

INCREASING INTERNATIONAL COOPERATION FORMULTILATERAL ENFORCEMENT BETWEEN COCOM MEMBER COUNTRIESINTRODUCTION1. Increased Soviet threat re: technology transfer

In the past eighteen months, the COCOM Subcommittee on Export Controls, which normally meets every three years, held three meetings to discuss the possibility of increasing international cooperation between the investigative services of COCOM member countries. The United States believes those meetings were productive and strongly urges the Subcommittee to continue its efforts in this direction because the problem of illegal technology transfer has increased significantly in recent years. The Soviet Union is engaged in a massive and centrally-coordinated effort to acquire advanced Western technology.

2. Soviet methods of acquiring Western technology

The Soviet's have developed a vast array of methods to acquire advanced Western technology. These include the following: illegal sales, end-user diversions, and third-country diversions; hostile

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intelligence service-directed trade (including the use of communist-owned but locally-chartered firms); industrial espionage; agents-in-place; compromised firms; and communications intercepts. The Soviets employ these methods singly or in concert, depending on their interest in acquiring a particular technology, as well as the obstacles imposed by Western export control regulations and counter-intelligence activities.

The Soviets have also used their bloc satrapies as surrogates in their efforts to acquire advanced Western technologies. The subsequent "leakage" has increased significantly in the wake of Afghanistan and the tightening of COCOM's controls on the transfer of high technology to the Soviet Union. These surrogates are also adept at exploiting cross-national ethnic allegiances in coopting Western scientists and businessmen.

### 3. Targets and changing nature of Soviet acquisition efforts

Current Soviet procurement efforts are concentrated in the following fields: semiconductors and microelectronics; computers, including both hardware and software; guidance, sensor, communications, and propulsion systems; and related production technologies, including machine-tools.

In addition to their traditional emphasis on Western weapons systems, the Soviets increasingly have sought to acquire advanced

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Western production technologies and know-how. Rather than copying entire Western weapons systems (as they did in the 1950s and 1960s), the Soviets increasingly have sought critical components in such systems and subsystems, focusing particularly on their design concepts and manufacturing processes. This allows the Soviets to use such Western component designs, employing their own industrial capabilities to meet new military requirements. This trend also reflects a growing Soviet awareness of the importance of such industrial technologies to gains in innovation and efficiency in manufacturing. This is particularly true with respect to key sectors of the Soviet economy, such as micro-electronics, computers and machine tools, in which scalar economies and high degrees of precision are critical elements in defense-support production.

Finally, the Soviet acquisition effort recently has begun to emphasize new, emerging technologies. Because many of these are the result of civilian research and development activities in universities or corporations, they are not uniformly protected by national security controls, as controls are often applied to such advances only after their specific military applications are identified. By keeping abreast of such Western developments, the Soviets hope to identify these applications with (or, if possible before) the West.

#### 4. Soviet acquisition efforts in COCOM member states

Soviet efforts to acquire advanced technology have been concentrated

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largely in the member-states of COCOM where such technology principally lies. In the United States, the focus of Soviet collection activities centers on the nexus of military installations, defense contractors, high technology firms, and universities and research institutes involved in the development of new and emerging technologies having future military applications.

In Japan and the countries of Western Europe, Soviet efforts to acquire advanced Western technology have two principal foci. First, in and of themselves these countries constitute vast reservoirs of those advanced technologies essential to innovation in Soviet defense - and civilian-related industries. This fact alone makes Western Europe and Japan "alternative sources of supply" for the Soviet Union in its efforts to acquire Western technology. Beyond this, Japan and the countries of Western Europe receive classified and proprietary technologies from the US Government and US-based corporations, respectively. The loss of such sensitive technologies compromises the West's qualitative superiority in advanced weapons, and thus endangers US, Western European, and Japanese security.

5. Increased Soviet acquisition efforts in third-world countries

The Soviet Union also seeks to acquire advanced Western technology via the modernizing countries of the third world. Many of these countries have accepted and even encouraged the presence of Western multinational corporations in an attempt to foster rapid

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industrialization. This access to sources of advanced Western technology makes such countries targets for Soviet acquisition efforts. The success of such efforts depends not only on the extent of Soviet presence and acceptance in Third World countries but also on the presence or absence of Allied provisions for the control of re-exports of Western technology.

