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## Controlling the Transfer of Militarily Significant Technology: COCOM After Toshiba

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## **Abstract**

The Note argues that the Toshiba and Kongsberg sales illustrate the critical need of Western allies to agree on a functional means of promoting international trade without compromising international security. Part I examines the illegal sale of ship building technology to the Soviet Union by Toshiba. Part II discusses how COCOM works. Part III analyzes current cooperative, national, and multilateral efforts to enhance the effectiveness of export controls. This Note concludes that to prevent future violations, the member nations of COCOM should adjust their export control policies to reflect changes in technological progress and should strive to achieve greater unification in their policies and goals.

# CONTROLLING THE TRANSFER OF MILITARILY SIGNIFICANT TECHNOLOGY: COCOM AFTER TOSHIBA

## INTRODUCTION

In January 1988, representatives of sixteen nations—Japan and all of the North Atlantic Treaty Organization (“NATO”) nations except for Iceland—met in Paris to discuss methods of improving the control of exports of militarily significant technology to the Soviet Union and its allies.<sup>1</sup> These nations together form the Coordinating Committee for Multilateral Export Controls (“COCOM”), an organization designed to prevent Eastern-bloc and other nations from acquiring crucial Western technology.<sup>2</sup> The meeting was held in the wake of the recent illegal sales of strategic technology to the Soviet Union by the Toshiba Machine Company of Japan (“Toshiba”), a subsidiary of the Toshiba Corporation, and the Kongsberg Vaapenfabrik Company (“Kongsberg”) of Norway.<sup>3</sup>

This Note argues that the Toshiba and Kongsberg sales illustrate the critical need of Western allies to agree on a functional means of promoting international trade without compromising international security.<sup>4</sup> Part I examines the illegal sale of shipbuilding technology to the Soviet Union by Toshiba. Part II discusses how COCOM works. Part III analyzes current corporate, national, and multilateral efforts to enhance the effectiveness of export controls. This Note concludes that to prevent future violations, the member nations of COCOM should adjust their export control policies to reflect

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1. Farnsworth, *West Is Easing Policy on Sales to Soviet Bloc*, N.Y. Times, Feb. 15, 1988, at D6, cols. 5-6; *A Littler List*, *ECONOMIST*, Feb. 6, 1988, at 67. “Militarily significant” means that an item, if modified, could be used in military equipment. See Farnsworth, *supra*.

2. Recent Development, 16 GA. J. INT’L & COMP. L. 197, 197 (1986). COCOM members include Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, the United Kingdom, and the United States. *Id.* at 197 n.4.

3. Farnsworth, *supra* note 1, at D6, cols. 5-6; *A Littler List*, *supra* note 1, at 67.

4. See NATIONAL ACADEMY OF SCIENCES, NAT’L ACADEMY OF ENG’G AND INST. OF MEDICINE, *BALANCING THE NATIONAL INTEREST: U.S. NATIONAL SECURITY EXPORT CONTROLS AND GLOBAL ECONOMIC COMPETITION 3-4* (1987) [hereinafter *BALANCING THE NATIONAL INTEREST*]; Bonker, *Protecting Economic Interests*, *ISSUES IN SCIENCE AND TECH.*, Fall 1986, at 96.

changes in technological progress and should strive to achieve greater unification in their policies and goals.

### I. TOSHIBA MACHINE COMPANY'S ILLEGAL SALE TO THE SOVIET UNION

In April 1981, Toshiba and the Soviet Union signed an agreement for the purchase and delivery of four computerized milling machines to the Soviet Union.<sup>5</sup> The machines are used for the rough milling of ship propellers.<sup>6</sup> They are also capable of improving the performance of the Soviet Union's missile-carrying nuclear submarines.<sup>7</sup> The Soviet Union requested both the MBP-110 model, with its nine-axis simultaneous numerical control,<sup>8</sup> and the five-axis MF series machines.<sup>9</sup> COCOM explicitly banned the export of both of these machines to the Soviet bloc because of their military usefulness.<sup>10</sup> The Soviet Union also approached Kongsberg, a firm owned

5. Sanger, *A Bizarre Deal Diverts Vital Tools to Russians*, N.Y. Times, June 12, 1987, at D10, col. 2; Investigation Into Sales Of Propeller Milling Machines To The Soviet Union By Toshiba Machine Co., Ltd., Report to the President and Directors of Toshiba Corporation, 23-24 (Aug. 28, 1987) [hereinafter Toshiba Report] (available at the *Fordham International Law Journal* office).

6. Toshiba Report, *supra* note 5, at 9.

Propellers are generally cast out of bronze or stainless steel but they cannot be successfully cast to the precise dimensions necessary to achieve their design function. Therefore, after casting, the propellers must be milled and ground to achieve their final dimensions and smoothness. Propellers can be ground entirely with a hand held power tool. However, hand grounding of propellers requires a team of highly skilled craftsmen, and is an extremely slow process. The basic milling function is more efficiently performed by an automated propeller milling machine.

