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REPORT

drawn up on behalf of the Committee on External Economic Relations

on the Pégard company, restrictions on strategic exports and US-EC technology transfer

Rapporteur: Mr M. TOUSSAINT

WG (VS1) /4369E

PE 92.716/fin.

At its sitting of 13 September 1984, the European Parliament referred the motion for a resolution by Mrs Lizin on the Pégard company and exports to COMECON (Doc. 2-466/84) to the Committee on External Economic Relations pursuant to Rule 47 of the Rules of Procedure.

At its sitting of 23 October 1984, the European Parliament referred the motion for a resolution by Mr Linkohr on the restrictions imposed by the USA on the international transfer of technology and the damaging effects on industrial development in the European Community (Doc. 2-721/84) to the Committee on External Economic Relations as the committee responsible and to the Political Affairs Committee, the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on Energy, Research and Technology and the Committee on Transport for their opinions.

At its meeting of 21 November 1984, the committee decided to draw up a report and appointed Mr Toussaint rapporteur.

It considered the draft report at its meetings of 26 April 1985, 26 June 1985, 25 September 1985, 26 September 1985, 19 December 1985, 20 November 1986, 28 January 1987 and 29 January 1987.

It organized a hearing on the subject on 26 September 1985.

On 29 January 1987, the committee adopted the motion for resolution as a whole by 12 votes to 0 with 10 abstentions.

The following took part in the vote: Mr Seeler, chairman; Mr Pons Grau, 2nd vice-chairman; Mr Toussaint, 3rd vice-chairman and rapporteur; Mr Blumenfeld (deputizing for Mr van Aerssen), Mr Cano Pinto (deputizing for Mr Motchane), Mr Cohen (deputizing for Mr Topmann), Mr Escuder Croft, Mr Ford, Mr Grimaldos Grimaldos, Mr Hindley, Mr Lemmer, Mr Moorhouse, Mr Novelli, Mr Papakyriasis, Mrs Roberts, Mr Rossetti, Mr Saridakis (deputizing for Mr Pelikan), Mr Silva Domingos, Mr Tridente, Mr Zahorka, Mr Zarges and Mrs Wieczorek-Zeul (deputizing for Hitzigrath).

The opinions of the Political Affairs Committee, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Transport are attached; the Committee on Energy, Research and Technology has not delivered an opinion.

The report was tabled on 9 February 1987.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Committee on External Economic Relations hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

A

MOTION FOR A RESOLUTION

on the Pégard company, restrictions on strategic exports and US-EC technology transfer

The European Parliament,

- having regard to the motion for a resolution by Mr LINKOHR on American restrictions on the international transfer of technology and the damaging effects on industrial development in the European Community (Doc. 2-721/84),
 - having regard to the motion for a resolution by Mrs LIZIN on the Pégard company and exports to Comecon (Doc. 2-466/84),
 - having regard to the motion for a resolution by Mr MATTINA on relations between the Community and the Soviet Union (Doc. B 2-558/85),
 - having regard to the motion for a resolution by Mr PORDEA, Mr de CAMARET and Mr ROMUALDI on the resumption of negotiations between the EEC and COMECON (Doc. B 2-643/85),
 - having regard to the report of the Committee on Energy, Research and Technology on technology transfer (Doc. A 2-99/85)¹,
 - having regard to the report of the Committee on External Economic Relations on relations between the European Community and the CMEA and the European member states of the CMEA (Doc. A 2-187/86),
 - having regard to the report of the Committee on External Economic Relations on the Pégard company, restrictions on strategic exports and US-EC technology transfer, and the opinions of the Political Affairs Committee, the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Transport (Doc. A 2-226/86),
- A. whereas there is a close link between scientific and industrial development and freedom to exchange ideas, knowledge and information,
- B. having regard to the interactions between Western Europe and the United States at all levels of industry and science,
- C. whereas the Soviet Union and the United States have attached increased importance to defence policy and related technological developments since the middle of the 1970s,
- D. whereas the scope of American export control legislation is much wider than that of the laws of most other countries (particularly the Member States of the European Community) and also covers re-exportation from third countries,