Diversions of strategic commodities and technology through non-COCOM countries have increased significantly in recent years and now pose a serious threat to our common security interest. The Soviet Union and its Warsaw Pact partners are aware that most COCOM members do not exercise controls over exported strategic commodities once they have been received in the country of destination. In addition, the number of original equipment manufacturers established in non-COCOM countries has also increased markedly. These companies are regularly obtaining and incorporating COCOM-embargoed components in their equipment which is then freely available for export to proscribed destinations. Often this same equipment could not be shipped from a member country without COCOM review.

U.S. EFFORTS TO IMPROVE ENFORCEMENT OF EXPORT  
CONTROL LAWS

1. Compliance Division, Office of Export Administration, U.S.  
Department of Commerce

In the United States, responsibilities are divided among various

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agencies and units of the Government.

- The Department of Commerce's Office of Export Administration, Compliance Division, is responsible for enforcing export controls set out in the Export Administration Act of 1979, investigating reports of non-compliance, determining whether violations occurred and referring violations to the Office of the General Counsel for administrative enforcement proceedings or possible referral to the Department of Justice for criminal prosecution.

## 2. Responsibilities of other U.S. Government Agencies

- The Department of State's Office of Munitions Control is responsible for the administration of the Arms Export Control Act. This act governs all exports of munitions and other military items from the United States. In essence, all munitions must be properly licensed by OMC before they can be legally exported from the United States. Failure to do so or obtaining the license through illegal means is a violation of the law.
- The Department of Treasury's U.S. Customs Service has been delegated by the Department of State to enforce the

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provisions of the Arms Export Control Act. These enforcement activities include investigations of purported violations of the Act and making arrests, seizures, and detentions if necessary. Customs has also been granted ancillary jurisdiction for enforcement of the Export Administration Act by the Department of Commerce. Customs both initiates its own investigations of purported violations of this law and also assists the Compliance Division when requested in conducting investigations. Customs also can and does take enforcement actions for this act, when necessary, such as making arrests, seizures, and detentions.

- The Department of Justice's Federal Bureau of Investigation monitors the activities of proscribed-country individuals and investigates espionage and other activities, which may sometimes involve export control violations.
  
- The Department of Justice is the basic prosecuting arm of the U.S. Government and is responsible for prosecuting export control violations, as warranted.
  
- The Department of State's Economic Defense Officers stationed at Embassies and Consulates abroad represent U.S. interests on export control matters and perform certain checks to ensure compliance with U.S. export control

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regulations.

- The Department of Energy monitors the shipment of, and advises on transactions involving, nuclear-related equipment and materials.
- The Department of Defense analyzes and provides advice on the security implications of individual transactions.
- U.S. intelligence agencies provide information relating to acquisitions by COCOM-proscribed countries.

We have taken a number of steps to improve coordination among these agencies and to ensure that the activities of each are focused effectively on export controls. We are pleased with our results. In the past 24 months we have successfully prosecuted five individuals and one company for criminal violations of the export control laws. Administrative action has been taken against twenty individuals and thirty three companies. Other administrative proceedings and criminal prosecutions are in progress.

Appendix 1 contains brief descriptions of representative criminal and administrative cases involving COCOM-controlled commodities and technology.

### 3. Industrial education



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The Compliance Division of the Office of Export Administration devotes considerable effort to acquainting the exporting community with its export control enforcement program and promoting public awareness of export controls. Four specific examples of the methods used are discussed below.

Speaking engagements are an excellent way to publicize the enforcement program. During the past two years, compliance personnel addressed senior executives and managers of some of the largest manufacturing and export firms in the United States. In addition, speeches were delivered before various seminars and symposiums for attorneys and marketing and export control executives. These speaking engagements provided an opportunity to acquaint several hundred exporting firms, including some foreign subsidiaries, with United States enforcement and administrative procedures such as the sanctions that may be imposed for violations of export controls.

Export Compliance Inspectors from the Compliance Division make unannounced visits to air, sea and overland facilities at ports of exit throughout the United States where they conduct selective examinations of export documents and inspections of related shipments to determine compliance with the Export Administration Regulations. On these occasions, the inspectors acquaint a different segment of the exporting community, the freight forwarders

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and carriers, with export control procedures and requirements.

The Compliance Division issues warning/educational type letters to the parties involved for various violations considered not serious enough to warrant criminal or administrative proceedings. The Division recently revised its procedures so that warning/educational letters are sent to the chief executives of the firms involved instead of lower level export managers. This focuses greater attention on the compliance action and helps to promote future compliance by the firm.