*Id.*

7. For a discussion of how performance is improved, see *infra* note 22.

8. Sanger *supra* note 5, at D10, col. 2; Toshiba Report, *supra* note 5, at 14. A numerical controller gives commands to an automated milling machine. Toshiba Report, *supra* note 5, at 9. The numerical controller directs the machine's milling head along a series of paths or axes as it mills propellers of a specific shape. *Id.* An axis is a direction of the path taken by either the milling head or the turntable on which the propeller is placed and on which it rotates under the milling head. *Id.* As a result, depending upon the number of turning axes, the milling head can move up and down, side to side, and can be rotated or tilted. *Id.* Consequently, multi-axis machines have a milling head capable of turning a greater number of directions and thus can more quickly cover the areas needed to be milled. *Id.*

9. Toshiba Report, *supra* note 5, at 29-32.

10. See Toshiba Report, *supra* note 5, at 11; see, e.g., the United States Commodity Control List, 15 C.F.R. § 399.1, Supp. 1, Group 0, ECCN 1091A (1988) (describing the U.S. application of COCOM rules).

by the Norwegian government, about purchasing computer equipment that was also banned by COCOM.<sup>11</sup> The Soviet Union intended to mate the Norwegian computer controls with the Japanese milling machines, a further violation of COCOM rules.<sup>12</sup>

In May 1981, Toshiba submitted an application to the Japanese Ministry of International Trade and Industry ("MITI") in Tokyo for a permit to ship another milling machine, the TDP 70/110, to the Soviet Union.<sup>13</sup> The application stated that export of the TDP 70/110 did not violate COCOM rules forbidding certain goods from being sent to Eastern-bloc countries.<sup>14</sup> MITI granted the permit under the assumption that this was the actual item being delivered.<sup>15</sup> None of the trade ministry's thirty export-control inspectors, who review 200,000 applications a year, challenged the application.<sup>16</sup>

By December 1983, two of the MBP-110 machines had been installed at the Baltic Factory in Leningrad.<sup>17</sup> The Soviet

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11. Toshiba Report, *supra* note 5, at 15-16; Sanger, *supra* note 5, at D10, col. 2; *Toshiba Machine Employees Arrested for COCOM Violations*, (May 27, 1987) (LEXIS, Nexis library, Asahi News Service file).

12. Toshiba Report, *supra* note 5, at 14; *see also Toshiba Machine Employees Arrested for COCOM Violations*, *supra* note 11 (the use of the Norwegian-made computer controls also violated COCOM rules). "This arrangement would entail circumvention of Norway's export regulations, since Norway, as a member of COCOM, has COCOM-related export regulations similar to those of Japan and the United States." Toshiba Report, *supra* note 5, at 16; *see, e.g.* United States Commodity Control List, 15 C.F.R. § 399.1, Supp. 1, Group 0, ECCN 1091A (explaining the rules concerning COCOM regulation).

13. Sanger, *supra* note 5, at D10, col. 2; Toshiba Report, *supra* note 5, at 25.

14. Toshiba Report, *supra* note 5, at 25-26 (a machine that has fewer than three axes is not banned from export); *see, e.g.* United States Commodity Control List, 15 C.F.R. § 399.1, Supp. 1, Group 0, ECCN 1091A (detailing the export policy of the United States). Attached to the application were: (a) a letter certifying that the machine would be installed in the factory of Electrosila in Leningrad (a heavy electric apparatus company) and would not be used to manufacture war materials and goods; (b) a copy of the formal contract; (c) a copy of the TDP 70/110 specifications showing the machine to be a nine-axis vertical boring and turning machine possessing only two simultaneously controlled axes; (d) a statement by Kongsberg as computer controller (numerical controller) manufacturer that the model is in accordance with the specifications and export restrictions set down by COCOM; and (e) a document from Toshiba Machine Co., bearing the President's seal, detailing the relationship between the machine and the export regulations and certifying that the machine was exportable under such regulations. Toshiba Report, *supra* note 5, at 25-26.

15. *See* Toshiba Report, *supra* note 5, at 26.

16. Sanger, *supra* note 5, at D10, col. 2.

17. Toshiba Report, *supra* note 5, at 27.

Union later installed the other nine-axis machines in a different area of the factory.<sup>18</sup> The five-axis MF-series milling machines, purchased in April 1983, were also approved for export from Japan by using the same method of misrepresenting the actual items.<sup>19</sup> By late 1984, all five of the MF-series machines were operational in Leningrad.<sup>20</sup> These sales remained undetected until December 1985, when they were disclosed to the COCOM chairman by a former employee of the trading company used by Toshiba.<sup>21</sup>

Since the Toshiba incident was uncovered in December 1985, the United States has publicly denounced the company's role in breaching Western security.<sup>22</sup> In June 1987, the U.S. Senate voted stiff penalties against Toshiba and Kongsberg,<sup>23</sup> and both the Senate and the U.S. House of Representatives are currently considering other penalties.<sup>24</sup>

While the Toshiba/Kongsberg sale is the most visible vio-

18. *Id.*

19. See Toshiba Report, *supra* note 5, at 31.

20. *Id.* at 32.