¹ OJ No. C 68, 24.3.86

- E. whereas it is becoming more and more difficult to distinguish between purely civil and purely military technology,
- F. perturbed by the fact that the United States are more and more restricting transfers of new technologies, even to their Western Allies, to the detriment of trade between all parties concerned,
- G. recognizing that many of these restrictions imposed by the US serve American commercial rather than security interests,
- H. whereas the COCOM member states have agreed considerably to extend the lists of products and know-how that may not be exported to the Eastern bloc and have undertaken to comply with embargo agreements,
- I. whereas the CMEA and the Community have embarked upon talks aimed at putting their relations on a footing of mutual official recognition and improving and expanding economic relations between the Community and the European member states of the CMEA,
- J. anxious to arrive at a happy medium between the normal imperatives of a defence policy and the desire to extend free trade as far as possible,
 - 1. Notes that the controls imposed unilaterally by the United States on transfers of technology in addition to the COCOM controls limit Western Europe's access to American technology and thus hamper mutual economic relations and may impair scientific and research cooperation,
 - 2. Acknowledges the need for an agreement such as COCOM to limit or ban certain exports to certain countries;
 - 3. recognizes that American industry suffers the trade consequences of the export restrictions imposed by the Export Administration Act and the COCOM lists and that European industry often suffers serious trade consequences and job losses in consequence of the export restrictions imposed by the Export Administration Act and the COCOM lists;
 - 4. Wonders about the effectiveness of some restrictive measures when the same products can be obtained on other markets and some Member States of the European Community have not joined COCOM, and believes that it would be appropriate to confine the COCOM lists to defence technology not available on the open market;
 - 5. Draws attention to the fact that there could be conflicts between some Community provisions and COCOM rules;
 - 6. Takes the view that COCOM agreements should be formalized and revised at regular intervals;
 - 7. Believes that the COCOM members must revise and review the lists of restrictions more frequently and more quickly so as to keep pace with technology change;
 - 8. Calls for the criteria for limiting technological exports to be defined as fully and precisely as possible early enough for them to be effectively applied;
 - 9. (a) Draws attention to the fact that a gentlemen's agreement that is not directly enforceable in law and under which arrangements are administered by agencies within the Member States has been acceptable hitherto,

- (b) Supports the retention of coordination and decision-making mechanism for COCOM and does not believe that formally binding arrangements would be appropriate,
 - (c) Requests the Commission to examine to what extent, bearing in mind the internal market, the Community can be included in COCOM as a separate legal entity,
 - (d) Calls on the Member States of the Community to give their consent to this move,
 - (e) Condemns the fact that the Commission is at present not even allowed access to the three COCOM restricted lists;
10. Warns that Community integration in the areas most concerned, i.e. data-processing, computerization, biotechnology, aeronautics and astronautics, new materials and telecommunications, must not be obstructed by unilateral action by individual COCOM members;
 11. Calls on the Council and the Commission and on the Member States to invite the United States to guarantee unlimited transfers of technology and information between the United States and the EEC;
 12. Calls on the Commission to submit to Parliament proposals concerning the principles that should govern transfers of technology between the EEC and the countries to which the COCOM List currently applies; these principles should be based upon the real industrial interests of Community countries and industries;
 13. Considers that the COCOM Arrangement, in its present form, is a serious hindrance to East/West trade;
 14. Instructs its President to forward this resolution and report to the Commission, the Council, the governments of the Member States and of the other member states of COCOM (Canada, Japan, Norway, Turkey and the US) and the COCOM permanent secretariat in Paris.