When criminal or administrative sanctions are imposed on parties involved in serious violations of export controls, an official press release is issued by the Department of Commerce. The press releases are distributed to international wire services as well as the local news media. This acquaints the exporting community as well as the general public with the export control enforcement program and serves as a deterrent to potential violators.

U.S. Customs is constantly conferring with various export industry spokesmen concerning the export control laws. These spokesmen include manufacturers who export controlled items, freight forwarders, customs brokers, and carriers including airlines and shipping companies. This liaison is conducted both by Customs domestic offices and by its representatives and attaches stationed at U.S. diplomatic posts overseas. The liaison includes

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explanations of the various export control laws, proper procedures to be met, and source development.

In September, 1978 the Federal Bureau of Investigation (FBI) instituted a program designed to develop information concerning targeting of classified industrial products by hostile intelligence services (HIS). This program is known as Development of Counterintelligence Awareness (DECA), and calls for a personal contact by a FBI field representative with an executive of as many industrial facilities handling classified contracts as FBI field resources will permit.

There are approximately 11,000 classified facilities in the U.S., and the FBI is concentrating on those facilities which deal in a product known or presumed to have been targeted by HIS.

As of August, 1981 the FBI has established and is maintaining contact with 5,786 classified defense contractors. In many instances these contacts have directly or indirectly resulted in a significant number of reports to the FBI of HIS activity, and these reports have allowed the FBI to initiate appropriate investigative activity.

The actions taken to educate industry, as described above, have increased the visibility of the export control enforcement community in the United States and abroad and thus enhanced its enforcement

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posture in the exporting community. Therefore, we suggest that it might be appropriate for the export control enforcement agencies of other member governments to undertake similar means to acquaint their exporting communities with their export control enforcement programs.

#### PROPOSALS TO IMPROVE MULTILATERAL ENFORCEMENT

##### 1. June 1981 COCOM Subcommittee meeting-overview

- a. A number of proposals were agreed to by the Subcommittee on Export Controls in the June 1981 meeting. The U.S. fully supports these proposals, which are set forth as Appendix II, and urges the Committee to adopt them.
- b. In addition, there were other proposals discussed at the Subcommittee meeting that were not adopted which we believe warrant further discussion. These are:
  - i. Establishment by member governments of statistics similar to those now deposited at the Secretariat concerning sales to all non-member, non-cooperating country destinations of commodities and technology whose export to a proscribed country would require prior Committee review, and the submission of such statistics to the Committee on a regular basis

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"Statistics similar to those now provided to the Secretariat should be maintained by each member government and supplied to COCOM on a regular basis regarding sales to all non-COCOM and non-cooperating country destinations of commodities and technology that would require COCOM review prior to export to a proscribed destination. These statistics will identify the specific technologies and equipment being sent to third countries and help identify possible sources or routes of diversion through non-COCOM and non-cooperating countries."

Restated: "Member governments consider the value and the possibility in the future of supplying statistical information on export to third country destinations of commodities and technology which would have required Committee review prior to export to a proscribed country."

The French, Japanese and Norwegian Delegates were unable to agree to the alternative text proposed by the United States which the Belgian, Canadian, Danish, German, Italian, Netherlands, Turkish and United Kingdom were prepared to accept. The United States delegate withdrew the proposal.

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- ii. Application of the IC/DV system to exports to member countries or cooperating countries of all commodities whose export to a proscribed country would require prior Committee review

"The Import Certificate/Delivery Verification (IC/DV) procedure should be applied to the export to all commodities (whose export to a proscribed destination would require COCOM review) to another COCOM member country or cooperating country."

CONCLUSION: The Subcommittee encouraged member governments to apply the IC/DV system to prevent diversions.

The Subcommittee concurred in this suggestion and agreed to resume the study of the possible extension of the application of the IC/DV system at its next session.

- iii. Forwarding of importing country's DV directly to the export country's export control services

"The DV procedure should provide for the DV to be forwarded by the importing country directly to the

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exporting country's export control authority."

The proposal did not meet with unanimous approval. The Subcommittee Chairman thought this proposal might be reviewed at the Subcommittee's next session, should the Japanese delegation be prepared to reconsider their position. The Japanese delegation were not in favor of changing the present procedure.

