

**EXPORT ADMINISTRATION ACT:
AGENDA FOR REFORM**

**HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC
POLICY AND TRADE
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
SECOND SESSION**

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EXPORT ADMINISTRATION ACT: AGENDA FOR REFORM

WEDNESDAY, OCTOBER 4, 1978

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL
ECONOMIC POLICY AND TRADE,
Washington, D.C.

The subcommittee met at 3:12 p.m. in room 2200, Rayburn House Office Building, Hon. Jonathan B. Bingham (chairman of the subcommittee) presiding.

Mr. BINGHAM. The Subcommittee on International Economic Policy and Trade will be in order.

We do expect some other members, but we also expect some votes on the floor and, therefore, in fairness to our witnesses I think we should proceed.

The subcommittee's major focus of attention next year will be on the extension and revision of the Export Administration Act. I plan to introduce a bill for this purpose in January, on which the staff will begin work immediately following adjournment.

The subcommittee will take extensive testimony on this subject next year. However, to help us in our efforts over the remainder of this year, we have asked three witnesses to give us a preview of their recommendations for improving the export-licensing process. They are: Mr. George Bardos, chairman of the Ad Hoc Committee on the Export Administration Act of the Computer and Business Equipment Manufacturers Association; Mr. James A. Gray, president of the National Machine Tool Builders' Association; and Dr. Fredrick W. Huszagh, executive director of the Dean Rusk Center for International and Comparative Law at the University of Georgia.

Welcome to the subcommittee, gentlemen. We look forward to your testimony.

Mr. Huszagh, we can go for about 8 minutes now and then we will have to suspend, unfortunately.

STATEMENT OF FREDRICK W. HUSZAGH, EXECUTIVE DIRECTOR, DEAN RUSK CENTER FOR INTERNATIONAL AND COMPARATIVE LAW, UNIVERSITY OF GEORGIA

Mr. HUSZAGH. Thank you, Mr. Chairman.

We are very pleased to be asked to comment on how the Export Administration Act could be improved with change in the future and how regulations adopted pursuant to the statute might be improved. First, a few comments on why the center, being an academic and research institution, is interested in such changes.

The declining rate of growth in this country will require that government produce government products more efficiently. The Export Administration Act is a good example of a government product in need of amendment to comport with contemporary standards of efficiency and effectiveness.

Absent such amendment, we feel our citizenry will lose confidence in government and our competitive position in the world markets will deteriorate along with our leadership in foreign affairs and our national security.

Without more, I shall outline the major points of my prepared testimony.

Mr. BINGHAM. I appreciate that.

Mr. HUSZAGH. I assume my prepared testimony will be put in the record.

Mr. BINGHAM. Yes. Without objection, your entire statement will appear in the record and we would appreciate it if you would summarize it.

SOME GENERAL PRINCIPLES OF EXPORT CONTROL

Mr. HUSZAGH. First, I believe evolving case law as well as past and current political theory suggest free trade by U.S. citizens is a fairly fundamental right. If this right is abridged by Government or by other citizens, they have some burden of proof to justify such abridgements. National security and foreign affairs are important national concerns but so are the citizens' rights. There should be a proper balancing of these interests.

Second, as government gets more complex, more decisions will be committed to an interagency decisional process. This process must be developed to approximate the sophistication of intra-agency decision-making. I do not believe that is the case now with the Export Administration Act.

Third, government decisions, especially in the executive branch, cannot ignore external costs. If decisions are made to bar export of a product, government should calculate the total costs of that decision in terms of lost sales or loss of opportunities for businesses to enter into the export market generally. Failure to properly acknowledge the full costs of government decisions will cause deteriorating citizen confidence in government action.

PROBLEMS IN THE ADMINISTRATION OF THE ACT

The Export Administration Act as now administered creates several problems. First, many decisions take time and create a lag in the sale process. A growing body of research suggests such time delay factors adversely affect our competitive position.

Second, decisionmaking under the act, especially concerning placement of products on the validated license list, creates an uncertainty that makes it very difficult for new-to-export companies to undertake the investment necessary to develop markets in many foreign countries. Consequently, they refrain from entering foreign markets and focus on domestic markets that are safer and involve less risk.

Third, the tying of licensing decisions to keystone technologies may further inhibit those U.S. products having the strongest competitive position in world markets. Research suggests that the level of R. & D.

in products correlates directly with competitive position in foreign markets' early phases of the product life cycle. If the United States fully capitalizes its leadership in terms of R. & D. regarding foreign markets, it will better capture foreign markets and thus limit the market available to non-U.S. manufacturers. Consequently, many foreign manufacturers will not be willing to undertake the R. & D. necessary to compete vigorously in such markets. Unfortunately, our export licensing regulations restrict most exports of our highest technology products having the greatest potential competitive edge in foreign markets, an edge that will not last indefinitely.

Fourth, although the Export Administration Act seeks several objectives, it does not require they be achieved simultaneously. In my opinion, every major decision made under the act should simultaneously seek to satisfy objectives of foreign affairs, security, and trade promotion.

Mr. BINGHAM. Excuse me. I apologize to all three of you but I am going to have to leave to vote. There will be a series of votes, so I think we'd better recess for approximately half an hour.

[Whereupon, a brief recess was taken.]

Mr. BINGHAM. Please proceed, Mr. Huszagh.

RECOMMENDATIONS

Mr. HUSZAGH. We recommend this subcommittee consider several amendments to the Export Administration Act during the coming months. These recommendations deal with the problems I have previously outlined.

First, the act's policies section should make clear priorities regarding objectives. If free trade is a right or something near to it, then the policies section should indicate the burden of proof is on those trying to encroach on that right for national defense and foreign policy reasons.

Second, special consideration should be given to the processes by which export products are moved on and off the validated license list. This process, despite the presence of advisory groups, is pretty much an internal government process. It is frequently controlled by national security rather than trade expansion interests. Affected parties in the private sector have little opportunity for a hearing adequate to understand the arguments that are being made and to counter those arguments with arguments of their own.

Third, we feel government processing of individual applications for validated licenses should be limited to only two or at most three decisionmaking levels. At the operating committee level, a formula ought to be devised that permits simultaneous consideration of foreign policy, national security, and trade promotion issues, and results in all cases in a decision to deny or approve. Parties not satisfied with the decision should have the right to appeal to a Cabinet level group consisting of the Departments of State, Defense, and Commerce. To the extent other Government entities like the Department of Energy have an interest in a case, they should be required to plead that interest through one of those three Departments on the basis of the priorities set forth in the preamble of the Export Administration Act.

We feel this decisional process will substantially reduce decision delay and will preclude many cases from being vehicles for resolving policy disputes between agencies. Jurisdictional disputes between agencies ought not be weighed routinely at the cost of individual citizens.

Fourth, the act should be designed to accommodate changes in priorities over time in terms of economic versus security issues. Continual resort to the legislative arena should not be necessary, and thus we recommend adoption of internal processing approaches that will automatically handle these adjustments in policy.

Finally, I am concerned that continued, increased reliance on interagency decisionmaking will circumvent the budgetary oversight power Congress now has over decisions processed through agencies. When the decisions are made external to agencies, Congress may retain some monitoring capacity through the legislation itself, but it loses much control associated with the very powerful tool of the appropriation process.

[Mr. Huszagh's prepared statement follows:]

PREPARED STATEMENT OF FREDRICK W. HUSZAGH, EXECUTIVE DIRECTOR, DEAN
RUSK CENTER FOR INTERNATIONAL AND COMPARATIVE LAW, UNIVERSITY OF
GEORGIA

I. INTRODUCTION

Export trade has always been a vital, though small, component of the nation's financial health, but the balance of trade surpluses of the sixties, as well as our own internal growth, have allowed the federal government to pursue political and security objectives without concern for their impact on export performance. Export control structures have developed which ignore the necessities of a dynamic and competitive export trade. Our present export laws and regulations are insensitive to basic realities of export trade. They fail to recognize fundamental differences in types of products and market characteristics. They are blind to the basic business processes by which American businesses evaluate and undertake risks in pursuit of trade expansion.

In contrast, countries reliant on export trade are sensitive to the characteristics of their exporters, products, and world markets. They can and do recognize important distinctions among product needs and market requirements. Thus, these countries insure that their export industries remain competitive in world markets.

Last spring, in testimony before the Subcommittee on International Finance of the Senate Committee on Banking, Housing & Urban Affairs,¹ I outlined the escalating conflict between elements of our "permanent government," that part of the Executive Branch which remains through changes in Presidents and administrations. With each element pursuing different policy objectives, the result not only inhibits trade directly, but also creates an environment of uncertainty dampening business interest in entering, expanding or maintaining export trade.

The Export Administration Act of 1969, as amended, is an excellent illustration of how conflicting agency objectives, supported by conflicting Congressional mandates, operate directly and indirectly to impair our export vitality. Testimony before this Subcommittee and others, indicates that the goals of export control are pursued with questionable effect and notable inefficiency. These goals are normally pursued with substantial indifference to the fundamental American commitment to free trade. Inflation and slow industrial growth require the government to act with greater effect for less cost. Legitimate government goals must be achieved with a minimum of undesired side effects. Shifts in emphasis among government goals must be accommodated continuously without repeated resort to legislative reform.

During the forthcoming legislative session, this Committee will be presented with a unique opportunity to give U.S. export trade a sharply higher priority in our national policy. I believe this can be achieved through techniques which do not impair other components of national policy and which set a model for both efficient and responsive government.

II. REFERENCE POINTS FOR REVISION OF THE EXPORT ADMINISTRATION ACT

In areas where the permanent government has become ensconced it is difficult to achieve a major change from past behavior through legislative action. The export licensing area is no exception.

The original Export Control Act of 1949 imposed limits on U.S. exports to bar military or strategic materials from communist countries. In 1962, the law was expanded to include exports of economic significance as well. These provisions resulted in administrative mechanisms and procedures which gave the highest priority to national security objectives.

In 1969, Congress sought to reduce these export restrictions by declaring that it was U.S. policy to encourage trade, to oppose restrictive trade practices fostered by foreign countries, to further U.S. foreign policies concerning international responsibilities, and to guard against short supply and abnormal foreign demand. Unfortunately, these expanded objectives have not displaced the permanent government's preference for maintaining national security as the highest priority. Further, it did not deter other elements of government from deploying these restrictive mechanisms to pursue non-security objectives which were of particular interest to them but perhaps of marginal utility to the country as a whole. Thus, past events created a mechanism that gave highest priority to restriction of exports, and no subsequent action has been able to dislodge this preference.

Federal regulation of export transactions has expanded considerably from its original concern with national security to include boycotts, sensitive payments, technology transfers, and alleged human rights violations. The complexities of these regulations and the randomness of their application make the exporting environment extraordinarily uncertain

for all classes of exporters--new-to-market, new-to-export and old-to-export. These exporters are frequently unable to predict whether they will have the opportunity to amortize necessary investments in export activities.

Sound government, if it is to foster a sustained and expanding export trade, cannot be oblivious to the uncertainty generated by the unpredictable pursuit of government objectives. The "black box" operation of the present regulations, especially when biased with goals that inherently restrict foreign trade, increases costs and delays without necessarily enhancing legitimate regulatory goals. These delays often result directly in loss of sales. The escalating administration costs associated with these regulations; increase the price of our exports in competitive markets. The associated confusion has made commitments to exporting too risky for new-to-export candidates. Even old-to-export companies are being forced to reconsider the nature of their commitment to export trade in areas and commodities covered by these regulations.

Legislative initiatives responsive to exporters' needs must reflect the legitimate concerns of the elements of the permanent government now involved, and balance them against the peculiar burdens imposed on export trade. There are several burdens which must be given special attention.