EXPLANATORY STATEMENTINTRODUCTION

The Pégard affair is now a closed book but it remains a valuable illustration of how COCOM works. To recap briefly on the affair, in 1982 the Belgian company Pégard supplied the USSR with an advanced boring and milling machine under a Belgian licence without having submitted the matter to COCOM. There were protests from the USA. In 1984 an application was submitted to COCOM for a second, more sophisticated boring and milling machine and the Belgian Government refused to grant an export licence. The affair aroused great controversy. The machine at the heart of the dispute was bought by the Belgian Army with American financial assistance which ended in 1985 with a cheque for US \$ 715 700. Also in 1985, five new boring and milling machines of the same type but with technical modifications were exported to the USSR under the responsibility of the German authorities with the agreement of the Belgian Government, the regrets of the American Administration and without COCOM's approval of the decision being sought.

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

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

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

This report attempts to collate all this information and to provide an answer as to what decision the Community Member States should take regarding the export of strategic products and, on the basis of this decision in principle, to clarify the European position on COCOM.

I. WHAT IS COCOM?1. Definition

- Coordinating committee for the control of exports to the Sino-Soviet bloc.

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

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

- Address of the COCOM Secretariat: The United States Embassy in Paris.
- Budget: approx. US \$ 1 million per annum.

2. Modus operandi

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

The list of products concerned is reviewed at regular intervals. It decreased from 300 in the early 1950s to 150 by the end of the 1970s¹. Any decision to make exemptions from this list requires a unanimous vote by the member states. In practice, there are cases in which states issue licences without referral to COCOM.

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

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

3. The EEC and the COCOM Lists

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

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

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

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

4. Comments

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

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

II. AMERICAN EXPORT CONTROL POLICY

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

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

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

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

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

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

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

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

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

Present trend in American policy on exports of strategic material

In general, the slackening off of East-West trade is not solely due to the application of COCOM or the Export Administration Act, but to a range of political and financial considerations. At the same time, we are witnessing a growth in bilateral trade between the USSR and Japan and a fall in trade between the USSR and the United States.

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

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

III. THE EUROPEAN POSITIONS

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

Participants were in agreement on a broad range of issues and stated that they accepted the COCOM system as it stood. In their view the system combined security needs with trade requirements relatively well and in a sufficiently flexible manner and took into account the complexity of the problems involved. There was apparently no discrimination between one country and another but it would be useful for small firms who were poorly informed to improve publicity about the COCOM system. COCOM's methods of working and manner of drawing up its lists should also be more readily accessible. The legal basis for COCOM was judged to be adequate. On the whole the American economy would seem to be more affected by the repercussions of COCOM than the European economy. Judging by statements made by European industrialists at the hearing, COCOM does not paralyse East-West trade. Participants were also eager to stress that the complexity of international trade relations in the world today was a reality that none could escape.

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

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

- According to the 'American' theory, the two blocs, East and West, are indomitably hostile to each other. Their mutual survival is contingent upon a delicate balance of forces. Everyone should therefore try to hold on to their trump cards and not give them away to the other side. In essence, this is an isolationist policy which tries to prohibit as much as possible any form of transfer to the East.
- According to the 'European' theory, hostility between the two blocs is essentially a matter of historical chance which has left the two areas with different political and economic systems, a different level of development and divergent, or even conflicting, interests. This situation can be reversed. By increasing economic, political, trade and other forms of contact, it is possible gradually to build up a communality of interest which will outweigh the divergences and in the long term can bring the two blocs closer together. From this point of view, the 'outstretched hand' is the approach always adopted.

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

IV. RECENT POSITIONS IN THE EUROPEAN PARLIAMENT ON TECHNOLOGY TRANSFER

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

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

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

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

Agreed multilateral controls imply the abolition of unilateral controls.