- iv. Possibility of establishing a procedure to require the owner of any embargoed product imported pursuant to an IC to notify any subsequent domestic purchaser of that product that its export is governed by the terms of the IC

"The Subcommittee should consider whether or not there is a need to provide for notification of subsequent domestic purchasers of items imported pursuant to an IC regarding license requirements associated with its reexport to a proscribed destination. Consideration should also be given as to how such notification could be implemented and the educational value of such a procedure."

All delegations having expressed their views, the United States delegate said that, in the light of

these views, his authorities would continue their study of this matter, especially the following possibilities:

- a) the IC might serve to encourage the importer to inform subsequent purchasers of the goods of the export control requirements to which they were subject;
  - b) the IC might indicate the final end-use of the goods in the importing country;
  - c) review the question of the standardization of ICs.
- vi. Compilation of a compendium of the COCOM export control laws, treaties, mutual assistance agreements and other agreements between member countries and cooperating countries

"A Compendium of member countries export control laws, treaties, mutual assistance agreements and other agreements between COCOM members which provide the basis for cooperation of COCOM cooperating countries should be compiled by the Secretariat with the assistance of member delegations."

CONCLUSION: The Subcommittee agreed that member



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governments should be invited to study means of making known to their Coordinating Committee partners their export control legislation.

The Chairman added that, in the light of what was deposited at the Secretariat, the Subcommittee could review this matter at its next session.

The Subcommittee concurred in the conclusion.

2. Increase resources devoted to export control enforcement

It has been previously noted that the Soviet acquisition effort with respect to advanced Western commodities and technology is increasing. Just as the acquisition effort increases so must the export control enforcement effort. To this end, the Compliance Division in the United States Office of Export Administration is being upgraded to office status itself. Additional resources (an increase of nearly 30 percent) allocated to the Compliance Office will allow it to open a field office on the West Coast. The field office will be located in San Francisco with a sub-unit in Los Angeles. About 10 percent of controlled commodities exported from the United States are shipped from San Francisco and 14 percent are shipped from Los Angeles, thus personnel in each location is most desirable to minimize travel and provide more effective coverage. The world-famous "Silicon Valley" is located in the San Francisco

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area, a fertile territory for the acquisition of strategic technology because of the sophisticated semiconductor manufacturing and testing equipment manufactured there. The United States encouraged other member countries to consider expanding their current resources allocated to enforcement by at least 10 percent to cope with the increased Soviet acquisition efforts.

### 3. Mutual assistance agreements

The COCOM Subcommittee recommended in June 1981 that member governments draw the attention of the officials negotiating mutual assistance agreements (such as those between Customs' Services of member countries) to the advisability of these agreements being sufficiently broad to encompass violations of laws enforcing COCOM commitments. We should encourage the negotiation of such mutual assistance agreements on violations involving COCOM-controlled commodities.

### 4. Increased and expanded sanctions for export control violations

Criminal sanctions for export control violations in COCOM countries are not very stringent. In most cases the maximum penalties are less than 5 years in prison and fines do not exceed \$25,000. Actual penalties imposed usually range under a year. Past practice indicated that export control violations are not viewed as serious offenses unless classified military information is involved. We

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encourage our COCOM allies to strengthen penalty provisions, vigorously prosecute violations and seek maximum penalties.

Administrative sanctions are generally not available to other COCOM member countries. They are unable, for example, to impose trading restrictions on particular firms or individuals. As a result, export control violators may repeatedly engage in the sale of strategic commodities. We suggest that other COCOM members seek legislative authority to deny export and reexport privileges of export control violators.

Under U.S. law, a denied party may not participate, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported, or to be exported from U.S., or produced abroad by persons subject to the jurisdiction of the U.S. The United States considers denial of U.S. export privileges to be the most effective sanction we have under the Act. The denial of export privileges to a U.S. firm can be a very substantial penalty if a significant portion of its business involves exports from the United States. In case of a denied foreign party, there is also an adverse economic effect to the extent the party is dependent on U.S. goods or technology to conduct its business. Further, placement on the denial list makes it considerably more difficult for the denied party to acquire U.S.-origin goods or technology, since it is a violation in itself for any U.S. or foreign firm to sell U.S.-origin goods or technology to a denied party.

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## 5. Information sharing

Laws in several COCOM member countries restrain disclosure, even on a confidential basis, of information regarding suspected export violations within their countries. We suggest our COCOM allies amend these laws to allow for exchanges of information on suspected violations through the COCOM channels.