First, the internal procedures for considering validated licenses require a consensus among interested agencies before such a license is issued. This process delays licensing decisions and obscures these decisions from the view of those most interested in them--the exporters. These delays and the "black box" processing impede exporter negotiations with potential foreign buyers, especially those buyers who have alternative foreign sources of supply. Our export companies are at a significant competitive disadvantage in those areas where time and certainty are a component of the purchase decision.

Secondly, the lack of clarity in the criteria used to make these decisions, as well as the insertion of new criteria dealing with evolving foreign policy interests, produces an uncertainty that may directly inhibit company interest in exporting to particular markets, or exporting particular products. The Dresser case and Oshkosh Truck case as well as situations in Latin America dealing with human rights violations

are vivid illustrations of how discontinuities can be created in the export licensing environment which make responsible business decisions extremely difficult and risky.

Thirdly, the current licensing procedures and proposed revisions which focus on "keystone technologies" (revolutionary technologies as compared to evolutionary technologies) may well place the greatest impediments on the very sectors of our economy which have the greatest opportunity for significant exports abroad. A number of studies have established that research and development is directly correlated to export performance.² Unfortunately, the American industries having the highest levels of R & D expenditures are often the industries subject to the most burdensome controls under current and proposed policies in terms of delay and uncertainty.

It is a specific objective of some participants in the licensing process to retard transfers of new technology. These technologies are likely to be the ones in which we have the greatest competitive advantage, and the opportunity to achieve dominance in foreign markets. Market dominance by the U.S. exporter reduces the market potential for a foreign competitor, making it more difficult for the competitor to amortize the R & D costs necessary to duplicate the American product. On the other hand, if we continue to retard our exports in the most dynamic areas of innovation, our own exporters will have less opportunity of amortizing their own R & D costs. This leads to a reduction of domestic R & D, and a reduction of our own technological lead. Ultimately, this vicious cycle can affect not only our economic vitality, but also our military strength.

Apart from the above national security, foreign policy, and economic aspects of our licensing policy, we believe this Committee must become concerned with the legitimacy of the process by which government controls exports. Free trade is a fundamental tenet of American philosophy, yet it must now sustain the burden of proof as against security and foreign policy interests. Those most affected by the process have minimal access to it. They must frequently endure delay in silence, without explanation, and must accept denial with a minimum of recourse. These are not conditions which may long endure if cherished elements of our constitution are to remain vital. The actions of permanent gov-

ernment must remain accountable to the tenets of our constitution, and it is Congress's obligation to insure that they remain so accountable. Nowhere are they less accountable than in processes like those dealing with export licensing.

III. AN OUTLINE FOR PROPOSED LEGISLATIVE REFORM

Administrative regulations promulgated under the Export Administration Act of 1969, as amended, require all commodities and manufactured items having potential strategic importance to comply with the terms of either a general or validated license. Goods on the general license list may be exported without approval, but the exporter must observe certain limitations, maintain required records, and make periodic filings. Goods on the validated license list may not be exported without specific approval by the Department of Commerce, and compliance with a variety of limitations, recordkeeping requirements, and report procedures. An analysis of our interview data, Congressional hearings, government reports and scholarly literature suggests these regulations are implemented as described below.

During the course of any year, there is considerable administrative action that moves items from the general license list to the validated license list. Less frequently are items moved from the validated license list to the general license list. The decision to impose validated license requirements on particular goods is not subject to the due process requirements associated with adjudication or rule-making in normal administrative proceedings.

Once an application for a validated license has been filed, it is evaluated by the Commerce Department staff to determine if a validated license can be issued automatically under the existing staff criteria agreed upon by all of the relevant agencies.

If this staff approval cannot be given, the matter is set for review by the Export Administration Operation Committee, composed of a chairman employed by the Department of Commerce, and representatives from the Departments of Commerce, State, and Defense. Other departments such as Energy and NASA participate in the event that items come within their interest areas. This committee meets weekly and handles approximately

fifteen cases per week. The chairman summarizes the important issues presented by the application, and then each department representative may make general comments. Subsequently, a tentative vote is taken, and if there is not consensus to issue a license, the Operating Committee chairman seeks to identify the reason for a lack of consensus and determines if there is a basis for resolving these difficulties. If they can be resolved, a consensus is reached and a validated license issued or denied.

In the event consensus is not reached, the matter is referred to the sub-ACEP level, which is a committee composed of deputy assistant secretaries from each of the cognizant departments. This group meets monthly and acts on consensus only. In the event consensus is not achieved at this level, there are provisions for submission to the ACEP committee composed of assistant secretaries, but in actuality this committee seldom functions. Consequently, where consensus cannot be reached at the deputy assistant secretary level, items are referred to the Export Review Administration Board, composed of cabinet level officers. Here again the group has seldom met in formal session in the past few years, but has discussed issues at meetings convened for other purposes.

In the above procedures, the lack of consensus at any level has the effect of deferring decision until a later date. Of course, if there is agreement to deny the license, this process is terminated and the applicant has limited appeal rights.

The foregoing description suggests several amendments to Title I of the Export Administration Act. At a minimum, the amendments should improve the focus of the Declaration of Policies, better define criteria for constructing the control lists, and restructure the processes for approving validated licenses.

In the Declaration of Policies, we believe that the objective of encouraging exports should be established as the paramount objective. Foreign policy, short supply, and national security objectives should be achieved at the expense of export expansion only in cases where facts indicate this is the best course of action for both the short and long term. In essence, the Declaration of Policies should place the burden of proof on those who would limit exports.

For the control lists, the Act should be amended to clearly indicate that a decision to bring items under the Act, or to move them from a general to validated license list, is a rule-making process which requires some opportunity for a hearing. If the decision to place a product on the validated list is made more formal, many of the monitoring and assessment objectives sought by the periodic reports now required will be met automatically, and the burden of proof requirements imposed on those seeking national security and foreign policy objectives can be safeguarded.

Implementing regulations for this amendment might require consideration of how additions to the list will affect the processing of other applications, and how the delay imposed by addition to the list will affect U.S. export competitiveness in various regional markets.³ This requirement will encourage cognizant government agencies to limit their restrictions only to specific countries rather than apply them generally to broad categories. Furthermore, we would propose that the regulations should require periodic (biennial) review of all items on the validated license list. Their continuation on the list would have to be justified, and affected parties would have an opportunity to be heard on the issue.

Thirdly, the Act should be amended to specifically require that validated licenses be issued according to procedures that provide for a relative weighing of export, national security, and foreign policy objectives. The Act should also insure that decisions for approval or denial will be made within a brief period, and not continually delayed by the lack of consensus. This statutory amendment should be supported by regulatory amendments which would establish a voting process at the lowest decisional level that would insure an automatic decision by the Operating Committee. Both private and public sector parties would have the right to appeal the decision to a higher level with the burden of proof resting on those advocating export restraints. The next level would involve the Secretaries of State, Defense, and Commerce, with other departmental and White House officials participating in an advisory capacity. The appeal procedures would be streamlined and would not contain all of the safeguards provided for in the Administrative Procedure Act. Presumably, the President could personally override the

decision of this cabinet level group in exceptional cases.

Overall, the procedures sought by the proposed amendment would allow most cases to be resolved at the lowest level possible. However, it would also permit agencies to use select cases to test the current relative importance of export, security, and foreign policy objectives and the concomitant distribution of power among the various agencies. Such continued review opportunities help avoid the current situation. The national security concerns that were paramount in the 1960's have been allowed to dominate export decision-making well into the 1970's, even though the national security concerns have lost much of their importance when compared to our export and balance of trade concerns.

IV. SUGGESTIONS FOR FURTHER RESEARCH

Our review of personal interviews conducted this summer, Congressional testimony, and the extensive literature on East-West trade and export licensing, makes it clear that the proposed changes are needed and feasible. However, at least four streams of research should be undertaken, and the results made available before Congress amends the Export Administration Act.

First, there should be quantitative measurement of how elements of the licensing process affect both the willingness of American companies to export and the competitiveness of American exports. This measurement should distinguish the effects according to the type of market, type of product, and the period of the product life cycle.

Second, there is a need to determine if inter-agency procedures can be adopted which properly balance evolving national interests, which provide affected private parties with safeguards concerning a fair hearing on their request, and which result in more open, efficient, and effective government.

Third, extensive analysis must be made of the various parties and interests in the permanent government as well as those of elected posts, to determine if proposed inter-agency procedures adequately reflect the substantive and procedural interests of various agencies and individuals involved.

Fourth, there must be a perceptive analysis of the constitutional standing of the various national interests affected by export controls.

Administrative implementation of the Export Administration Act places the burden of proof on those seeking to export, thus, making exporting a privilege rather than a right. I feel both the evolution of case law, and the political theory underlying our government place this approach at the margins of the constitution. The priority we advocate for export trade will reverse this drift to the margins and reaffirm the basic tenets of our Constitution. Congress has become increasingly sensitive to the encroachment of government on basic freedoms. The outlined amendments are consistent with this trend, and if pursued, should stimulate government action that is efficient, effective, and proper.

V. SUMMARY

If the above-noted research discloses that current export licensing procedures do substantially impair overseas competitiveness of products where we have the greatest comparative advantage, and do inhibit companies from expanding into export markets, our adverse balance of trade requires legislative reform. If the research also discloses models for reform that adequately protect critical security and foreign policy interests without imposing significant impediments to current U.S. export trade and its future growth, legislative reform should adopt such models despite the political implications within the permanent government.

Apart from these pragmatic reasons for reform, the continued strength of our constitutional system requires Congressional action that restores the "right to trade" to a position of prominence among our fundamental rights and reaffirms that private parties substantially affected by government action have meaningful opportunities as to time, place and manner, to contribute to the decision, insuring that such action reflects a balanced assessment of all private and public interests involved. Toward these ends we recommend serious attention be given to the following types of amendments to the Export Administration Act of 1969, as amended.

First, the Act's Declaration of Policies could be clarified to stress the importance of exports and indicate the flow of exports can be limited for foreign policy and national security reasons only if there

is clear demonstration that benefits of such limitations exceed the costs. Second, amendments could better define the criteria to be used for constructing the control lists for both general and validated licenses. Third, amendments could be made to insure the decisional process on actual licenses is not delayed beyond a specific period without detailed disclosure on the reasons for delay. Fourth, the Act could be amended to streamline the issuance of validated licenses so that a decision to deny or approve a license would be made in the first instance, thus permitting both public and private parties dissatisfied with the decision to commence an appeal and assume the burden of proof of overturning the initial decision. Fifth, the Act could be redesigned to assure that the licensing criteria can be changed if circumstances demand. For example, through administrative procedures, it should be possible for the parties to ignore precedent in the event there are sudden shifts in economic growth. Finally, the statute could be amended to facilitate better external monitoring and assessment of these processes by Congress, the President, and the Courts.

Notes

¹ Hearings on Export Policy before the Subcommittee on International Finance of the Senate Committee on Banking, Housing & Urban Affairs, 95th Cong., 2d Sess., pt. 6 (1978).

² See V. Hirsch, *The Export Performance of Six Manufacturing Industries: A Comparative Study of Denmark, Holland and Israel* (Praeger: 1971); *International Economic Report of the President*, 120 (Washington, D.C.: U.S. Government Printing Office, 1977).

³ Greg Conderacci, "To Have Impact on Huge U.S. Trade Gap," *The Wall Street Journal*, September 27, 1978, p.2.

Mr. BINGHAM. Thank you very much, Mr. Huszagh.
We will hear next from Mr. George Bardos.

**STATEMENT OF GEORGE BARDOS, CHAIRMAN, AD HOC COMMITTEE
ON THE EXPORT ADMINISTRATION ACT, COMPUTER & BUSINESS
EQUIPMENT MANUFACTURERS ASSOCIATION**

Mr. BARDOS. Mr. Chairman and members of the subcommittee, I am George Bardos, vice president for the Control Data Corp. and chairman of CBEMA's Export Administration Act Subcommittee.

Accompanying me is John Collins of IBM World Trade, and chairman of CBEMA's International Trade Regulation Subcommittee.