21. Jameson, *Shock Waves from Toshiba-Soviet Deal Still Rattle Japan*, L.A. Times, Aug. 11, 1987, § 4, at 1, col. 1; Sanger, *supra* note 5, at D10, col. 5. The sale was disclosed by Kazuo Kumagai, the Moscow office manager of the Wako Koeki trading firm, which represented Toshiba in the illegal sale. Sanger, *supra* note 5, at D10, col. 5.

22. Jameson, *supra* note 21, at 1, col. 3. The United States claimed that the machines that Toshiba Machine Co. sold to the Soviet Union helped to improve the Soviets' submarine warfare capacity. *Id.* at 1, col. 2; Crossette; *Weinberger Blames Japanese for Compromising Security*, N.Y. Times, June 30, 1987, at A14, col. 1. *But see Maritime Analysts Doubt Claims Against Toshiba Machine* (July 20, 1987) (LEXIS, Nexis library, Asahi News Service file) (doubt has grown as experts match the schedules for the construction of two Soviet submarines and their entrance into the fleet with the timing of the delivery of the Toshiba milling equipment to the Soviet Union). One of the main sources of a submarine's noise is its spinning propeller blade as it cuts through water. Sanger, *supra* note 5, at page D10, cols. 3-4; Browne, *Furor Over Sale Casts a Spotlight on Race for Silence in Seas*, N.Y. Times, June 16, 1987, at C3, col. 1. The performance of the submarine was enhanced as a result of quieter propellers. Sanger, *supra* note 5, at page D10, cols. 3-4; Browne, *supra*, at C3, col. 1. The milling machines allowed the Soviet Union to produce quieter propellers in less time. Sanger, *supra* note 5, at page D10, cols. 3-4; Browne, *supra*, at C3, col. 1.

23. *On Trade: Wrong, Long Arm of the Law*, N.Y. Times, Feb. 16, 1988, at A20, col. 1 [hereinafter *On Trade*]; see also Hara, News Report (July 10, 1987) (LEXIS, Nexis library, Asahi News Service file) (discussing a two-year ban on Toshiba imports that passed in the U.S. Senate).

24. Farnsworth, *Trade Conferees in Congress Agree on Toshiba Curbs*, N.Y. Times, Apr. 1, 1988, at A1, col. 4 (this bill will ban all sales of goods produced by the Toshiba Machine Corporation in the United States).

lation of COCOM's rules, it is not the first.<sup>25</sup> Because many Japanese businessmen believe that the COCOM rules have been unilaterally imposed on Japan by the United States,<sup>26</sup> they have "a rather loose attitude toward export restrictions, not only within the Toshiba Machine Co. but within Japanese corporations in general."<sup>27</sup> Indeed, according to the individual who disclosed the illegal Toshiba sale, of the more than fifty Japanese firms that do business in Moscow, "there is probably not a single one that has never violated Japanese government laws and regulations concerning export restrictions."<sup>28</sup>

Furthermore, Japan and Norway are not the only member nations in which there have been violations of the COCOM restrictions. France has often violated COCOM rules.<sup>29</sup> In addition, the British government has allowed the sale of Spey engines, manufactured by Rolls Royce Ltd., as well as Harrier Jets to the People's Republic of China without considering the COCOM process.<sup>30</sup> Japan, the United Kingdom, Italy, and France regularly issue licenses for high-technology trade exhibitions despite their awareness that a resulting sale might not meet the unanimous approval required by COCOM.<sup>31</sup> Finally, many member nations routinely circumvent COCOM policy when conflicting domestic issues present themselves.<sup>32</sup> Some of COCOM's rules are clearly at odds with the growth of international trade.<sup>33</sup>

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25. See *infra* text accompanying notes 29-32.

26. Jameson, *supra* note 21, at 4, col. 2.

27. *Id.*

28. *Id.*

29. Recent Development, *supra* note 2, at 206 n.56; see *infra* text accompanying note 84.

30. McIntyre & Cupitt, *East-West Strategic Trade Control: Crumbling Consensus?*, 25 SURVEY 81, 102 (1980).

31. Aepfel, *The Evolution of Multilateral Export Controls: A Critical Study of the COCOM Regime*, 9 FLETCHER F. 105, 111-12 (1985) (discussing conflicts in national styles of export control, and suggesting that France does not even like to admit that COCOM exists); McIntyre & Cupitt, *supra* note 30, at 102.

32. McIntyre & Cupitt, *supra* note 30, at 91, 102 (in some of the participating countries there is political opposition because of the "internal constitutional and legal regimes" of those countries).

33. Bingham & Johnson, *A Rational Approach to Export Controls*, 57 FOREIGN AFF. 894, 905, 906 (1979); Bucy, *Technology Transfer and East-West Trade: A Reappraisal*, 5 INT'L SECURITY 132, 148 (1981); McIntyre & Cupitt, *supra* note 30, at 91, 102.

## II. COCOM

COCOM, an organization headquartered in Paris, has traditionally kept many of its activities secret.<sup>34</sup> However, since the Toshiba incident, several details concerning the organization have come to light.