As previously noted (Appendix II), the Subcommittee recommended that the member countries be encouraged to submit to the Subcommittee -- where feasible and permitted by member country law -- details of the identify of third country individuals and firms known to be engaged in or for whom there is a strong evidence to suspect them of being engaged in, diversions of embargoed commodities or technology to proscribed destinations. Also, the Subcommittee recommended that member governments should report to the Subcommittee, where feasible and permitted by law, the description: i) of embargoed commodities (whose exportation to proscribed destinations required prior Committee review) which were believed to have been diverted from the reporting country to a proscribed country; and ii) the methods employed to accomplish those diversions. The identities of the parties involved might also be disclosed at the member government's discretion. Building on the member countries' acceptance of the foregoing proposals, the United States proposes that -- where feasible and permitted by member country laws -- details of the

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identify of member country individuals and firms known to be engaged in, or for whom there is strong evidence to suspect them of being engaged in, diversions of embargoed commodities or technology to proscribed destinations be submitted to the Subcommittee. These are logical extensions of preventive information sharing and would considerably enhance the COCOM compliance efforts of member countries.

6. Opening of rapid communications channels

The United States would like to point out that preventive enforcement plays a large role in its export control enforcement program. In taking preventive action to frustrate potentially illegal exports, it prevents the loss of strategically-rated goods and technology to proscribed destinations. In frustrating diversions, time is of the essence and rapid direct contacts between appropriate services and their counterparts in other countries are the most effective; recourse to diplomatic channels possibly involving sufficiently long enough delays that diversions may take place rather than be frustrated. Therefore, the United States supports the United Kingdom proposal to the Subcommittee that a procedure for rapid communication between member countries' appropriate services and their counterparts in other countries be established.

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## APPENDIX II

Suggested Procedures for Improving Multilateral Enforcement Agreed Upon by June 1981 Subcommittee on Export Controls:

1. Annual (or more frequent) meetings of the Subcommittee

"The Subcommittee on Export Controls should meet at least once yearly to monitor export control enforcement. These meetings should generally be scheduled to last at least one week to permit the Subcommittee to give delegations an opportunity to develop contacts to exchange intelligence, investigative and other information, to discuss proposals for upgrading COCOM enforcement and to react to new methods used to accomplish illegal diversion."

CONCLUSION: The Subcommittee would meet annually unless the Committee considered there were no grounds for a meeting. In so far as possible, the regular meeting would be held in Spring and its length would be determined on the basis of the number of points on the agenda therefore. The Committee could likewise decide to convene extraordinary meetings of the Subcommittee at the request of one or more delegations.

The Subcommittee concurred in this conclusion.

2. Prior submission by each member government of a report on the

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activities of its export control enforcement services

"An updated report on each country's compliance activities should be submitted prior to such meetings." (The U.S. Delegation submitted COCOM Doc. CONTR. (81) 2.8 which gave complete details of the United States services dealing with export controls.)

RECOMMENDATION: The Subcommittee recommended that member governments table reports on the activities of their control enforcement services which they considered of general interest to the Committee's work; delegations tabling such reports should do so at least three weeks before the meeting of the Subcommittee.

The Subcommittee concurred in this recommendation.

3. Submission to the Subcommittee of the identity of third country individuals and firms known to be or suspected of being engaged in diverting embargoed commodities and technology to proscribed countries

"Each delegation should where feasible and permitted by law undertake to report to the Subcommittee the identity of third country (non-COCOM country) individuals and firms known, or suspected, or being engaged in diverting COCOM embargoed commodities and technology to proscribed destinations. This information will assist other COCOM members in determining the risks of diversion

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encumbent on exports to such third country firms."

RECOMMENDATION: The Subcommittee recommended that member countries are encouraged to submit to the Subcommittee -- where feasible and permitted by member country law -- details of the identity of third country individuals and firms known to be engaged in, or for whom there is strong evidence to suspect them of being engaged in diversions of embargoed commodities or technology to proscribed destinations.

The Subcommittee concurred in this recommendation.

4. Submission to the Committee by each delegation of a description of COCOM embargoed commodities believed to have been diverted from their country to a proscribed country

"Each delegation should undertake to report to COCOM the description of COCOM embargoed commodities (whose export to proscribed destinations required prior Committee review) which are believed to have been diverted from the reporting member's country to a proscribed destination."