Just a comment about CBEMA. The Computer and Business Equipment Manufacturers Association (CBEMA) represents the leading manufacturers of computer and business equipment. Last year the combined revenues of CBEMA member companies increased to more than \$40 billion, of which \$16 billion were derived from international sales. CBEMA members contributed more than \$2.4 billion to the U.S. balance of trade with exports of \$4 billion as compared to \$1.6 billion of imports in 1977.

Our member companies employ a total of 750,000 people in the United States. Typically, our members receive from 30 percent to over 50 percent of their revenues from overseas operations.

CBEMA and its member companies have participated actively in the review and revision of the Export Control Act of 1949, which led to the passage of the Export Administration Act of 1969. We participated also in the 1972, 1974, and 1977 extensions and amendments of that act. We are pleased to appear before the Subcommittee on International Economic Policy and Trade to relate our concerns about the current law and to suggest areas of change and revision for the subcommittee's consideration, regarding the Export Administration Act of 1969 as amended, which is scheduled to expire in September 1979.

We have actively participated most recently with the act in 1974 and 1977, and we are pleased to appear before this subcommittee and suggest areas of change and revisions for the subcommittee's consideration.

RECOMMENDATIONS

Our industry would like to take the opportunity at this time to present three specific recommendations which we believe will significantly improve the export licensing aspects of this act.

Currently, under U.S. law, all commodities require an export authorization. The recommendations and revisions we propose will improve the predictability of this process without diminution of national security purview.

There are two categories of export licenses, general, and validated. General licenses for exports—where a company does not need to apply in advance for Government preapproval—are representative of the first category of licenses. Validated export licenses—where a company must make an application to the Government for each individual case which may or may not be approved—are representative of the second category of licensing.

Under the general category, the Government specifies in advance what the rules are; then exporters are responsible for obeying the rules, and the Government monitors compliance and penalizes violators. However, when trading with controlled countries, industry is required to pre-submit certain end-use and end-user information.

Under the validated category of export licenses, private industry, and individuals submit requests for export licenses to the Government describing each transaction in advance, then the Government approves or disapproves the proposed transactions.

Now this latter form of licensing requires a significant amount of Government resources and places a much heavier paperwork burden on both Government and industry. Additionally, it results in uncertainty as to what will or will not be approved along with protracted leadtimes between the application for approval and the actual completion of that review.

The CoCom control list is not the same as the U.S. control list although the same descriptions are used, such as computers, peripherals and disks. The levels of performance of these items are the determining factor as to whether they are CoCom controlled or can be licensed at U.S. discretion. Only a small portion of the total list; namely, the higher performance levels, do in fact require CoCom approval. The majority of items, and therefore the majority of the current caseload can and are being approved at U.S. discretion without submission to CoCom.

It is desirable to minimize the number of cases that will require validated licenses without endangering national security. This could be done by issuing more general licenses, which will result in reduced paperwork and minimize delays and uncertainties. Thus, predictability, which is so vital for the U.S. exporter, will be achieved.

INCREASED USE OF GENERAL LICENSE PROCEDURES

Our proposal has two key features:

First, we recommend the validated license procedure—that is, the case-by-case prior approval—be limited to those cases that require CoCom approval.

The effect of this would be that all other cases that can now be approved at U.S. discretion without CoCom approval would fall under the general license procedure, and not require case-by-case prior approval.

Thus, attention would be focused on the exceptional cases, with a greater emphasis toward reducing less sensitive products to a qualified general license and elimination from the list altogether.

Based upon the experience of our industry, we estimate that this procedure would reduce the caseload and attendant paperwork up to 80 percent without jeopardizing national security and would permit the United States to concentrate only on CoCom-related cases. Significant savings in cost and manpower to both industry and Government would result.

In addition, the advantages of greater speed and predictability would have positive effects upon U.S. employment and the balance of trade.

TIME LIMIT OF LICENSING DECISIONS

Second, we recommend retention of the provision that requires cases submitted for validated license approval be determined in 90 days, but add automatic escalation to a secretarial level committee if a decision has not been reached at that time. Further, the higher level decision must be completed in another 45 days, and if the case is still unresolved, the President be given 45 additional days to reach a final decision. Any application for a validated license that has not been approved or disapproved within 180 days from the date of receipt would then be presumed conclusively to be approved.

This process will eliminate the protracted delays we have continually experienced and which have added to the uncertainty and unpredictability of exporting, costing the U.S. economy in lost business and jobs.

There are additional features of our recommendations which I will mention, but not describe at this time, such as the need for an Industry Advisory Committee for industry to interact with the Government to provide consensus on foreign availability of products, to emphasize the desirability of indexing and updating of CoCom control levels, and the need for a forum for discussing problems and difficulties of the export process.

We are prepared to work closely with you and your staff on the Export Administration Act and related issues.

We also encourage you and your subcommittee to provide the necessary oversight responsibility for the execution of the provisions of this act.

In closing, I would like to summarize CBEMA's position:

The Computer and Business Equipment Manufacturers Association represents an industry which employs almost three-quarters of a million persons in the United States. Last year, when the U.S. trade deficit reached nearly \$27 billion the industry made a positive contribution of \$2.4 billion to the U.S. balance of trade. The industry's deep and increasing involvement in international trade has led us to conclude that the U.S. Government and the U.S. industry have definite and distinct roles to play in achieving a sound international trade and monetary position.

The role of the Government is to maintain a sound domestic economy and to encourage and reinforce the efforts of U.S. companies trading abroad. On the other hand, industry must cooperate with the Government while seeking maximum return on its international business activities. An important aspect of international trade is the opportunity for job creation; this opportunity is vital to the United States. U.S. export activities must be balanced between economic, national security, political, and technological factors. Continued communication and cooperation between Government and industry, we believe, are the keys to long-range success in international trade and in supporting a sound domestic economy. The export administration process has too frequently in the past depended on uncertainty and delay to implement the views of the controllers. A turnaround in the international trade position depends on many factors not the least of which is swift and predictable export administration.

Thank you.

[A list of CBEMA member companies follows:]

CBEMA MEMBER COMPANIES

3M Co.	Liquid Paper Corp.
A. B. Dick Co.	Micro Switch, Division of Honeywell, Inc.
AMP Inc.	NCR Corp.
Acme Visible Records, Inc.	North American Philips Corp.
Addmaster Corp.	Olivetti Corp of America.
Addressograph Multigraph Corp.	Pitney Bowes.
Bell & Howell Co.	Royal Business Machines, Inc.
Burroughs Corp.	Sanders Associates, Inc.
Control Data Corp.	Sony Corp. of America.
Dennison Manufacturing Co.	Sperry Univac.
Dictaphone Corp.	Sweda International.
Digital Equipment Corp.	TRW Communications Systems & Services.
Eastman Kodak Co.	Tab Products Co.
GF Business Equipment, Inc.	Tektronix, Inc.
General Binding Corp.	The Standard Register Co.
Harris Corp.	Uarco Inc.
Hewlett-Packard Co.	Xerox Corp.
Honeywell Information Systems Inc.	
K/Tronic, Inc.	
Lanier Business Products, Inc.	

Mr. BINGHAM. Thank you, Mr. Bardos.
Mr. Gray.

STATEMENT OF JAMES A. GRAY, PRESIDENT, NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION

Mr. GRAY. Thank you, Mr. Chairman.

My name is James A. Gray. I am president of the National Machine Tool Builders' Association (NMTBA). With me are James H. Mack, NMTBA Public Affairs Director, and Edward J. Loeffler, NMTBA technical director.

Mr. BINGHAM. Excuse me, Mr. Gray. Would you like to have your entire statement inserted in the record and summarize it?

Mr. GRAY. Yes; thank you.

INTERNATIONAL MACHINE TOOL SHOW

Before proceeding with our suggestions for revisions to the legislation, we would first like to mention the recent International Machine Tool Show as a source of information for the U.S. Government authorities who are involved with export licensing. The International Machine Tool Show was held in Chicago, Ill., at McCormack Place from September 6 to September 15. The show area covered 640,000 square feet of space, making it the largest industrial show ever held in the United States. Over 97,000 registrants at the show saw all types of American and foreign machine tools—from the simplest to the most sophisticated.

The exhibits included machines from the Socialist countries of Eastern Europe and the People's Republic of China as well as from Western Europe, India, Japan, and South America—some 32 different countries.

Today Congressman Dan Rostenkowski, of Chicago, made a very important statement on the House floor, and I ask that Mr. Rostenkowski's comments be inserted in the record at this point.

[The statement may be found in the Congressional Record of October 5, 1978, on p. H11774 (proceedings of the House continued from the Record of October 4, 1978).]

Mr. GRAY. Attendance at the show was a wonderful opportunity to examine at first hand these machine tools and accessories, and to talk to the salesmen and sales engineers in detail about each product. It was our hope that many of the government authorities involved with the processing of validated export licenses would attend the show in order to make a comparison between the equipment we are trying to ship and the equipment being manufactured overseas, including equipment manufactured in the controlled countries.

Since the Departments of Defense and Energy have been the major objectors to granting export licenses for machine tools in the past, it is hoped that they sent numerous representatives who work on licensing problems to observe the equipment that we have long claimed is available from the Socialist countries—equipment that is becoming comparable to our own. This subcommittee may wish to question the DOD and DOE licensing officials as to how much interest they showed in updating their files on the availability of all types of machine tools manufactured in the Socialist countries, as well as in the rest of the industrial world.

As an example of equipment available from the Socialist countries, the Hungarian exhibit presented a 3-axis computer NC machining center on which the control was as advanced as many of those produced in the western world. Incidentally, the Hungarians candidly admitted—and I quote:

We were not allowed to purchase suitable machines and controls from the western nations and so we had to develop our own. Now we will compete with you in the world market.

When asked if the control contained a microprocessor, their representative replied, "Yes." When queried as to where the Hungarians were able to obtain microprocessors, he answered, "At any shop in Western Europe."

As this subcommittee is well aware, microprocessors, and the equipment in which they are used, are the subject of rather acrimonious debates among Government people as to whether they should even be allowed to be shipped from this country.

And now to proceed with our reasons for changing the existing legislation.

FOREIGN AVAILABILITY

Section 4(b)(2)(b) provides that the President may deny a license for national security reasons even if he determines that machines are available without restriction from sources outside of the United States in significant quantities and comparable in quality to those produced in the United States. We would like to see that the legislation includes some specific criteria for determining whether foreign availability of comparable quality and quantity exists.

In the same section it is suggested that specific criteria be included for determining whether national security controls should be imposed, even though foreign availability has been established.

In addition, it is suggested that this section be improved by requiring the President to not only "initiate" but conclude successful

negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. A reasonable period of time—such as 6 months—should be required for the conclusion of the negotiations.

RIGHT OF EXPORT

Section 4(d) states that: "Nothing in this act or the rules or regulations thereunder shall be construed to require authority or permission to export, except where required by the President to effect the policies set forth in section 3 of this act." This section has been misinterpreted by some to mean that no export may be shipped without a Presidential determination that a license should be granted. The wording of this section should be changed to make it clear that Congress encourages U.S. exports and makes export controls the exception rather than the rule.

DELEGATION OF AUTHORITY

Section 4(e) states that: "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." We suggest that the President be prohibited from delegating licensing authority to any agency, the head of which is not subject to Senate confirmation.

INFORMATION TO EXPORTERS

Section 4(g)(1) reads in part: "It is the intent of Congress that any export license applications required under this act shall be approved or disapproved within 90 days of its receipt."

The current bureaucratic interpretation of the paragraph is that if there is not enough time to process an application—and there seldom seems to be—the applicant is merely notified that an extension of time is required. It is suggested that the legislation be changed to require that exact and complete technical circumstances for the delay be submitted to the applicant.

The current section 4(g)(3) states: "In any denial of an export license application, the applicant shall be informed in writing of the specific statutory base for such denial." This provision has also been circumvented by broad and almost meaningless general statements for denial, such as "national security."