### A. *The Organization*

COCOM is an informal body that is based upon a voluntary agreement between the United States, Japan, and all the NATO member nations except Iceland.<sup>35</sup> Created in 1949 at the insistence of the United States, its main task is to deny the Soviet Union and its allies any item that would enhance those nations' military capabilities.<sup>36</sup> To that end, COCOM maintains three lists of items that it has determined should not be exported to Eastern-bloc nations.<sup>37</sup>

The International Atomic Energy List includes radioactive material;<sup>38</sup> the International Munitions List itemizes actual weapon systems;<sup>39</sup> and the International List contains "dual-use" items, that is, items that have both military and commercial use, such as Toshiba's milling machines.<sup>40</sup> The International List is the most controversial, and the most subject to change during periodic list reviews.<sup>41</sup> During all list reviews technical experts are called upon to give advice concerning

34. G. SCHIAVONE, *INTERNATIONAL ORGANIZATIONS: A DICTIONARY & DIRECTORY* 67 (2d ed. 1986); Aepfel, *supra* note 31, at 108; Bingham & Johnson, *supra* note 33, at 904; Hunt, *Multilateral Cooperation in Export Controls—The Role of COCOM*, 14 U. Tol. L. Rev. 1285, 1287 (1983). *But see* Farnsworth, *supra* note 1, at A1, col. 5 (the once secret COCOM lists of embargoed goods is now being made public).

35. G. SCHIAVONE, *supra* note 34, at 66-67; Aepfel, *supra* note 31, at 108; Bingham & Johnson, *supra* note 33, at 903-04; *see also* Hunt, *supra* note 34, at 1285, 1287 (explaining that COCOM exists as an informal and voluntary arrangement).

36. G. SCHIAVONE, *supra* note 34, at 66-67; 1 UNION OF INT'L ASS'NS, *YEARBOOK OF INTERNATIONAL ORGANIZATIONS* F4582g (22d ed. 1985); Hunt, *supra* note 34, at 1287-88.

37. REPORT OF THE TECHNOLOGY TRANSFER PANEL OF THE COMMITTEE ON ARMED SERVICES, H.R. DOC. NO. 15, 98th Cong., 2d Sess. 8 (Comm. Print 1984) [hereinafter PANEL REPORT]; G. SCHIAVONE, *supra* note 34, at 67; Hunt, *supra* note 34, at 1288-89; McIntyre & Cupitt, *supra* note 30, at 87; Recent Developments, *supra* note 2, at 198 n.6.

38. PANEL REPORT, *supra* note 37, at 8; McIntyre & Cupitt, *supra* note 30, at 87.

39. PANEL REPORT, *supra* note 37, at 8; McIntyre & Cupitt, *supra* note 30, at 87.

40. PANEL REPORT, *supra* note 37, at 8; McIntyre & Cupitt, *supra* note 30, at 87.

41. *See* Aepfel, *supra* note 31, at 109; McIntyre & Cupitt, *supra* note 30, at 90.

particular items on the list.<sup>42</sup>

Until 1985, list reviews took place approximately every three years.<sup>43</sup> That year, however, it was agreed that one out of the three COCOM lists would be reviewed annually.<sup>44</sup> During list reviews, the list changes tend to reflect technological advances and availability of strategically-significant items to non-COCOM countries.<sup>45</sup> A member can place an item on review by submitting a proposal four months in advance of the review.<sup>46</sup> Forty-five days before the review meeting, concerned members file counterproposals or proposals for consistency if there is a discrepancy among two or more proposals.<sup>47</sup> COCOM rules require that any proposal must pass by a unanimous vote.<sup>48</sup> The revised list becomes effective sixty days after it is circulated among all COCOM members.<sup>49</sup> Each member nation is responsible for noting changes in the list and adhering to them.<sup>50</sup>

COCOM itself lacks enforcement mechanisms.<sup>51</sup> Instead, each member nation is responsible for enacting and enforcing domestic export-control laws that implement COCOM's policies.<sup>52</sup> Each nation thus devises its own list of controlled tech-

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42. McIntyre & Cupitt, *supra* note 30, at 94. List reviews, when conducted, are used to select items to be added or deleted from the COCOM list. See Hunt, *supra* note 34, at 1290-91.

43. *Report Drawn Up on Behalf of the Committee on Energy, Research and Technology*, EUR. PARLIAMENT WORKING DOCUMENTS, ser. A, doc. A2-99/85, at 18 (Sept. 30, 1985) [hereinafter *European Parliament Report*]; see also PANEL REPORT, *supra* note 37, at 8 (list reviews have occurred every three years); McIntyre & Cupitt, *supra* note 30, at 94 (same).

44. *European Parliament Report*, *supra* note 43, at 18.

45. Hunt, *supra* note 34, at 1289-90; McIntyre & Cupitt, *supra* note 30, at 95. "Clearly, if the Soviets can procure an item from Sweden or Switzerland, which are not in the COCOM system, then it becomes rather self-defeating for COCOM to control the item." McIntyre & Cupitt, *supra* note 30, at 95; see also Bingham & Johnson, *supra* note 33, at 904 (describing the criteria used to place an item on the COCOM list).