5. Identification of the parties involved and the methods used to accomplish the diversion

"Where feasible and permitted by law, the identities of the parties



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involved, and the methods used to accomplish the diversion should also be provided. This information will appraise COCOM members regarding the acquisition by proscribed end users of strategic items and assist other COCOM members to police their strategic exports."

RECOMMENDATION: The Subcommittee recommended that member governments should report to the Subcommittee, where feasible and permitted by law, the description; i) of embargoed commodities (whose export to proscribed destinations required prior Committee review) which were believed to have been diverted from the reporting member country to a proscribed country; ii) the methods employed to accomplish those diversions. The identities of the parties involved might also be disclosed at member governments' discretion.

All delegations, France ad referendum, accepted the recommendation.

6. Increasing the monitoring of sales of COCOM embargoed commodities and technology to countries not cooperating in the IC/DV system

"Emphasis should be increased on closely monitoring sales of COCOM embargoed materials and technology to countries that do not participate in the IC/DV procedures. This should include provisions for pre-licensing and post-shipment checks on exports of commodities or technology which if exported to a proscribed destination would have required COCOM review. Such pre-licensing and post-shipment

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checks should be conducted on a regular basis by the exporting country's official personnel (e.g., by embassy staff in the recipient country) or through the cooperation of other COCOM member official personnel who may be posted closer to the location of the transaction check."

RECOMMENDATION: The Subcommittee recommended that emphasis should be placed, where necessary, on increasing the close monitoring of sales of COCOM embargoed commodities and technology to countries not participating in the IC/DV procedures. This would include provisions, for example, for the use on end-use certificates, for pre-licensing and post-shipment checks by all available means on exports of commodities or technology which, if exported to a proscribed country, would have required COCOM review.

The Subcommittee adopted the recommendation.

7. Implementation of a new DV procedure to permit the exporting country to require, on a spot-check basis, a second DV, possibly several months after the export, to confirm that the equipment is still in the consignee's possession or to determine what has become of it

"A new DV procedure should be implemented to permit the exporting country, on a spot check basis, to require a second DV, possibly several months after the export, to confirm that the equipment is

still in the consignee's possession or to explain what has happened to the equipment in the interim. The institution of this procedure is intended to insure that particularly sensitive equipment is not diverted subsequent to its receipt by the consignee."

The Subcommittee agreed to consider this proposal along with the next proposal.

8. Formulation of a standard form of procedure permitting the export control services of a member country to request the export control services of another member country to carryout post-shipment checks and to communicate the results

"A standard form and procedure should be formulated whereby the export control authorities of one COCOM member country may request the export control authorities of another COCOM member country to conduct and provide the results of post-shipment checks. Such checks would be requested only when there is a reasonable basis for concern regarding the ultimate destination of the COCOM embargoed equipment or technology."

The Subcommittee adopted the following recommendation:

"Each member government might, where there were reasonable grounds for suspicion, notify another member government of transactions where diversions would be possible. The governments thus alerted

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would, where feasible and permitted by law, inform the requesting government of the results of any investigations it might have carried out."

9. Specific reference in mutual assistance agreements between member countries' enforcement and prosecuting services to violations of export control regulations

"Intra-COCOM mutual assistance agreements between the various enforcement and prosecutive authorities should make specific reference to violations of export control regulations."

Restated: "Intra-COCOM mutual assistance agreements between the various enforcement and prosecutive authorities should be sufficiently broad to encompass violations of export control laws and regulations."

RECOMMENDATION: The Subcommittee recommended that member governments draw the attention of the officials negotiating mutual assistance agreements to the advisability of those agreements being sufficiently broad to encompass the violations of COCOM regulations.

The Subcommittee adopted the recommendations.

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## APPENDIX I

Descriptions of Representative United States Criminal and  
Administrative Cases Involving Strategic U.S.-origin Commodities and  
Technology

William Holden Bell and Marian W. Zacharski

William Holden Bell, a radar engineer employed by the Hughes Aircraft Company, and Marian W. Zacharski, a Polish national employed by the Polish American Machinery Company (POLAMCO) were arrested for espionage on June 28, 1981.

On July 9, 1981, a federal grand jury in Los Angeles returned a two-count indictment charging Bell and Zacharski with conspiracy to commit espionage in violation of 18 U.S.C. Sec. 794(c), and Bell with a substantive count of espionage in violation of 18 U.S.C. Sec. 793(e). The indictment charges that beginning in late 1978 Bell began providing Zacharski with classified documents pertaining to military radar and weapons systems in exchange for cash. From 1979 to 1981 Bell delivered film of classified documents to agents of the Polish government at various locations in Europe. Throughout this time he received regular payments as well as "special" film from Zacharski.