Attempts to obtain further information are usually fruitless. The legislative provision should be changed to not only require the specific statutory basis for a denial but also the exact technical reasons for that denial.

DEPARTMENT OF DEFENSE ROLE

Sections 4(h)(1) and 4(h)(2) assign to the Secretary of Defense the responsibility for reviewing license applications where the "export of such goods and technology will make a significant contribution to the military potential of such (a controlled) country."

Delays of up to 2 years have been experienced in the processing of license applications, and a great deal of the blame lies with the Department of Defense.

In order to speed up the licensing process, we recommend that the use of "precedents" in the licensing of similar exports be allowed. That is, instead of requiring a complete review of each licensing process, we recommend that the use of "precedents" in the licensing of similar exports be allowed. That is, instead of requiring a complete review of each license application on a case-by-case basis, authority be given to the Department of Commerce to approve license applications for machines which have been previously approved for shipment to the controlled countries. Subsequent licensing for similar machine tools would, of course, be subject to the appropriate end-use control.

Also to speed up the license processing, it is suggested that the Operating Committee decisions be made on a two-thirds vote of the departments and agencies that are members of the Operating Committee. This would improve the present situation whereby a unanimous vote of the departments and agencies is required.

However, it is recognized that, in some instances, national security considerations may still be considered by DOD to be of strong concern and, consequently, the following legislative suggestions are offered.

If the DOD position is in the—one-third or less—minority on the Operating Committee, DOD would be allowed 5 working days in which to file a written notice of objection stating that DOD wants to pursue the case on a higher level. If no written statement is received by the Operating Committee within the 5 days, the license would be issued. But if the statement of objection is filed, DOD would have 30 days in which to appeal the case to the President. The President would then be allowed an additional 30 days in which to prepare a final ruling on the case.

DEFINITION OF TECHNOLOGY

In section 4(h)(4)(A) the term technology is defined. This definition has proven inadequate and it is suggested that a new definition be written based on that given by Mr. J. F. Bucy of Texas Instruments Inc., during his testimony before the Senate Permanent Subcommittee on Investigations in May 1977.

FOREIGN POLICY CONTROLS

It is well known that the administration has been exercising control over U.S. exports for reasons of foreign policy. While we are not necessarily in agreement with this precept, we recognize that the Congress may wish to add some further foreign policy controls into the future legislation.

There may be times when sanctions may be justified in pursuit of foreign policy goals, but we don't believe that export controls are an efficient manner in which to apply those sanctions. In industries such as the machine tool industry, where long leadtimes prevail, these sanctions may be particularly inefficient because the foreign policy may shift before the equipment is finally manufactured. Other forms of sanctions, or "leverage," may be much more effective than a restriction on some exports.

We recommend that, if Congress considers changing the administrative authority for licensing controls based upon foreign policy considerations, the same foreign availability restrictions be imposed thereon as are imposed upon national security controls. We recommend that it must also be shown that the proscribed exports significantly contribute to a foreign country's pursuit of military policies which are significantly detrimental to the foreign policy of the United States.

We further recommend that the controls be administered by the Commerce Department in cooperation with the State Department.

When a license is withdrawn after prior issuance, a manufacturer may be faced with a large financial loss because he has proceeded to manufacture the machines in reliance upon a license having been granted. It is suggested that some recourse of indemnification be provided for the manufacturer who is faced with such a problem.

COCOM

The record before this subcommittee in the Cyril Bath case and in other testimony shows clearly that CoCom has not met its intended goals.¹ CoCom has most decidedly not been an effective means of denying the availability of high-technology equipment to controlled countries. NMTBA recommends that CoCom should either be made more effective or should be eliminated entirely.

Since it is thought in many Government circles that the CoCom agreement does serve some purpose, we recommend that the agreement be elevated to treaty status, subject to Senate approval. Further, it is suggested that the appropriate congressional committees be authorized to review on a regular basis the State Department's conduct of CoCom negotiations and foreign and U.S. exception request reviews.

In addition, the same time limitations should be placed upon U.S. review of foreign exception requests as are now placed upon the review of U.S. license applications.

COMMODITY CONTROL LIST

Finally, we would like to see the legislation strengthened in several areas to cover administrative details which have proven troublesome. Notably, the Commodity Control List, as issued by the Department of Commerce on behalf of the U.S. Government, should be required to spell out exactly the criteria for each item contained therein.

It should then be mandated that only the provisions printed in the Commodity Control List shall be considered when a license application is processed. The information required to be submitted with a license application shall be restricted to cover only those items specifically called for in the Commodity Control List; no other items, other than end use or foreign availability information, shall be required to be submitted with a license application.

Thank you for the opportunity of appearing before the subcommittee again. We will be glad to answer any questions you may propose.

[Mr. Gray's prepared statement follows:]

¹ See Export Licensing: Foreign Availability of Stretch Forming Presses," hearing before the Subcommittee on International Economic Policy and Trade, Nov. 4, 1977.

PREPARED STATEMENT OF JAMES A. GRAY, PRESIDENT, NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION

Good afternoon, my name is James A. Gray, I am President of the National Machine Tool Builders' Association (NMTBA). With me are James H. Mack, NMTBA Public Affairs Director, and Edward J. Loeffler, NMTBA Technical Director.

We would like to thank you for again giving us the opportunity to testify before this Committee on the subject of export legislation -- a subject which is of major importance to our industry.

As mentioned in earlier testimony, NMTBA is a national trade association comprised of about 400 companies accounting for some 90% of the United States machine tool production. Over 70% of these companies have less than 250 employees, while the entire industry has approximately 90,000 employees.

In previous testimony we dwelt on the difficulties our members have had in obtaining export licenses for the shipment of machine tools to controlled countries. We attempted to show why the COCOM controls are working only to the disadvantage of American industry. Furthermore, we tried to show that the Export Administration Act is not being followed by the various U. S. government departments and agencies as was clearly mandated in

the amendments to the Act made in 1977. The fact that the intent of the amendments have been circumvented has been brought sharply into focus by a review of Congressional committee reports, discussions with committee staff members, and additional discussions with congressmen and senators who were involved in writing the amendments.

We have also had the opportunity to observe, first hand, the licensing difficulties when we have been involved on behalf of some of our member companies in their attempts to obtain export licenses.

Today, with your permission, we would like to change the thrust of our testimony and suggest specific changes in the legislation. We will limit our complaints to brief explanations for the suggested changes. The conclusions we have drawn, and the suggestions we will make, are not primarily the thoughts of the NMTBA staff, but have come from discussions with our member companies and with various committees of the NMTBA that have been charged with the task of overseeing the problems connected with export controls and with the administration of those controls.

Before proceeding with our suggestions for revisions to the legislation, we would first like to mention the recent International Machine Tool Show as a source of information for the U. S. government authorities who are involved with export licensing. The International Machine Tool Show was held in

Chicago, Illinois at McCormick Place from September 6th to September 15th. The show area covered 640,000 square feet of space, making it the largest industrial show ever held in the United States. Over 97,000 registrants at the show saw all types of American and foreign machine tools -- from the simplest to the most sophisticated. The exhibits included machines from the Socialist countries as well as from Western Europe, India, Japan, and South America.

Attendance at the show was a wonderful opportunity to examine at first hand these machine tools and accessories, and to talk to the salesmen and sales engineers in detail about each product. It was our hope that many of the government authorities involved with the processing of validated export licenses would attend the show in order to make a comparison between the equipment we are trying to ship and the equipment being manufactured overseas, including equipment manufactured in the controlled countries. Since the Departments of Defense and Energy have been the major objectors to granting export licenses for machine tools in the past, it is hoped that they sent numerous representatives who work on licensing problems to observe the equipment that we have long claimed is available from the Socialist countries -- equipment that is

becoming comparable to our own. This subcommittee may wish to question the DoD and DoE licensing officials as to how much interest they showed in updating their files on the availability of all types of machine tools manufactured in the Socialist countries, as well as in the rest of the industrial world.

As an example of equipment available from the Socialist countries, the Hungarian exhibit presented a 3-axis CNC machining center on which the control was as advanced as many of those produced in the Western world. Incidentally, the Hungarians candidly admitted -- and I quote -- "We were not allowed to purchase suitable machines and controls from the Western nations and so we had to develop our own. Now we will compete with you in the world market". When asked if the control contained a microprocessor, their representative replied "Yes"! When queried as to where the Hungarians were able to obtain microprocessors, he answered, "At any shop in Western Europe". As this subcommittee is well aware, microprocessors, and the equipment in which they are used, are the subject of rather acrimonious debates among government people as to whether they should even be allowed to be shipped from this country.

And now to proceed with our reasons for changing the existing legislation. All section numbers refer to the Export Administration Act of 1969 as amended in 1972, 1974, and 1977. For clarity, the suggestions are given in order of the section

numbers in the legislation, rather than in order of importance.

Section 4(b)(2)(B) provides that the President may deny a license for national security reasons even if he determines that machines are available without restriction from sources outside of the United States in significant quantities and comparable in quality to those produced in the United States. We would like to see that the legislation includes some specific criteria for determining whether foreign availability of comparable quality and quantity exists. Our members have, in the past, submitted large quantities of catalogs of foreign manufacturers, as well as articles and pictures from trade journals, with their license applications. This material has been considered inadequate by the U. S. government for proving foreign availability. Numerous executives from our member companies, upon returning from visits to factories in the controlled countries, have offered to submit sworn affidavits attesting to the equipment they have seen installed in these countries. The U. S. agencies involved with processing the licenses have never seriously considered that such affidavits might serve to prove foreign availability and have never asked for them. It has been suggested by government officials that copies of sales proposals, purchase orders, or shipping documents might be of interest to them; this is obviously impractical as neither the buyer nor the seller of the equipment would seriously entertain a request for submission of such information.

In the same section it is suggested that specific criteria be included for determining whether national security controls should be imposed, even though foreign availability has been established. The national security of this nation is not enhanced if the subject equipment is freely supplied by a foreign nation. Rather, the national security of this nation is improved if our machine tool factories are kept operating at a high rate of production, thus enabling them to better meet their fixed expenses as well as to keep a trained workforce together.

In addition, it is suggested that this section be improved by requiring the President to not only "initiate" but conclude successful negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. A reasonable period of time -- such as six months -- should be required for the conclusion of the negotiations. Any more protracted time period would only result in the loss of the order for which the application was made and would render further negotiations academic. Requirements should be added that the negotiations should receive adequate publicity so that all parties involved would know the status of these actions.

Section 4(d) states that "Nothing in this Act or the rules or regulations thereunder shall be construed to require authority or permission to export, except where required

by the President to effect the policies set forth in Section 3 of this Act". This section has been mis-interpreted by some to mean that no export may be shipped without a Presidential determination that a license should be granted. The wording of this section should be changed to make it clear that Congress encourages U. S. exports and makes export controls the exception, rather than the rule.

Section 4(e) states that "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". We suggest that the President be prohibited from delegating licensing authority to any agency, the head of which is not subject to Senate confirmation. By this means the Congress will be able to maintain a closer control over the administration of the export legislation, and may more easily determine that the Congressional mandates are being followed.

Section 4(g)(1) reads in part, "It is the intent of Congress that any export license applications required under this Act shall be approved or disapproved within 90 days of its receipt". Although the inclusion of this provision was an improvement over past legislation, and the intent of the Congress was thought to be clear, subsequent actions of the bureaucrats has made a farce of the provision. The current bureaucratic interpretation of the paragraph is that if there is not enough

time to process an application -- and there seldom seems to be -- the applicant is merely notified that an extension of time is required. No reason is necessarily given for the required extension and if the applicant were to insist on adherence to the 90 day provision his license would be denied immediately. It is suggested that the legislation be changed to require that exact and complete technical circumstances for the delay be submitted to the applicant. In this way the applicant would be informed as to the precise reasons for the processing delay and could immediately submit additional material to substantiate his case, if necessary.