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

2. On embargoes and boycotts

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

¹ OJ No. C 292, 9.11.1982, p. 13 ff

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

3. On relations with COMECON

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

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

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

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

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

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

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

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

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

'The inadequacy of COCOM

Without wishing to belittle the role played by COCOM, it must be stressed that the committee's work does not fully meet the present requirements. In a field as complex and as fluctuating as that of new technologies, the adaptation of lists of products needs to be

¹ PE 97.811/fin., p. 4

performed with greater speed and flexibility. It is regrettable, for example, that it has taken several years for COCOM to sanction the export of small personal computers, even though this represents a very limited adjustment. Moreover, a number of countries such as Taiwan, Singapore, South Korea, Sweden and Austria do not belong to COCOM and can evade the regulations on transfers of technology. This weakens the scope of COCOM's regulations and produces a distortion of competition. It would be sensible, therefore, to consider setting up a consultative body for the USA and the Community which would include representatives from both the governments and industries concerned and could launch a dialogue at strictly commercial level which would be productive for both sides.¹

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

This opinion states that:

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

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

1. Preliminary remark

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

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

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

¹ PE 94.246/fin., p. 6

² PE 98.215/fin., p. 5

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

This is noted by Mr DANKERT in his opinion:

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

2. The future of East-West trade

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

In addition, the Soviets seem to be increasingly aware of their dependence and their vulnerability as their system of production deteriorates. A number of Communist leaders are contemplating recentralizing their economy while there are mounting fears in the West about the Eastern bloc's solvency.

3. American trade policy

Trade relations between the EEC and the USA give rise to certain general problems and joint solutions are currently being sought.

US trade policy towards Eastern Europe is rather different from the EEC's policy. In general the Americans control their strategic exports far more strictly than the Europeans do. However, there have been certain contradictions in American trade policy, for example when the US abandoned its wheat embargo and yet called on its allies to tighten their trade controls in relations with the Soviets. It should also be borne in mind that the United States and the European countries accuse each other of protectionism and the danger in this area is a real one. A natural consequence of this is that the Europeans sometimes fear that certain American actions are designed to protect purely national interests. At all events, Western policies may run the risk of increasing costs and a relative loss of markets.

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

The position seems to be the same as the line taken by Mr MITTERRAND as early as 1981 in Ottawa when he stated that he was in favour of revitalizing COCOM's activities¹.

4. A common strategy to control exports of strategic products

First of all the Community Member States must decide what exports of strategic products are to be allowed and, on the basis of this decision in principle, clarify their position on COCOM.

It is undoubtedly difficult to control the spread of new technology effectively.

Undoubtedly there are indirect ways of transferring technology to the East, especially through countries which are not members of NATO or COCOM. In addition, industrial espionage has to be taken into account, although this requires considerable amounts of time and finance which make it extremely expensive. Added to this, finally, is the new role that China could play through the increasing liberalization of American exports to that country.

It must also be stressed that in issuing export licences, the trade departments sometimes interfere for reasons which are in no way connected with defence problems.

Above all there must be an improvement in cohesion between the 12 countries in the Community. This was also the wish of the then European Commissioner for Industry, Mr DAVIGNON, when he proposed on 17 October 1984 that a thorough examination be made of the problem of high technology transfer with a view to producing a common position between the then 10 members of the Community which would enable them to improve talks with the USA. In addition, the problem then arises of drawing up European lists for the export of strategic products and knowing whether it would be useful to have military personnel participate more directly as experts in the process of issuing licences.

Such a process would, however, also necessitate the Community Member States improving the dissemination of information to each other and harmonizing their technologies. In general, the problem is the overall European response to the modern technological challenge². But this is part of the whole range of European problems because there can be no technological Europe without a large market with no borders based on the harmonization of standards, opening of public markets, common legislation on industrial property, European quality standards and intra-Community competition, monetary and financial cooperation and even a common foreign policy.

Part of this is the response to the problem of European strategic defence and the Community's position on strategic defence initiatives by the USSR and the USA.

Finally, there is the possibility of considering a legal instrument which is more rigid than COCOM is its present form. For example, an international treaty with strict rules to govern operation, with a clear definition of the obligations and rights of all parties and adequate publicizing of the related legal provisions.