Trial is set for October 13, 1981.

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Rolf P. Herms and Werner R. Hilpert

On January 30, 1981, Rolf P. Herms, a West German national, was arrested at John F. Kennedy International Airport when he attempted to export a wide-range microwave surveillance receiver system to the U.S.S.R. in violation of the Arms Export Control Act, 22 U.S.C. 2778.

On January 31, 1981, the United States Attorney for the Eastern District of New York filed a complaint charging an attempt to violate the Act. The Court set bond at \$250,000.

On February 27, 1981, Rolf P. Herms waived indictment and entered a guilty plea to a one-count information. On May 11, the Court sentenced Herms to imprisonment for two years suspended, and a term of five years probation. It is noted that Herms was in prison from the time of his arrest in January until the day of the sentence in May, approximately four months.

The United States Customs Service and an investigative grand jury in the District of Maryland developed evidence that Werner R. Hilpert, a United States citizen, conspired with Herms to export this device, without having obtained a license from the Department of State.

Pursuant to a plea agreement, on May 1, Hilpert entered a guilty

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plea to an information filed on April 13, in the District of Maryland, charging him as an aider and abettor in the attempt to export this device in violation of 22 U.S.C. 2778. No date has been set for sentencing.

Spawr Optical Research, Inc.; Walter J. and Frances Spawr

On January 19, 1981, Spawr Optical Research, Inc., Corona, California, and its owners and officers, Walter J. and Frances A. Spawr, were sentenced in the U.S. District Court for the Central District of California. The Spawrs and the firm had been found guilty on December 12, 1980, of charges alleging conspiracy, making false statements to a Government agency, and violating export control laws in connection with the export of laser mirrors to the U.S.S.R. via West Germany and Switzerland in 1976 and 1977. The charges were based on evidence developed during an extensive investigation by the Compliance Division and U.S. Customs. The Court fined the corporation \$100,000, and sentenced Frances Spawr, the firm's secretary/treasurer, to five years imprisonment (suspended). She was placed on probation for five years. Walter Spawr, the firm's president, was sentenced to ten years in prison and five years probation for his part in the crimes. The Court suspended nine and one-half years of that sentence, but ordered that Walter Spawr be imprisoned for a period of six months. A condition of probation was that each must devote 500 hours to charitable work. The Court, during the sentencing, stressed the importance of

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the Government's export control laws and the necessity of strong enforcement of those laws.

On February 24, 1981, an Order was issued by the Department of Commerce denying Spawr Optical Research, Inc., and its principals all export privileges pending the final disposition of administrative and judicial proceedings.

Werner J. Bruchhansen, et al.

On August 19, a federal grand jury in Los Angeles returned a 60-count indictment against Anatoli Maluta, Redondo Beach, Ca., Sabina Tittel, Rancho Palos Verdes, Ca., Werner J. Bruchhansen, West Germany, and Dietmar Ulrichshofer, Austria, charging various violations of the Export Administration Act, the Arms Export Control Act, conspiracy, federal income tax laws and perjury before the grand jury. The indictment followed an intensive investigation here and abroad by the Compliance Division, U.S. Customs, Justice, and the Internal Revenue Service. The West German Government also cooperated in the investigation. The investigation disclosed a conspiracy to export various high-technology commodities to West Germany and elsewhere without required licenses from the Commerce and State Departments with knowledge that the equipment was intended for the Soviet Union and other Soviet Bloc countries. The commodities included semi-conductor manufacturing and testing equipment, electronic monitoring and communications systems and



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computer and computer peripheral components. The illegal procurement effort allegedly involved a network of interrelated U.S. and European firms.

The Department of Commerce had previously issued an Order temporarily denying U.S. export privileges to Bruchhausen, Maluta and Tittel as well as Techma GmbH, Dusseldorf, West Germany, Ing. Dietmar Ulrichshofer Vertriebs, Bad Reichenhall, West Germany and Electronic Elektronische Bauelemente GmbH, Vienna, Austria. The Order was issued to protect the national security and public interest and will remain in effect pending completion of administrative and judicial proceedings.