The current Section 4(g)(3) states, "In any denial of an export license application, the applicant shall be informed in writing of the specific statutory base for such denial". This provision has also been circumvented by broad and almost meaningless general statements for denial, such as "national security". Attempts to obtain further information are usually fruitless. The legislative provision should be changed to not only require the specific statutory basis for a denial but also the exact technical reasons for that denial.

Sections 4(h)(1) and 4(h)(2) assign to the Secretary of Defense the responsibility for reviewing license applications where the "export of such goods and technology will make a significant contribution to the military potential of such (a controlled) country". The Act further states that the

Secretary of Defense shall reply within 30 days after the notification of a request for a license. Delays in the processing of licensing applications have been mentioned previously but here is another place where long delays occur. Delays of up to two years have been experienced in the processing of license applications, and a great deal of the blame lies with the Department of Defense. Again, if a license applicant were to press for quick action on his application the result would be an even quicker denial. In order to speed up the licensing process, we recommend that the use of "precedents" in the licensing of similar exports be allowed. That is, instead of requiring a complete review of each license application on a case-by-case basis, authority be given to the Department of Commerce to approve license applications for machines which have been previously approved for shipment to the controlled countries. Subsequent licensing for similar machine tools would, of course, be subject to the appropriate end-use control.

Also to speed up license processing, it is suggested that the Operating Committee decisions be made on a 2/3 vote of the departments and agencies that are members of the Operating Committee. This would improve the present situation whereby a unanimous vote of the departments and agencies is required. However, it is recognized that, in some instances, national security considerations may still be considered by DoD to be of strong concern and, consequently, the following legislative

suggestions are offered. If the DoD position is in the (1/3 or less) minority on the Operating Committee, DoD would be allowed five working days in which to file a written notice of objection stating that DoD wants to pursue the case on a higher level. If no written statement is received by the Operating Committee within the five days the license would be issued. But if the statement of objection is filed, DoD would have 30 days in which to appeal the case to the President. The President would then be allowed an additional 30 days in which to prepare a final ruling on the case.

In Section 4(h)(4)(A) the term technology is defined. This definition has proven inadequate and it is suggested that a new definition be written based on that given by Mr. J. F. Bucy of Texas Instruments Incorporated during his testimony before the Permanent Subcommittee on Investigations (Governmental Affairs Committee, U. S. Senate) in May, 1977. Mr. Bucy's statement was: "Technology is not science and it is not products. Technology is the application of science to the manufacturing of goods or the producing of services. It is the specific know-how required to define a product or service that fulfills a need, and to design and manufacture it. The product is the end result of this technology, but it is not the technology."

Section 5(c) deals with Department of Commerce Technical Advisory Committees. Since the passage of the Export

Administration Amendment of 1977 there has been some improvement in the operation of the Numerically Controlled Machine Tool Technical Advisory Committee. However, we respectfully suggest that this subcommittee may wish to question members of other Technical Advisory Committees as we are aware that some of the members of other committees are far from satisfied with the operation of their particular TACS.

We now have a number of suggestions which we have not tied in directly with specific sections of the existing legislation. Nonetheless, we feel that these are important and should be given due consideration by this subcommittee.

It is well known that the administration has been exercising control over U. S. exports for reasons of foreign policy. While we are not necessarily in agreement with this precept, we recognize that the Congress may wish to add some further foreign policy controls into the future legislation. There may be times when sanctions may be justified in pursuit of foreign policy goals, but we don't believe that export controls are an efficient manner in which to apply those sanctions. In industries such as the machine tool industry, where long lead times prevail, these sanctions may be particularly inefficient because the foreign policy may shift before the equipment is finally manufactured. Other forms of sanctions, or "leverage", may be much more effective than a restriction on some exports. In addition, some sanctions often

prove to be counter-productive in that the country against which the sanctions are applied reacts in a manner not foreseen, and the exportation of other commodities to that country are adversely affected.

We recommend that, if Congress considers changing the administrative authority for licensing controls based upon foreign policy considerations, the same foreign availability restrictions be imposed thereon as are imposed upon national security controls. We recommend that it must also be shown that the proscribed exports significantly contribute to a foreign country's pursuit of military policies which are significantly detrimental to the foreign policy of the U. S. We further recommend that the controls be administered by the Commerce Department in cooperation with the State Department.

Because of licensing delays already mentioned, numerous of our companies have been placed in a rather precarious financial position because they have, in good faith, proceeded to order long delivery items and, in some cases, completed the assembly of machines only to learn that their licenses have been denied or have been withdrawn after prior approval. It is recognized that it is strictly a business decision as to whether to proceed with the purchase and/or construction of equipment while a license application is pending. Hence we feel nothing can be done about this problem other than to vastly improve the time for license processing. However, when

a license is withdrawn after prior issuance a manufacturer may be faced with a large financial loss because he has proceeded to manufacture the machines in reliance upon a license having been granted. It is suggested that some recourse or indemnification be provided for the manufacturer who is faced with such a problem.

The record before this subcommittee in the Cyril Bath case and in other testimony shows clearly that COCOM has not met its intended goals. COCOM has most decidedly not been an effective means of denying the availability of high technology equipment to controlled countries. NMTBA recommends that COCOM should either be made more effective or should be eliminated entirely. Since it is thought in many government circles that the COCOM agreement does serve some purpose, we recommend that the agreement be elevated to treaty status, subject to Senate approval. Further, it is suggested that the appropriate Congressional Committees be authorized to review on a regular basis the State Department's conduct of COCOM negotiations and foreign and U. S. exception request reviews. In addition, the same time limitations should be placed upon U.S. review of foreign exception requests as are now placed upon the review of U. S. license applications.

The members of COCOM interpret the COCOM regulations differently and, it is alleged, more loosely. For example, it is noted that the so called "Administrative Notes" in the

COCOM Regulations are observed in this country to require a license following procedures as stringent as for complete COCOM control. But, in the other COCOM countries, licenses are granted very freely under the Administrative Notes.

In addition, several major manufacturing countries are not parties to the COCOM agreement and trade freely with all controlled countries.

Finally, we would like to see the legislation strengthened in several areas to cover administrative details which have proven troublesome. Notably the Commodity Control List, as issued by the Department of Commerce on behalf of the U. S. government, should be required to spell out exactly the criteria for each item contained therein.

It should then be mandated that only the provisions printed in the Commodity Control List shall be considered when a license application is processed. We have seen some instances where a government official has stated that a license application should be denied because, in his opinion, the equipment proposed for sale is "too much for the stated end purpose". This is a judgment factor which should not be allowed. The information required to be submitted with a license application shall be restricted to cover only those items specifically called for in the Commodity Control List; no other items, other than end use or foreign availability information, shall be required to be submitted with a license application.

Also, the wording of the CCL is sometimes subject to broad and varied interpretation. For example, item 1091A(b) requires a license for "Equipment, which according to the manufacturer's technical specifications can be equipped with"... some other embargoed item. The intent of the wording is to limit the shipment of machine tools without numerical controls to, ostensibly, prevent the application of NC at some later date. However, this has been a very troublesome phrase. A simple comparative example of the effect of this phrase would be the purchase of an automobile which can be ordered with a 6 or 8 cylinder engine. If the car were bought with a 6 cylinder engine it might, under this CCL provision, be denied an export license because it "can be equipped with" an 8 cylinder engine, assuming that the 8 cylinder engine was embargoed. The point is that any piece of equipment can be upgraded if one takes the time and has the money to spend.

Thank you for the opportunity of appearing before the subcommittee again. We will be glad to answer any questions you may propose.

Mr. BINGHAM. Thank you, Mr. Gray.

BALANCING ECONOMICS AND NATIONAL SECURITY

Mr. Huszagh, it is very easy to say that our desire to increase our exports should be balanced against a decision to say no to an application for an export license on national security grounds. I think this balance occurs today in a way, but the difficulty as I see it, and the difficulty that I don't think you address in your testimony, is that this is really a case of comparing apples and oranges.

How do you measure, on the one hand, the desirability of certain exports from an economic point of view as against, on the other hand, a national security problem arising from our contributing to the capability of potential enemy power?

Mr. HUSZAGH. Well, I think that decision obviously has to be made at some level. Certainly as people debate these issues or they are debated in Congress or before the President, he must make those decisions, and he does on an everyday basis.

I think the problem is the way the process is now structured. Complete deference is given to national security claims. When such a claim is made, there is not an examination of it by those parties most affected. That is the private sector.

We certainly impose these tradeoff requirements, through the National Environmental Policy Act on all sorts of Government action dealing with environmental questions versus economic growth. I don't see why the same tradeoff approach cannot be imposed on export-licensing decisions. More importantly security risks reflect increased deference not to immediate security risks but to a desire to delay the Russians in allocating resources to security interests. I think that is getting pretty obtuse for blind defense, although it is an important consideration. It deserves serious consideration, but I don't think it deserves consideration in isolation.

Mr. BINGHAM. I am not saying that this is impossible. Maybe it should be attempted. Aren't you suggesting that we should have some kind of quantitative measure applied to both sides of the equation and some way of relating the two? In a given case you try to relate the economic considerations to some sort of scale, and I suppose the larger the transaction, the more important from the point of view of our exports. It is not so easy to say how you can put on a scale the various degrees of danger, if you will, that a given export might pose for the national security.

Mr. HUSZAGH. Well, it is not easy, but there are ways of assigning to certain kinds of technologies greater weight to a vote by the Defense Department than by the Commerce Department or the State Department but then a vote should be taken without a unanimity requirement for permit approval. Congress ought to direct some Government agency or a group of private and public sector interests to seriously attempt to work out such a tradeoff formula for various technologies.

When NEPA first took hold, everybody threw up their hands and said you could not compare apples and oranges. With some effort, however, we have managed to develop some criteria for trading off apples and oranges.

Mr. BINGHAM. I think your approach is sound and that we should really look at it very carefully. As I recall the hearings last year and the year before, it became fairly apparent that national security considerations were not absolute. Really, all we were doing was slowing down the development of the countries in a particular field, maybe delaying their acquisition of a particular type of computer, say a year or two, but not preventing it. So I think you have a good point. The problem is, I think, both in the minds of the administration and in the minds of a great many Members of Congress, when you say something is dangerous for national security, then that becomes a consideration overriding everything else.

Mr. HUSZAGH. Well, I don't wish to be facetious, but assume the Defense Department were given a budget, an amount that they could draw on. If they made a defense decision with a significant impact on export trade, they could draw on that budget to compensate for the trade impact. I suspect they would suddenly start considering these things very differently.

U.S. COMPETITIVE EDGE IN ADVANCED TECHNOLOGY

Mr. BINGHAM. One point you make intrigues me, and I don't recall seeing this stated the way you did, that almost by definition the type of products where we have the best competitive edge, the type that are farthest advanced in terms of technology, are the products of which people say, well, we should not export those to Eastern Europe because that will damage our security. There is a relationship there that tends to defeat one purpose or the other.

Mr. HUSZAGH. I certainly agree and would be glad to submit to the staff more elaborate details on the whole question of productive cycle. American companies have the greatest competitive edge in the first part of a product cycle, where R. & D. is intensive. American companies are not getting a chance to effectively exploit their competitive edge caused by early R. & D. investments, especially when they are subjected to the uncertainty resulting from foreign affairs issues being rolled into the control structure. If companies do not have adequate time to amortize their R. & D. investments, I am afraid they will just stop making the investments. A review of comments of chief executive officers of some of our largest corporations indicates they are very pessimistic about future investments. However, they make the investment decisions. Consequently, they are stating a self-fulfilling prophesy.

ARGUMENTS AGAINST CBEMA PROPOSAL

Mr. BINGHAM. Mr. Bardos, I am very much interested in your proposal for putting all of the U.S.-discretion cases under general license where they are not CoCom cases. What arguments do you anticipate would be made against that proposal, and how would you suggest that they be dealt with?