46. Hunt, *supra* note 34, at 1290.

47. *Id.*

48. G. SCHIAVONE, *supra* note 34, at 67; Aeppel, *supra* note 31, at 108-09; Hunt, *supra* note 34, at 1287; McIntyre & Cupitt, *supra* note 30, at 94.

49. McIntyre & Cupitt, *supra* note 30, at 95.

50. *Id.*

51. *Id.* at 82; Aeppel, *supra* note 31, at 108-09; Bingham & Johnson, *supra* note 33, at 904.

52. McIntyre & Cupitt, *supra* note 30, at 82; see also Toshiba Report, *supra* note 5, at 8 (each COCOM nation must construe and interpret the COCOM list, and as a

nology as well as its own application of the COCOM restrictions.<sup>53</sup> The United States, for instance, maintains the Commodity Control List, which is even more comprehensive than that of COCOM itself.<sup>54</sup> For years, the so-called Battle Act,<sup>55</sup> the U.S. enforcement structure, provided the "symbolic teeth" of COCOM.<sup>56</sup> The Battle Act provided for the denial of U.S. military and economic assistance to any country that intentionally permitted banned goods to be shipped to the Soviet Union.<sup>57</sup> However, the Battle Act has been superseded by the Export Administration Act of 1979,<sup>58</sup> which is the current U.S. enforcement mechanism.<sup>59</sup> Recently, however, U.S. ability to enforce compliance with COCOM rules has diminished.<sup>60</sup>

### B. *Flaws in the Organization*

In recent years, COCOM rules have become a cause of mounting frustration among member nations.<sup>61</sup> Many members agree with West Germany's claim that the list goes "beyond what is necessary,"<sup>62</sup> and thus inhibits lucrative trade with Eastern-bloc markets.<sup>63</sup> Many U.S. policymakers, on the

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result there may be differences among member countries concerning the application of the COCOM controls).

53. Toshiba Report, *supra* note 5, at 8.

54. Bonker, *supra* note 4, at 100; *Necessary Barriers*, *ECONOMIST*, Feb. 6, 1988, at 89; Farnsworth, *supra* note 1, at D6, col. 5. The Commodity Control List is published and updated on a regular basis and can be found at 15 C.F.R. §§ 399.1-2 (1988). The regulations that govern its application are located at 15 C.F.R. §§ 368-398 (1988). The list is promulgated administratively pursuant to the Export Administration Act of 1979, Pub. L. No. 96-72, 93 Stat. 503 (codified as amended at 50 U.S.C.A. app. §§ 2401-2403, 2404-2420 (West Supp. 1988) and scattered sections of 7, 22, 26, and 42 U.S.C.).

55. Mutual Defense Assistance Control Act of 1951, ch. 575, 65 Stat. 644 (superseded 1979).

56. McIntyre & Cupitt, *supra* note 30, at 91-92.

57. See Mutual Defense Assistance Control Act of 1951, ch. 575, 65 Stat. at 644.

58. Pub. L. No. 96-72, 93 Stat. 503 (codified as amended at 50 U.S.C.A. app. §§ 2401-2403, 2404-2420 (West Supp. 1988) and scattered sections of 7, 22, 26, and 42 U.S.C.).

59. McIntyre & Cupitt, *supra* note 30, at 91.

60. See Bucy, *supra* note 33, at 148. "As most of the COCOM member governments no longer receive U.S. aid, the U.S. Battle Act has lost its practical significance." McIntyre & Cupitt, *supra* note 30, at 92. The reason for such a loss is the disappearance of Western Europe's fear that the denial of U.S. aid could damage its economies. See Bucy, *supra* note 33, at 148.

61. *Necessary Barriers*, *supra* note 54, at 89.

62. Farnsworth, *supra* note 1, at D6, col. 6.

63. *Id.*

other hand, are concerned about their allies' permissive enforcement of export controls.<sup>64</sup> It is clear that COCOM is only as strong as the national laws and enforcement mechanisms that implement it and that its strength has recently been sapped by differing export control policies.<sup>65</sup> When COCOM was created in 1949, three factors helped to make the United States successful in establishing a united Western front against the Soviet Union and its trade demands: one, the hefty contribution of the U.S. economic and military assistance to NATO; two, a widely-held perception that the Soviet Union posed a threat to NATO's security; and three, a compact list of items considered too crucial to export, most of which were produced in the United States.<sup>66</sup> Since that time, each of these premises has been called into question.

First, Western Europe has become economically self-reliant.<sup>67</sup> Much of the technology that the United States once produced exclusively is now being produced by Western European nations.<sup>68</sup> In addition, Japan's economic growth since World War II has been phenomenal.<sup>69</sup> Moreover, the U.S. role in supplying military assistance to its European allies has been questioned within both the United States and foreign nations,<sup>70</sup> leaving Western Europe to believe that its future security can be better protected by developing a working relationship with Eastern-bloc nations.<sup>71</sup> Japan, for its part, is governed by a constitution that was written while Japan was under U.S. occupation and that does not make national security a pri-

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64. Markham, *Revised Curbs on East-Bloc Trade*, N. Y. Times, Jan. 29, 1988, at D1, col. 3.

