring shipments would be "knowingly permitted." If the United States is satisfied that the country did not in fact know of the first shipment, that shipment would not have been "knowingly permitted"; however, the fact that the country declines to take steps to prevent recurrence after specific information of the first shipment has been brought to its attention would be a factor in the judgment of the United States as to whether the country's denial of knowledge of the first shipment is to be taken at face value.

4. Where shipments of such materials take place after January 24, 1952, and the country is willing to take steps to prevent their recurrence, but shipments continue to recur under circumstances which demonstrate that the country in reality is indifferent to such recurrences, such subsequent shipments will be deemed to have been "knowingly permitted," but not the first shipment.

5. Where a country states that such shipments are prohibited, the country has practically no control system to police its commitment, shipments occur, but the country nevertheless declines or fails to institute a system of control which, while it may differ from ours materially, is capable of interdicting such traffic. All shipments would therefore be "knowingly permitted."

A country would not be deemed to have knowingly permitted shipments of strategic materials in the following types of cases:

1. If there is a genuine misunderstanding as to whether an item shipped is included on the Title I lists. If a country honestly believes that the item is not included on the list, it has not "knowingly" permitted the shipment of a prescribed material because it did not know that it was prescribed; if, after its error is called to its attention, it permits shipment of such an item, it will then have "knowingly" permitted that next shipment.

2. If a country states that it prohibits shipments of prescribed materials, there is a presumption that it will perform its undertaking. This is a rebuttable presumption, but before the presumption can be considered to be rebutted, evidence that the undertaking is not being carried out must be at hand. If we learned that a shipment of prescribed material is about to take place or has taken place, we would bring it to the attention of the country; if the country refused to take steps to prevent its shipment, if not already made, or if it failed to return such material to us, it would

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be considered to be "knowingly" permitting such shipments. On the other hand, if upon learning that such a shipment has occurred, it acts in good faith to prevent its occurrence, but nevertheless fails to do so, that shipment would not be considered to have been "knowingly permitted," nor indeed, would a second shipment which occurred under the same circumstances, if good faith efforts to prevent it had been made. Likewise, if upon learning that such a shipment may occur, the country acts in good faith to prevent its occurrence, but nevertheless fails to do so, that shipment would not be considered to have been "knowingly permitted," nor indeed, would a second shipment which occurred under the same circumstances if good faith efforts to prevent it had been made. However, if recurrence of such shipments persists, this circumstance would cast doubt upon the judgment that good faith efforts were being taken to prevent them, and might well, under all of the circumstances, result in a judgment that the country "knowingly" permitted such shipments.

The application of these or any other guide lines to particular cases will, of course, require considerable adaptation in terms of specific situations.

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