Mr. BARDOS. Well, one of the considerations that the export process looks at in the evaluation of validated license is who is the end user and what is the end use, and requires that end user to sign an end-use statement guaranteeing civil end use.

In other words, nonmilitary, nonstrategic. Also he can't reexport it and so on.

As part of this submission the way it is today the Government looks at those end users and at that end use and then agrees and then permits us to ship to those end users with that prescribed end use and one of their concerns is that if they don't have that information that some of this material, some of this equipment can go to users that they don't want it to go to.

My suggestion is we will continue to submit that type of information. We will continue to send a list of the prospects and customers that we intend to ship to. Here are signed statements of those trading officers guaranteeing this and we will submit that in advance and then from that list we can then ship on our own authority as long as we guarantee it will be to that set of customers with that end use.

So I think that will considerably allay any of their concerns because really what we are dealing here with are not strategic materials at all but those that are not even of high enough performance to go to CoCom.

So as long as the Government has control over the end use and end user, they should not have any complaint about this.

Mr. BINGHAM. And in the particular field that you are interested in, would there be many cases in that category?

Mr. BARDOS. Of the cases that we have today, 80 percent under this recommended procedure would not have to be case-by-case, not have to go to CoCom and could be approved. You won't even need approval, it would be under general license and we could ship. So we really believe this would be an 80 percent reduction in a caseload without any impact or any change to the levels.

LICENSING DELAYS

Mr. BINGHAM. I believe you suggested that today there is typically a delay of more than 90 days. I don't think that is fair from my recollection of the statistics. I think a large proportion of the applications are processed under that time limitation. We tend to hear about the others. My recollection is that a very high percentage get processed on time.

Mr. GRAY. Mr. Chairman, I think I made that statement, and in the case of machine tools, a vast majority of 90-day delays are positively the case.

Mr. BARDOS. I will speak for CBEMA as well as for Control Data. We never have anything less than 6 months, never. Never.

Mr. BINGHAM. That is something we have to check into again. I am considering the totality of the applications.

Mr. GRAY. There is another point on that. When they give you those statistics, they include in those statistics the validated license for equipment going to England, France, Germany, Japan, and the Western countries. That is why the figures are skewed.

Mr. BARDOS. Yes.

Mr. BINGHAM. Mr. Whalen.

CREATING AN INCENTIVE TO EXPORT

Mr. WHALEN. Mr. Huszagh, you really put your finger on the problem that has existed all these years; that is, we have conflicting objectives in this legislation. We are concerned about increasing exports

but at the same time in this legislation we express concern about our own strategic needs. As long as these conflicting objectives exist, I think we are going to continue to encounter these problems.

I think you have also indicated that one of the problems is that there is an incentive to limit exports. I wonder if you, Dr. Huszagh, can give us any indication as to how the system might be changed to provide an incentive to trade.

Mr. HUSZAGH. Well, a formula could be employed by the operating committee that differentiated among product categories exported to specific market areas. We should emphasize those markets where our products will be most competitive for the longest period in the product cycle. With such priority product/market pairings, we could then assign a very high priority to the export value versus the security value. If there is a significant security risk presented by exporting computers to the Philippines, it may well be worthwhile for the Commerce Department to have monitoring facilities outside Washington in the Philippines to reduce such risks and thus be able to target our most competitive products to major markets. If we do not make these product and market distinctions, we cannot allocate our resources efficiently. If you try to control everything centrally, you are going to incur enormous inefficiencies.

MAIN PROBLEMS FACED BY EXPORTERS

Mr. WHALEN. Both of the industry spokesmen have made certain recommendations. What, in your respective opinions, are the main problems that really have given rise to these recommendations?

We will start with you, Mr. Bardos.

Mr. BARDOS. Well, I didn't count the number of times I said "predictability," perhaps I should, but that is the key to our problem. We cannot predict what it is we can and can't do. We cannot guarantee things to customers. We cannot assure customers of deliveries in any kind of time scale. We cannot plan our factory, our production. We cannot realistically as business people know what we are going to do. Predictability is the problem.

The licensing process itself generates that uncertainty and that lack of predictability. So my major thrust is to improve that by reducing the caseload—make it simple, make it clean, make it direct and make it predictable.

Mr. WHALEN. To what extent have your products been denied in terms of sales?

Mr. BARDOS. Well, I would like to answer that perhaps with a little piece of what Mr. Huszagh said. We manufacture high technology products, the vast majority of which we do not market into Eastern countries.

Mr. WHALEN. You just don't even ask.

Mr. BARDOS. We don't talk about that. We are marketing products in this country and in Europe 10 and 20 times the speed we are talking about here. We only market those products that are either small in performance or so past its technological life that they have no military significance and all we ask is that it be slightly higher in performance than what they already have so we have a little bit of competitive edge and we don't believe that within that limit, within that list,

there are any military implications and that this long delay just deprives us and the country from what we think are legitimate, good, sound principles.

Mr. WHALEN. So the list is an important factor?

Mr. BARDOS. Absolutely. And it really takes a year for every computer for which we have ever got an export license.

Mr. WHALEN. Has the answer been in most instances favorable?

Mr. BARDOS. Most of the time I would say—and I hate to quote a statistic off the top of my head but I would say 90 percent of the time we do get a positive answer. Very seldom do we get a denial. Very seldom.

Mr. WHALEN. Mr. Gray, how about in terms of the industry you represent?

Mr. GRAY. The machine tool industry is placed at a great competitive disadvantage. About 45 percent of all the machine tools that were consumed outside of the United States in 1977 were consumed by the Socialist countries. U.S. machine tool exports accounted for only 2 percent of these countries' imports. West Germany, Japan, France, and Italy are getting a substantial share of the business. They all are signatories to the CoCom agreement. That is one of the problems we have.

Mr. WHALEN. That is due to CoCom decisions or to our own trade policy?

Mr. GRAY. The U.S. machine tool industry is becoming an unreliable supplier, as far as Socialist countries are concerned. It takes too long to get a license. They are on a 5-year plan, and when you are building factories you want to know that when a machine is due in a factory it will be there. We may not even have the license by the time the equipment is due to be delivered.

Some of the machines are special. We cannot take the chance on building it unless we do have a license. As a result of the Dresser controversy, our industry is becoming more and more concerned about the license being pulled back once it has been granted. We are concerned about becoming an unreliable trading partner.

With respect to national security, the machine tool industry is at the very base of our national defense structure, because you cannot have any guns or planes without a machine tool making it or making the machine it was made of. If we don't make those profits, so we can reinvest money in research and redevelopment, we are going to become a second class industry. Our country cannot afford that. It is in our national interest to keep this industry strong.

Mr. WHALEN. You have indicated that companies operating in other western industrialized states are not encountering those delays?

Mr. GRAY. That is right. I met with the president of a German conglomerate. They have several large machine tool companies. In West Germany, they submit a request for a license. If it is not denied within a short period of time, it is assumed that the license is granted. At least that is what our German competitors tell us about the way it is done there. I know foreign companies don't have the problem or the expense we have. To get a license the international trade director or sales executives of a U.S. company—many of whom are small businesses—might have to come to Washington a half a dozen or a dozen times. That is not true in other countries.

Mr. WHALEN. Just to restate an earlier question, is part of our problem also due to the fact that we have certain restrictions in our laws for most favored nations that aren't existent in other countries?

Mr. GRAY. No, that has not been a factor in keeping us out of the market. We had a little problem in Hungary but that has been resolved. Jackson-Vanik has certainly taken the American tool industry virtually out of the Soviet market. But the basic problem has been the fact that there is not a uniform interpretation of the CoCom regulations by the various countries. We are very strict in the United States, and the other countries are not.

Mr. WHALEN. Thank you, Mr. Chairman.

Mr. BINGHAM. Mr. Gray, what do you think of Mr. Bardos' suggestion that only those items that are on the CoCom list would require a validated license?

Mr. GRAY. Absolutely. We frankly don't have that problem. I believe that all the machine tools that are restricted now are on the CoCom list. The unilateral list for machine tools has been eliminated. Mr. Bardos has not had that experience.

NATIONAL SECURITY COUNCIL ROLE

Mr. BINGHAM. I understand that the NSC has now taken on a direct role in export licensing decisions. Is that your understanding?

Mr. BARDOS. Yes.

Mr. BINGHAM. What do you think of it?

Mr. BARDOS. Well, I am not very happy about that for several reasons, one of which is they get into the act, if you will pardon the phrase, after everything has been done. We have several cases that had rigorous review, took 8 to 9 months, were finally agreed by every agency to be approved that there were no military security implications and after all that was done it was then sent to NSC and then they looked at it for another 2 or 3 months and still we cannot communicate with them like we can communicate with the other agencies. We don't know what their concerns or their problems with the reviews are and we don't feel that we have any degree of interaction or partnership or understanding and so it is very unsettling.

Also, if they are making foreign policy determinations, I think we should know what they are. I think they should set rules or publish information so that we can follow. We have no particular concern that if the United States feels a certain way about a certain product or a certain country that they cannot restrict exports for those reasons but they should state that, publish that, air that, and let us understand that so we can then go about our business with that in mind.

We don't feel that happens with the NSC. For example, we understand they reversed a case for Tass with the Univac computer and subsequently the Russians went out, shopped, got bids from four other countries and I hear today the French got the business. That just seems to be an unusual way of proceeding.

IMPLEMENTATION OF 90-DAY REQUIREMENT

Mr. BINGHAM. We attempted to deal with a number of these problems in the 1977 amendments. For example, you would make some changes in the 90-day requirement. Have they been—

Mr. BARDOS. The 90-day requirement has really been totally circumvented. I have here typical letters that we get from the Commerce Department. They are normal letters. They all say, "This is to advise you that we have not been able to process it in 90 days." Their citation is section 4(G) of the act, that is all it says. It says, "At the present time your application is undergoing review by one or more agencies." It does not say what the problem is. It says they expect it to be another 60, 45 or 90 days and at that time we received no current information or reporting whatsoever.

So the 90-day clause as we see it is totally not followed, not effectively followed. It may be according to the paperwork but that is all.

Mr. GRAY. They could follow it, but it would mean a denial, if they do it within the 90 days, in most instances.

Mr. BARDOS. Well, I don't know if it would mean a denial. I think they would have to do their homework and make their decision on time. They just put it off. There is no pressure, there is no time cutoff. There is no reason to make these decisions promptly and accurately yes or no and get on with it so they just languish forever.

Mr. BINGHAM. Just a minute.

Mr. BARDOS. That is unfair. I retract "forever."

Mr. BINGHAM. You know that most of the decisions that really drag, drag on because of a difference of opinion among different agencies.

Mr. BARDOS. Yes, you are right. There are the difficult cases that take a long time and are going to take longer than 90 days and may take longer than 180 days, yes, and I am really not complaining about those as much as about the other 80 percent that take just as long that are not difficult at all and not sensitive at all and they mix them all together.

Mr. GRAY. Mr. Chairman, we dealt with that in our testimony. We suggested that the legislation be changed to require that exact and complete technical circumstances for the delay be submitted to the applicant in the case of a license that requires more than 90 days.

FOREIGN AVAILABILITY

Mr. BINGHAM. What would happen if we required that foreign availability be an absolute bar to the denial of a license?

Mr. BARDOS. I'm sorry, I don't understand the question.

Mr. BINGHAM. If the product or its equivalent is actually available in other markets, that means that the license could not be denied because of national security implications.

Mr. BARDOS. Well, that would certainly be helpful. The problem is we in industry that deal in that part of the world feel we have a very good understanding of what foreign availability is and we do not have concurrence with the Government as to what really is available either in the Western markets or in the Eastern markets.

One of the recommendations we are making is some sort of committee that can come up with a consensus that says, Yes, this is the level that is out there or the level is higher or lower than that so that we all have an understanding of what is available and set the proper limits.