Marc Andre DeGeyter

An investigation by the FBI into allegations that Marc Andre DeGeyter, a Belgian, was commissioned by his Soviet clients to acquire a U.S. firm's highly sophisticated computer software technology was culminated in May 1980 with the arrest of DeGeyter. Subsequently, DeGeyter pleaded guilty to an information charging him with one count of violating the Export Administration Act and one count of violating a State commercial bribery statute. He was sentenced to four months in prison for violating the Act and was fined \$500 on the related criminal charge of commercial bribery. He also agreed to a \$10,000 civil penalty under the Export Administration Act.

The technology which DeGeyter sought is the source code (the mathematical formula behind a computer program) of the U.S. firm's data base and computer programming technology. The source code would require a validated export license for export to any destination other than Canada. No validated export license would be granted under any circumstances if the source code were to be exported to a proscribed destination.

During his attempts to obtain this technology, DeGeyter offered bribes, ranging from \$150,000 to \$500,000, to a salesman and the president of the U.S. firm as well as to an undercover FBI agent posing as an employee of the U.S. firm.

The investigation was conducted by the FBI in coordination with the Compliance Division. The Compliance Division initiated administrative compliance proceedings which resulted in the collection of the civil penalty in the amount of \$10,000. A period of denial of U.S. export privileges is also being sought.

Jacob Kelmer, et al.

Orders issued in August 1980 denied Jacob Kelmer, an Israeli national doing business as Excel Industries in Israel, as well as a Canadian national, Peter Virag, and his wholly owned company, DeVimy Test-Lab, Ltd., in Montreal, all U.S. export privileges for periods

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of 15 and 10 years, respectively. They had been charged separately with reexporting U.S.-origin semiconductor manufacturing equipment, valued in excess of \$1,500,000, to various proscribed destinations in Eastern Europe.

Coordinated by the Compliance Division, the investigation was conducted with the assistance of the U.S. Customs Service, Foreign Service Officers in The Hague and Tel Aviv, the Royal Canadian Mounted Police, and the Israeli National Police.

The investigation disclosed that Kelmer, through Virag, purchased the equipment in the U.S. for export to Canada, a destination not requiring special authorization. The equipment was delivered to DeVimy Test-Lab, the Montreal firm owned by Virag, and reexported without authorization from Canada to Amsterdam and other intermediate points from which it was sent to Vienna and elsewhere for ultimate delivery to the U.S.S.R. and other COMECON countries.

As a result of information uncovered by the Compliance Division, the U.S. Customs Service seized one shipment consigned to Virag. This equipment was ordered forfeited by a U.S. District Court and DeVimy, Virag's firm, was fined \$1,500 on a criminal charge. The Canadian authorities also fined DeVimy for violating that country's export laws.

Kelmer admitted his part in the illegal reexportations to the

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Israeli National Police. He was indicted in a U.S. District Court and an order for his arrest was issued. Kelmer's activities in this case were contrary to the provisions of both the U.S. Export Administration Regulations and a prior Denial Order issued against him in 1972 and still in effect.

A shorter period of denial was imposed on the Canadian parties because the evidence developed reflected that they had no knowledge that the ultimate destination of the equipment was to be Eastern Europe.

Gerald Starek, et al

In October 1979 Gerald Starek and Carl Story, former president and vice-president, respectively, I.I. Industries, Sunnyvale, California, and Robert Johnson, former president, Kasper Instruments, Mountain View, California, pleaded guilty in a U.S. District Court to a criminal charge of violating the Export Administration Act by illegally exporting semiconductor manufacturing equipment from the U.S. to a proscribed destination. Each individual was fined \$25,000, given a 5-year suspended prison sentence, and placed on 3 year's probation. Charges are still pending against two West German nationals, Richard Mueller and Volker Nast, but they are absent from the U.S. and cannot be extradited. Warrants remain outstanding for their arrest if they

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enter the U.S.

In July 1981 an Order was issued against Starek and Storey denying them all U.S. export privileges for a 3-month period together with denial of validated licensing privileges to all destinations for a period of 5 years together with denial of validated licensing privileges to all destinations for a 5-year period.

These actions followed an investigation in which the Compliance Division, U.S. Customs Service and the Royal Canadian Mounted Police participated. The investigation developed evidence that, during the approximate period April 1975 to January 1976, the parties effected the unauthorized exportation of strategically-rated semiconductor manufacturing equipment to a proscribed destination through a convoluted international route that included sales to firms including some "front" firms, in the United States, Canada, Switzerland and the Federal Republic of Germany.