65. Bucy, *supra* note 33, at 151; see also Farnsworth, *supra* note 1, at D6, col. 5 (discussing the pressure COCOM is under from European as well as U.S. companies to allow certain sales to Eastern Europe and the Soviet Union).

66. Bucy, *supra* note 33, at 147; McIntyre & Cupitt, *supra* note 30, at 106.

67. See Bucy, *supra* note 33, at 148 (the independent economies of Western Europe have created greater need to allow more trade); Recent Development, *supra* note 2, at 209 (many Western Europeans no longer feel economically or technically dependent on the United States).

68. See Recent Development, *supra* note 2, at 209 (previously the United States was credited with developing 70% of the technology in the world; that figure has declined drastically).

69. *Japan and America: Forget the Growl, Look at the Tails*, ECONOMIST, Jan. 9, 1988, at 18, col. 2 [hereinafter *Japan and America*].

70. See J. DORMAN, *THE U.S. WAR MACHINE* 252-63 (1978) (evaluating U.S. military capability and its weaknesses); Bucy, *supra* note 33, at 148.

71. Bucy, *supra* note 33, at 148.

ority.<sup>72</sup> Policymakers in both the United States and Japan have recently called for Japan to assume greater responsibility for its military security and that of its Western allies.<sup>73</sup>

Second, relations between Western allies and the Soviet Union have begun to thaw. Because of disarmament and other Soviet initiatives, General Secretary Mikhail S. Gorbachev seems "less adversarial than his predecessors."<sup>74</sup> In addition, many Western governments and companies are eager to respond to his request for aid from the West in an effort to restructure the Soviet Union's economy and provide more goods for its consumers.<sup>75</sup>

Third, COCOM's original dual-use list has grown too large to be either manageable or economical.<sup>76</sup> COCOM members have made efforts in recent years to reduce the number of items on the list. In 1985, for instance, the United States eliminated licensing requirements for low-technology

72. STAFF OF HOUSE COMM. ON FOREIGN AFFAIRS, 97TH CONG., 2D SESS., UNITED STATES RELATIONS WITH JAPAN AND KOREA: SECURITY ISSUES 12-13 (Comm. Print 1982) [hereinafter SECURITY ISSUES]; J. EMMERSON, *ARMS, YEN & POWER: THE JAPANESE DILEMMA* 50 (1971); Jameson, *supra* note 21, at 4, col. 1. The language in the section of the Japanese Constitution is as follows:

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the State will not be recognized.

KENPŌ (Constitution) art. 9 (Japan), *reprinted in* JAPAN MINISTRY OF JUSTICE, *THE CONSTITUTION OF JAPAN AND CRIMINAL STATUTES* (1957 & reprint 1979).

73. SECURITY ISSUES, *supra* note 72, at 10-12; *Japan and America*, *supra* note 69, at 17-20; *see also* Crossette, *Weinberger Holds Talks with Tokyo on Tough Issues*, N.Y. Times, June 29, 1987, at B14, cols. 1-2; Crossette, *Weinberger Blames Japanese for Compromising Security*, N.Y. Times, June 30, 1987, at A14, col. 2 (discussing the possibility of an increased role in the Persian Gulf).

74. Farnsworth, *supra* note 1, at D6, col 6. The United States and Soviet Union have negotiated an arms treaty ("INF") that calls for a reduction in both sides' medium-range nuclear missiles. Such an agreement, along with Gorbachev's policy of *glasnost* (openness, public disclosure), has caused relations between the United States and the Soviet Union to improve. *See* J. HOUGH, *RUSSIA AND THE WEST: GORBACHEV AND THE POLITICS OF REFORM* 201-15 (1988) (discussing the policy and implications of *glasnost*).

75. *Talking Econo-Military*, N.Y. Times, Mar. 30, 1988, at A27, col. 6; Farnsworth, *supra* note 1, at D6, col. 6.

76. *A Littler List*, *supra* note 1, at 67; *see also* Farnsworth, *supra* note 1, at D6, col. 6 (COCOM controls go beyond what is necessary).

exports to COCOM member nations.<sup>77</sup> More recently, in January 1988, COCOM members spoke of "rationalizing" the list, and then of "concentrating on the control of those goods and technologies that are strategically significant."<sup>78</sup> These measures are only two of several under consideration in the United States and other COCOM member nations.<sup>79</sup> Nevertheless, at present the list remains unworkable.