Mr. BINGHAM. I'm sorry. I am going to have to interrupt you again. With your permission we may submit some additional questions in writing. We would also urge you to let us have your written suggestions for amendments.

Without objection, we will include in the record two reports received by this committee as required by the Export Administration Amendments of 1977, "Simplification of the Export Administration Regulations," and "Special Report on Multilateral Export Controls." [The information follows:]

REPORT ON SIMPLIFICATION OF THE EXPORT ADMINISTRATION REGULATIONS, SUBMITTED BY THE SECRETARY OF COMMERCE PURSUANT TO SECTION 114 OF THE EXPORT ADMINISTRATION AMENDMENTS OF 1977

INTRODUCTION

Section 114 of the Export Administration Amendments of 1977 amended Section 7 of the Export Administration Act of 1969 by adding the following new subsection:

(e) The Secretary of Commerce, in consultation with United States Government departments and agencies and with appropriate technical advisory committees established under Section 5(c), shall review the rules and regulations issued under this Act and the lists of articles, materials, and supplies which are subject to export controls in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such rules and regulations, by simplifying or clarifying such lists, or by any other means. Not later than one year after the enactment of this subsection, the Secretary of Commerce shall report to Congress on the actions taken on the basis of such review to simplify such rules and regulations. Such report may be included in the semiannual report required by Section 10 of this Act.

The following is a report of the actions taken pursuant to Section 114. It is divided into two parts: simplification and clarification of the Commodity Control List and simplification and clarification of the Export Administration Regulations.

COMMODITY CONTROL LIST

The Commodity Control List (Section 399.1 of the Export Administration Regulations) includes all commodities under the export licensing jurisdiction of the Department of Commerce. Its content is governed by (a) agreements reached in the international control structure known as COCOM on what commodities should be controlled multilaterally in the interests of our mutual security needs and (b) determinations reached by the Department of Commerce, in consultation with its advisory agencies, on what commodities should be controlled unilaterally for national security, foreign policy or short supply reasons.

Historically, the Commodity Control List (CCL) has been tied to the Census Bureau's Schedule B, a numerical code used to classify exports for statistical reporting purposes. The tie-in was based on the premise that exporters or their freight forwarders must select for Census purposes the proper Schedule B number for their commodities prior to export and that this number would provide a ready clue as to where the commodity would appear on the CCL. In short, use of the Schedule B was intended to facilitate for exporters the job of determining whether the commodity to be exported would require a validated export license or could be exported under a general license authorization.

In the fall of 1977, the Bureau of the Census announced that a major revision of the Schedule B would be issued, to be effective January 1, 1978. It was apparent that this major revision would render the tie-in between the Schedule B and the CCL inoperative unless the latter were completely revised before that date. Faced with this need to revise the CCL and the legislative mandate to simplify its regulations and control list, the Department took a close look at the desirability of retaining the Schedule B concept for its CCL. Our initial impression was that a CCL based on the multilateral COCOM list format would be simpler and shorter, since in many instances a single COCOM list entry covered several Schedule B based entries. For example, there were 22 entries on the CCL covering one COCOM entry for lasers and laser systems.

Consultation with Industry and Other Agencies

In investigating the feasibility of moving to the simpler COCOM format, the Department first consulted its technical advisory committees, whose industry members generally come from high technology firms that produce commodities under validated license control. Almost without exception, their reaction was to favor the COCOM format. However, they warned that a change to the COCOM format might adversely affect freight forwarders and firms that export commodities produced by others. Because these firms generally do not have the technical expertise needed to review the CCL entries for control purposes, the possibility existed that they would prefer to retain the Schedule B tie-in.

Inquiries with members of this group, however, indicated rather conclusively that the Schedule B-based CCL had become so technical that freight forwarders, for example, had to rely heavily on the exporter or supplier to advise them of the proper CCL entry. In other words, the premise that originally led to the decision to base the CCL on the Schedule B had lost its validity.

The Department then consulted its advisory agencies and obtained their concurrence to a decision to abandon the Schedule B concept and adopt the COCOM-styled format.

Publication of the New List

An Export Administration Bulletin was issued in November, 1977, announcing that, effective January 1, 1978, a revised CCL based on the COCOM format would become effective. A preliminary version of the new CCL was included in the Bulletin so that exporters could become familiar with it. A correlation between the old CCL numbers and the new was included to assist exporters in preparing for the transition. The revised CCL was published officially December 29, 1977, and became effective January 1, 1978.

The CCL in the COCOM format now contains approximately 200 entries with no reduction in the kinds of commodities subject to validated license controls. This contrasts with the old CCL that had more than 700 entries.

The issuance of the new CCL was accompanied by a short narrative which, in simple language, explained what the CCL is and how to use it. It takes a novice exporter, step-by-step, through the exercise of determining whether a particular export transaction requires a validated license from the Department.

Advisory Notes

The simplified CCL has been well received by the export trade. The change to the COCOM format also permitted the Department to issue advisory notes for selected CCL entries that cover multilaterally controlled commodities. These advisory notes, issued in May, 1978, identify commodities that are more likely than others to be approved for export to Communist countries.

EXPORT ADMINISTRATION REGULATIONS

Efforts to simplify and clarify the substantive portions of the Export Administration Regulations (Parts 368 through 390) proceeded along two fronts. The first was to identify specific portions of the Regulations or procedures that needed simplification or clarification, or even revocation. The second was to seek means to rewrite the entire Regulations in plain English.

With respect to the first stage, the Office of Export Administration (OEA), the Departmental unit assigned responsibility for administering the Export Administration Act of 1969, as amended, had identified two major areas that were in need of simplification and certain individual portions of the Regulations that it believed also could be improved. Not content with its own appraisal, however, the OEA requested each of its six technical advisory committees and the Subcommittee on Export Administration of the President's Export Council to identify portions of the Regulations or procedures that had proved bothersome to them. It also requested advice from the National Committee on International Trade Documentation, a non-profit organization devoted to simplifying and improving international trade documentation procedures. The latter responded by requesting its Technical Committee on U.S. Export Regulations and Procedures to work with the OEA on this project.

The two major areas identified by OEA were (a) the need for a simplified procedure to authorize exports for the servicing of equipment previously exported or reexported to Communist destinations and (b) the need to revise the technical data regulations (Part 379) so as to make them more easily understood.

Simplified Servicing Procedure

The problems of servicing equipment previously exported to Communist destinations were discussed at meetings of the Subcommittee on Export Administration of the President's Export Council and comments received were considered in drafting proposed changes in the Regulations. Inasmuch as

the Computer Systems Technical Advisory Committee had established a Subcommittee on Licensing Procedures, an initial draft of the proposed changes was submitted to that Subcommittee for review and comment along with a general request for advice on simplification and clarification of the Regulations. From this came recommendations from the full Committee. Included in the recommendations were six specific suggestions for revising the servicing draft. Four of the six suggestions were incorporated in a revised draft. Action on the others has been deferred pending further discussion in the Subcommittee on Licensing Procedures.

This revised draft was then reviewed by a member of the Subcommittee on Export Administration and again revised to incorporate advice received. At this point, the proposed revision was presented to the Interagency Operating Committee of the Department's Advisory Committee on Export Policy. Changes suggested by representatives of the advisory agencies were accepted. Because the new servicing procedure will require certain reports from exporters, approval of the Office of Management and Budget is required before the reporting requirements may be imposed. As of the date of this report, publication of the new servicing procedure in the Export Administration Regulations is awaiting this OMB approval.

Revision of Technical Data Regulations

With respect to simplifying the technical data regulations, the Computer Systems Technical Advisory Committee's Subcommittee on Licensing Procedures was requested to review an OEA draft. Although no formal report has been submitted by the Subcommittee to its parent Committee, the minutes of the Subcommittee meetings reveal that the draft was considered by the group to be an improvement in clarity and understanding. However, there were two Subcommittee recommendations which, if accepted, would involve substantive changes in the technical data regulations. One would remove a time limit on the supply of maintenance repair and operational data to Communist countries under general license. The other would eliminate the current requirement for the return of validated licenses once the technical data are exported or the license expires.

Although there had been no formal transmittal of these recommendations to OEA, it was decided to pursue the two issues immediately. The impact of the proposed change in removing the general license time limit is being explored with the principal government departments that advise the Department on these matters. The proposal to eliminate the requirement for the return of validated licenses was discussed at a recent meeting of the Subcommittee on Export Administration. As of the date of this report, both issues are unresolved.

Other Revisions

As mentioned earlier, certain individual portions of the Regulations had been identified by the OEA as in need of improvement. In certain instances, comments from the public reinforced this view. The following actions have been taken:

- o Two special licensing procedures, the Time Limit license and the Periodic Requirements license, were found to be obsolete and have been discontinued.
- o The requirement that an Application Processing Card, Form DIB-623P, be submitted with each export license application has been eliminated.
- o The provisions of General License GLC and GATS, both of which dealt with the departure of civil aircraft from the United States, were consolidated under General License GATS. General License GLC was thereupon deleted from the Regulations.
- o The export license shipping tolerance provisions were simplified and clarified.
- o The Service Supply procedure was revised to provide for a two-year extension in lieu of a one-year extension. Editorial changes were made in the provisions of two other special licensing procedures, the Project License and Distribution License, to conform to the revisions in the Service Supply procedure.

More remains to be done. The NCITD Technical Committee on U.S. Export Regulations and Procedures, for example, has begun the task of clarifying and simplifying the special licensing procedures in Part 373 of the Export Administration Regulations. The Committee also has forwarded other recommendations, including a suggestion that a summary of each Part of the Regulations be published to enable users to determine quickly whether the Part pertains to a particular question. This has been accepted for implementation. Other suggestions and recommendations submitted by the technical advisory committees and their members and from the export trade generally have been reviewed. Those accepted will be addressed by the OEA Procedures Staff in the months to come.

Plain English Project

The second stage in simplifying and clarifying the Export Administration Regulations involves an effort to rewrite the entire body of the Regulations in plain English. On a day-to-day basis, we make a concerted effort to write all regulations in a simplified and straightforward manner. Considerable resources are invested in this effort. One example is the new set of boycott regulations issued under Title II of the Act. They have generally received commendation for their clarity and the guidance which they give.

A rewrite of the entire set of Export Administration Regulations has to be addressed separately from the day-to-day work of preparing Regulations to implement policy decisions and simplifying procedures of immediate concern. To this end, the OEA has held preliminary discussions with commercial firms that specialize in preparing legal forms, insurance policies and government regulations in plain English. If funds permit, it is contemplated that a firm will be hired, not only to rewrite the current Regulations in plain English, but also to train the OEA Procedures staff to continue writing regulations in this style.

**SPECIAL REPORT ON MULTILATERAL EXPORT CONTROLS, SUBMITTED BY THE PRESIDENT
PURSUANT TO SECTION 117 OF THE EXPORT ADMINISTRATION AMENDMENTS OF 1977**

The following report is submitted in response to Section 117 of Public Law 95-52 (Export Administration Amendments of 1977).

Since the late 1940's, the United States and 15 of its Allies have acted in concert to control their exports of strategic items to the USSR, countries under Soviet domination, and Communist countries in East Asia. This multilateral coordination of export controls, which is pursuant to the Export Administration Act of 1961 and the Mutual Assistance Control Act of 1951, is the responsibility of an organization known as the Coordinating Committee, or COCOM, headquartered in Paris. The members of COCOM are the NATO countries (except Iceland) and Japan.

COCOM's main purpose is to achieve parallel administration of export controls. Its methods include: agreed strategic criteria; detailed lists of embargoed items; procedures for multilateral review of those lists; and procedures for ruling on individual cases as exceptions from the embargo.

The COCOM List

Comprehensive reviews of the COCOM List take place every three or four years. One is scheduled to begin in October 1978. Changes in individual items on the COCOM List may be proposed for Committee consideration at any time.