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

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

ANNEX

MOTION FOR A RESOLUTION (Doc. 2-466/84)

tabled by Mrs LIZIN

pursuant to Rule 47 of the Rules of Procedure
on the Pégard company and exports to COMECON

The European Parliament,

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

MOTION FOR A RESOLUTION (Doc. 2-721/84)

tabled by Mr LINKOHR

pursuant to Rule 47 of the Rules of Procedure

on the restrictions imposed by the USA on the international transfer of technology and the damaging effects on industrial development in the European Community

The European Parliament,

- A. whereas since the end of the 1970s the USA has stepped up its controls on the transfer of technology, even to the countries of the European Community, by such means as secrecy regulations, export restrictions and clauses in public sector contracts,
 - B. having regard to the findings of an unpublished study on the restrictions imposed on the international transfer of technology by the USA (carried out on behalf of the Federal German Ministry for Research and Technology),
 - C. concerned at the growing nationalism surrounding technology, whereby the USA hopes to achieve economic and technical supremacy,
 - D. whereas US export control laws are much more extensive than the equivalent laws in other countries, and also cover re-exports,
 - E. fearing that, in the absence of a concerted approach, the European Community's technical dependence will lead to ever greater political dependence and make it vulnerable to blackmail,
 - F. whereas US secrecy regulations seriously impede the exchange of scientific data and research results,
1. Calls on the Council and Commission to bring all their influence to bear on the USA to secure the lifting of restrictions on the transfer of technology between the USA and the European Community;
 2. Calls on the Commission to have proposals for countermeasures at the ready in the event of the restrictions being maintained;

3. Reaffirms its view that the level of advanced technology in Europe should be improved by greater cooperation within the framework of the Community research and industrial policy, particularly in the fields of data processing, automation, biotechnology, aeronautics and aerospace, new materials and telecommunications;
4. Calls on the Commission to draw up a report on the current state of technology transfer between Western countries;
5. Instructs its President to forward this resolution to the Council and the Commission.

OPINION

(Rule 101 of the Rules of Procedure)

of the Political Affairs Committee

Draftsman: Mr P. DANKERT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DRAFT OPINION

(Rule 47 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman : Mr RAFTERY

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

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

The following took part in the vote :

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

1. American restrictions on transfers of technology

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

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

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

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

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

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

The position of the Community as regards trade with the COMECON countries is very different from that of the United States in terms of both type and quantity. In 1980, for example only 9% of American exports were to COMECON countries and only 3% of American imports came from these countries. In contrast, Western Europe accounted for 80% of all trade between the OECD and COMECON in 1980. In addition, it should be noted in particular that, whereas the USA exports mainly agricultural products to the Soviet Union, Community exports are principally of manufactured goods. This produces a technological interdependence (spare parts, future deliveries...) and implies, a certain degree of mutual trust. In other words, the US restrictions on the transfer of technology have a much greater effect in the Community, than they have in the US.

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

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

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

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

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

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

3. The position of the Community

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

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

(a) The inadequacy of COCOM

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

(b) The work of international bodies

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

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

(c) The activities of transnational undertakings

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

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

(d) Strengthening technological cooperation in the Community

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

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

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

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

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

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

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

OPINION

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

Draftsman: Mrs BRAUN-MOSER

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

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

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

1. INTRODUCTORY

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

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

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

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

II. TECHNOLOGICAL SIGNIFICANCE OF THE EAST-WEST TRADE

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

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

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

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

III. TRADE FLOWS AND COMMUNITY TRANSPORT POLICY

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

3) See the JUNG report on 'the EEC's relations with the COMECON countries in the field of maritime shipping' (Doc.51/79) O.J. No C 140 of 5.6.79 and the HOFFMANN report on 'relations between the EEC and the COMECON countries in the field of transport policy' (Doc.1-203/82) O.J. No C 238 of 13.9.82

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

IV. CONCLUSIONS

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

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

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