Not only have the presumptions underlying COCOM changed, but there are also fundamental dissimilarities in the laws, regulations, and procedures enacted by each COCOM member nation to implement the informal multilateral agreement.<sup>80</sup> These dissimilarities exist between the United States and its allies as well as between the allies themselves.<sup>81</sup> This lack of unity has weakened COCOM. For instance, nearly forty years after formation, COCOM's members remain unable to agree on a mutually acceptable definition of what is a "strategic" or "militarily significant" item.<sup>82</sup> In 1976, for example, the U.S. Department of Commerce refused to permit the Cyril Bath Company, a U.S. manufacturer of machine tools, to export a metal-forming press to the Soviet Union.<sup>83</sup> Conversely, the French government authorized a French company's sale of nine identical presses without even consulting COCOM rules.<sup>84</sup> The United States complained to COCOM about France's classification of the presses.<sup>85</sup> The French govern-

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77. Export to COCOM Countries, 50 Fed. Reg. 35,511, 38,512-14 (Int'l Trade Admin. 1985) (codified at 15 C.F.R. §§ 371, 374, 386, 399); Bonker, *supra* note 4, at 101; Recent Development, *supra* note 2, at 197-98.

78. Farnsworth, *supra* note 1, at D6, col. 6.

79. See, e.g., Trade and International Economic Policy Reform Act of 1987, H.R. 3, 100th Cong., 1st Sess. (1987) (bill calling for a reduction in the items on the U.S. Commodity List). *European Parliament Report*, *supra* note 43, at 24 (a motion passed banning unilateral export controls by the United States).

80. Aepfel, *supra* note 31, at 111-17.

81. *Id.*; McIntyre & Cupitt, *supra* note 30, at 88, 89.

82. Aepfel, *supra* note 31, at 117; Hunt, *supra* note 34, at 1288; McIntyre & Cupitt, *supra* note 28, at 86.

83. Bingham & Johnson, *supra* note 33, at 904, 905; McIntyre & Cupitt, *supra* note 30, at 102. For a complete discussion, see *Export Licensing: Foreign Availability of Stretch Forming Presses*, Hearing Before the Subcommittee on International Economic Policy and Trade of the House Committee on International Relations, 95th Cong., 1st Sess. (1977).

84. Bingham & Johnson, *supra* note 33, at 905; McIntyre & Cupitt, *supra* note 30, at 102.

85. Bingham & Johnson, *supra* note 33, at 905; McIntyre & Cupitt, *supra* note 30, at 102.

ment reasoned that the Soviet Union already possessed the technology, as evidenced by its aircrafts, and that France could therefore ignore the relevant COCOM controls.<sup>86</sup> It has been said that at present "[b]ubble gum is the only item with no military significance."<sup>87</sup>

Finally, the United States, for its part, has contributed to the lack of unity among COCOM members by practicing what United States Secretary of State George P. Shultz has termed "light-switch diplomacy"<sup>88</sup>—trade policies that turn on and off. Export controls have become part of a confusing diplomatic signaling process that weakens Western export markets<sup>89</sup> and leaves Western exporters angry and confused.<sup>90</sup> COCOM members do not always feel inclined to follow the U.S. lead in restricting technology to the Soviet Union, because they believe that U.S. policies are inconsistent and insensitive to Western Europe's needs.<sup>91</sup>

### III. CURRENT EFFORTS TO STRENGTHEN EXPORT CONTROLS

The problems inherent in COCOM must be addressed on

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86. Bingham & Johnson, *supra* note 33, at 905. France considered the technology of the presses to be already available, thus making their sale to the Soviet Union not very significant. *Id.*

87. Goldman, *Why Not Sell Technology to the Russians?*, *TECH. REV.*, Feb./Mar. 1984, at 72. Strategic goods are those goods that have been determined to possess military potential. *See* Mountain, *Technology Exports and National Security*, 32 *FOREIGN POL'Y* 95, 95 (1978).

88. Shultz, *Light-Switch Diplomacy*, *BUS. WK.*, May 28, 1979, at 24, 26.

89. Bucy, *supra* note 33, at 145.

90. Bingham & Johnson, *supra* note 33, at 910. The confusion can be especially high when exporters are refused a license for a product they had previously shipped to the same customer. *Id.*; *see also* Goldman, *supra* note 87, at 72 (the United States sends confusing signals when, as the world leader in grain production, it is willing to sell grain to the Soviet Union and then seek to ban other goods that are more integral to the European economy).

91. *See* Agnelli, *East-West Trade: A European View*, 58 *FOREIGN AFF.* 1016, 1017 (1980); Gonzalez, *How To Increase Technology Exports Without Risking National Security—An In-Depth Look at the Export Amendments Act of 1985*, 8 *LOV. L.A. INT'L & COMP. L.J.* 399, 452 (1986); McIntyre & Cupitt, *supra* note 30, at 107 (indicating that COCOM members do not like the unilaterally imposed U.S. restrictions); "West Germany, France, Great Britain, Japan and Italy are all far more heavily dependent on foreign trade than the US." *Id.* at 104; Vernon, *The Fragile Foundations of East-West Trade*, 57 *FOREIGN AFF.* 1035, 1049 (1979) (discussing the fact that many industrialized nations would want to maintain distance from U.S. policy if the United States continues to include politics in its trade decisions).

a number of different levels: company-wide, national, and multilateral. Inherent in these different levels is the need for cooperation among the member nations.