The COCOM members have agreed that the purpose of the embargo is to restrict the exports of goods and technology which would make a significant contribution to the military potential of the Communist world and thus have an adverse effect on the security of the member states. The members have agreed to control goods and technologies in the following categories: those which are principally used in peacetime for the development, production, or use of arms; those from which technology of military significance might be extracted; and those of military significance in which the proscribed destinations have a deficiency.

Under the procedure for periodic list reviews, each member may submit "original proposals" four months in advance of the review. "Counterproposals" may be submitted 45 days in advance. Two or more members may agree on the submission of "revised proposals" at any time during the 10-month review. Any member may submit a "proposal for consistency" at any time that it appears that a change in one item would require a change in another for technical consistency.

If an item has been in commercial use in the West for five years, an "Original proposal" to decontrol that item will be considered approved unless a counterproposal is submitted. Such proposals become effective 30 days after they are approved. Other agreements reached during the list review become effective 60 days after the end of the review.

In 1954 and 1958, major reductions were made in the COCOM Lists. Since then, list reviews have simply updated the items of advanced technology which are controlled. The process of considering which items meet the strategic criteria has been repeated many times over the years. As a result, changes during list reviews are now seldom dramatic. A few items are deleted and a few new ones added. But most of the changes consist of modernizing the technical descriptions to reflect technological progress.

The Mutual Defense Assistance Control Act calls for the Administrator of the Act to determine which items are strategic and for the U. S. to seek multilateral coordination of export controls. The Mutual Defense Assistance Control Act List is substantially the same as the COCOM List.

Exceptions Requests

About 1,000 "exception cases," valued at about \$200 million, are now reviewed by COCOM annually (the figure for 1977 was \$214 million). The U. S. submits almost half of these cases, and many of the others include U. S.-origin components. COCOM disapproves approximately 2 to 4 percent of these requests another 3 to 5 percent are withdrawn, and many more are revised to take into account changes recommended during the Committee review process. About half of the cases, by value, are computer-related. Many of the others are also in the electronic area.

This is a heavy caseload from the perspective of time required for careful review. However, the total is small in comparison with overall East-West trade. The value of COCOM exception cases in the 1970's has been running at a rate of less than 1 percent of exports from COCOM member countries to COCOM proscribed destinations.

Process for COCOM Decisions on Exceptions

In considering an exceptions request, the Committee examines the particular circumstances of the case in the context of the strategic criteria for export controls. Domestic political and economic factors in the exporting country or international

political factors in the importing country may be considered if they are relevant to the security of member countries. However, the principal determining factor is a judgment of minimal risk of diversion to significant military use.

All COCOM decisions are based on the rule of unanimity. Thus, exceptions are not considered approved until all members wishing to express an opinion have informed the Committee that they have no objections.

Member positions are due within three weeks of submission of the case. However, extensions are granted if more time is needed for review. On the average, U. S. cases are processed by COCOM within 20 days of submission (another 18 days, on the average, is required for transmittal to and from Paris). In reviewing cases submitted by other members, the U. S. takes care to be consistent with action on related or similar U. S. cases.

Uniformity of Interpretation and Enforcement

Other COCOM countries consider that U. S. policy on controls is overly restrictive. They have not committed themselves by treaty or formal international agreement to the embargo, and there are no internationally agreed sanctions for deviations from it.

The participating countries sometimes differ in their interpretations of the export controls agreed to by the Committee. Some embargo list definitions are complex. They suffer from translations into foreign languages.

Where participating countries have acted contrary to U. S. interpretations of Committee agreements, the U. S. has sought to restore an agreed interpretation. In some instances, our view has prevailed. In others, uniformity of interpretation has eventually been achieved through an agreed relaxation of the embargo. The differences often occur at the borderline of embargo cutoffs. With the evolution of technology in the East as well as in the West, embargo relaxations are, for the most part, a question of timing. If our Allies permit shipment of an item which we regard as embargoed, or at an earlier time than we believe is justified, they of course enjoy a competitive advantage thereby. However, now that the U. S. is submitting about half of the exceptions requests, many of them breaking new ground, our Allies understandably complain that we seem to be using the embargo for our commercial advantage, even though that is certainly not our intent.

Diversions of embargoed items, in violation of the export controls of the member countries, are also of serious concern. As part of the cooperative export control efforts, we have shared with other COCOM governments information concerning such violations.

Despite the variations of interpretation and enforcement, there is a durable uniformity among COCOM members on basic principles. All agree that strategic items should not be shipped to the East. All agree that coordination of national controls and parallel administration of those controls are essential. And all agree that the embargo must be based on consensus.

Exports from Countries Not Participating in COCOM

Although non-aligned Western countries do not participate in COCOM, they do maintain some form of national controls. Moreover, many of their industries use U. S.-origin parts or technologies subject to U. S. controls. Exports from subsidiaries of U. S. companies located in such countries are also controlled by the U. S., as are reexports of U. S. products by any foreign company. The extraterritorial reach of U. S. controls is a source of friction in our relations with some of our closest friends; but evasion of these controls is rare.

End-Use Safeguards

In some instances, approval of an exception request is conditioned on post-sale visits designed to provide assurance that the item continues to be used at the stated location for the stated civil purpose. In one such case the post-sale visit was not in fact permitted; we have advised the government of the exporting country that we would not approve a similar future request. In other cases the safeguards system seems to be working well. Presumably, this is largely because the importing countries do not want to jeopardize future purchases or the supply of spare parts for past purchases.

Recommendations

The effectiveness of multilateral coordination of national export controls is not likely to be improved through greater formalization of the international machinery. COCOM has survived as a reasonably effective organization for a far longer period than many others based on more formal instruments. Because of political sensitivities in member countries, some of them might find it difficult, if not impossible, to participate in a more formalized export control organization.

The COCOM strategic criteria, list review procedures, and exceptions procedures have been modernized to parallel policy and procedural provisions in U. S. legislation and to emphasize technology controls as much as possible. Enforcement of controls by our COCOM partners could be improved, although it is not yet clear what additional resources or other measures might be appropriate. It may be that U. S. enforcement could be strengthened with greater resources, but further evaluation of staffing and other requirements is still necessary.

The effectiveness of controls could be improved by further refinements of the embargo list. Updating definitions would improve coverage of new technologies. Freeing items which have become less critical from control would further the U. S. objective of encouraging trade. It would also reduce the caseload of exceptions requests. Current efforts along these lines are being pursued in cooperation with industry, working primarily through the Technical Advisory Committees established by the Export Administration Act.

Appendix A

Statistical Analysis of COCOM Exception Cases

Exports approved by COCOM as exceptions from the embargo have increased in the last 10 years. The value per year of approved cases in millions of dollars (at current prices) has been:

1967	11
1968	8
1969	19
1970	62
1971	56
1972	124
1973	106
1974	119
1975	185
1976	162
1977	214

While the value of exception cases approved has increased substantially in the past 10 years, the amounts are still very small compared to total exports. For example, from 1965 to 1975 total exports from COCOM countries increased from \$120 billion to \$568 billion, and the share of those exports going to COCOM-proscribed destinations increased from \$4 billion to \$32 billion.

The value of COCOM-approved cases is so small that one or two large transactions, reviewed because of the presence of some embargoed components, often skew the data.

The continuing factor which affects these statistics most significantly is the procedure whereby COCOM reviews a large number of cases involving computers for which there are many bona fide civil uses. Computers consistently account for more than half of the total value of COCOM-approved cases.

Computer Requests

	<u>Value (\$ millions)</u>	<u>Percent of Total</u>
1971	21	23
1972	66	39
1973	80	50*
1974	120	66*
1975	147	64*
1976	123	52
1977	168	63

*Omitting two exceptionally high value cases in 1973 and one each in 1974 and 1975 which would distort the figures. None of these four high-value proposed exports actually took place.

The 1977 figure of \$214 million represented 836 approved cases; of which 358 cases at \$55 million were submitted by the U. S. The U. S. accounted for more of the approved cases than any other country, but the value of the cases approved for Germany (\$64 million) exceeded the value of the cases approved for the U. S. (\$55 million). Poland was the recipient for the highest number of cases (210), but the value of approved exports for the USSR was the highest (\$78 million).

During the year the Committee completed action on 867 exception requests, disapproving 31 valued at \$19 million. Another 44 valued at \$7 million were withdrawn.

The Coordinating Committee operates on the basis of unanimity, giving each member a right to deny an exception request by formally objecting to it. During 1977 the U. S. availed itself of this right in 30 cases valued at just under \$18.8 million. The U. S. also entered objections to parts of specific equipment contained in seven exception requests. Most of these objections were directed at relatively small-value cases involving advanced integrated circuits, precision electronic testing equipment, or sophisticated computer peripherals. Four cases to which the U. S. objected involved the shipment of nickel powder to various destinations in Eastern Europe in quantities that were believed to be too easily diverted to strategic uses.

Among the more substantial cases to which the U. S. objected were three proposals involving the transfer of advanced technology. The objection to a \$5.6 million proposal to transfer power transistor production equipment and technology to the Soviet Union was that the equipment and technology to be provided would permit a significant expansion of Soviet capabilities to manufacture reliable high-quality devices for military as well as civilian uses. The reasoning for objecting to a sale of know-how and equipment for the manufacture of radio link equipment to Hungary was that such a transfer would significantly reduce the technology lead of the West in an area which is of particular military importance. The U. S. objected to a proposal to sell know-how and manufacturing equipment for the production of advanced metal oxide semiconductor integrated circuits to Romania because this transaction would have made a significant contribution to the development of an integrated circuit industry in Eastern Europe.

The U. S. also objected to a proposal to sell the Soviet Union a \$3 million consumable electrode vacuum arc furnace because of the possibility of diversion to the production of super alloys for strategic purposes. A sale of a \$1.7 million hybrid computer system to the Soviet Union was also objected to by the U. S. on the ground that the end users did significant strategic work for the Soviet armed forces.

The 981 new requests presented to the Committee during 1977 were up from 926 the year before. These figures are down markedly from the record 1,276 cases set in 1975 (just prior to the April 1976 revision of the embargo list).

Appendix BDescription of Illustrative CasesCase 1: Suspect end-user

A. U. S. firm was denied a license to export equipment of lower performance than others which had been previously approved for export to a proscribed destination. The reason for the denial was that the stated end-user was an institute engaged in research of a highly strategic nature, whereas end-users for the approved higher-performance exports were clearly engaged in predominantly civil activities. The U. S. applicant suspected that competitors in other Western countries would get the business. Our consultation with the governments of other potential supplier countries resulted in a reasonable degree of assurance that this was not likely to happen.

Case 2: Too high performance for stated end-use

A. U. S. firm was denied a license to export equipment of about the same performance level as other equipment previously approved for export to a proscribed destination. The reason for the denial was that the equipment proposed for export had a higher performance than required for the stated application. The unused capacity could have been made available for other less benign purposes. Lower performance equipment was substituted and approved.

Case 3: Equipment for semi-conductor production

Several U. S. applicants have been denied licenses to export equipment for the production of integrated circuits even though the technology is 10 or more years old, and stated end-uses were to make devices for televisions and other civil items. This is because of the broad range of strategic uses for such circuits and the backwardness of Soviet technology. The USSR and the PRC have been partially successful in obtaining such equipment from the West surreptitiously. Following U. S. approaches to the countries of origin, there has been a considerable tightening of compliance in those countries.

Case 4: Dual use

The U. S. has denied the export to proscribed destinations of equipment used in underwater sounding for petroleum research because it also has military applications. Another Western country, which had sold or leased comparable equipment, tightened controls as a result of a U. S. approach.

Mr. BINGHAM. Mr. Huszagh, Mr. Bardos, Mr. Gray, thank you very much.

The subcommittee stands adjourned.

[Whereupon, at 4:35 p.m., the subcommittee adjourned.]

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