#### A. *Company-Wide Measures*

On an immediate level, companies anxious not to repeat the Toshiba/Kongsberg mistakes should incorporate further controls into their corporate structure. Internal controls recently introduced by Toshiba Corporation can serve as a model.<sup>92</sup> In its Strategic Products Control Program ("SPCP"), the Toshiba Corporation has set up mechanisms at every internal level to identify products banned from export, as well as to detect potential high-risk customers before sales are made.<sup>93</sup> It has also created a continuing education unit to ensure that personnel understand the program.<sup>94</sup> Identical requirements have been imposed on the subsidiaries and affiliates of Toshiba Corporation.<sup>95</sup> Furthermore, additional levels of accountability have been created inside the corporation's management to assure compliance.<sup>96</sup>

The Toshiba Corporation has also created an Internal Control Program ("ICP") to regulate the sale of U.S. parts that it receives under a U.S. distribution license.<sup>97</sup> The main function of the ICP is to ensure compliance with the terms of the U.S. export licences and with the export control laws and regulations of the United States.<sup>98</sup>

#### B. *National Measures*

Each COCOM member nation should examine its national export policies and, if necessary, amend them. The United

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92. See *Toshiba Unveils New Program To Prevent Illegal Exports* (Sept. 9, 1987) (LEXIS, Nexis library, Asahi News Service file); *Japanese Firms Take Action to Ensure COCOM Compliance* (Sept. 2, 1987) (LEXIS, Nexis library, Asahi News Service file); *Toshiba Corporation Will Set Up Export Examination Division*, (July 8, 1987) (LEXIS, Nexis library, Asahi News Service file).

93. Toshiba Corp., *Toshiba Strategic Products Control Program 15-25* (Aug. 28, 1988) [hereinafter *Toshiba Program*] (available at the *Fordham International Law Journal* office).

94. *Id.* at 41-46.

95. *Id.* at 11-14.

96. *Id.* at 47-52.

97. *Id.* at 53.

98. *Id.*

States, the European Community, and Japan have all begun to consider changes in their export policies so as to improve the balance between security and trade.

Recent U.S. legislation has sought to improve the functioning of the Commodity Control List. The Export Administration Amendments Act of 1985<sup>99</sup> ("1985 Act") urged that the United States remove from the list items that no longer contribute to the military capability of potentially hostile nations.<sup>100</sup> The 1985 Act was an attempt to strike "a delicate balance between easing the burden of export controls on U.S. manufacturers and protecting national security."<sup>101</sup> Implementation of the export control policy enunciated in the 1985 Act, however, has been extremely slow.<sup>102</sup> As a result, further legislation has been proposed to redirect U.S. policy concerning export controls.<sup>103</sup> A proposed amendment to the 1985 Act, now in conference between the U.S. House of Representatives and the United States Senate, calls for a forty-percent reduction of the number of items on the U.S. Commodity Control List.<sup>104</sup> Certain categories of items are to be eliminated entirely from the U.S. Commodity Control List. These categories include low-technology goods that do not need COCOM approval for shipment, medical instruments and equipment, and goods that appear on the Commodity Control List.<sup>105</sup> The changes are intended to free the U.S. government from moni-

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99. Pub. L. No. 99-64, secs. 102-120, 1985 U.S. CODE CONG. & ADMIN. NEWS (99 Stat.) 120, 120-55 (amending Export Administration Act of 1979, §§ 2-7, 10-18, 20, 50 U.S.C. App. §§ 2401-2406, 2409-2417, 2419 (1982)). See generally Feldman, *The Restructuring of National Security Controls Under the 1985 Amendments to the Export Administration Act: Multilateral Diplomacy and the Extraterritorial Application of United States Law* 21 STAN. J. INT'L L. 235 (1985); Gonzalez, *supra* note 91.

100. See Export Administration Amendments Act of 1985, sec. 106, § 5(d), 50 U.S.C. App. § 2404(d) (Supp III 1985).

101. Bonker, *supra* note 4, at 101.

102. *Id.* at 102.

103. See H.R. 3, 100th Cong., 1st Sess. sec. 332(f), as amended (1987), *reprinted in* H.R. REP. NO. 40, 100th Cong., 1st Sess. pt. 3, at 27 (1987). "Due in large part to the [Reagan] administration's failure to fully implement both the letter and spirit of the [1985] Export Administration Act, the House Foreign Affairs Committee drafted further amendments . . . ." Bonker, *supra* note 4, at 102.

104. See H.R. 3, 100th Cong., 1st Sess. sec. 332(f), as amended (1987), *reprinted in* H.R. REP. NO. 40, 100th Cong., 1st Sess. pt. 3, at 27 (1987).

105. See *id.* sec. 332(e), as amended (1987), *reprinted in* H.R. REP. NO. 40, 100th Cong., 1st Sess. pt. 3, at 26-27 (1987).

toring goods that have little strategic importance.<sup>106</sup>

The U.S. Senate is also considering a proposal to impose U.S. penalties on foreign companies that violate their own national export laws.<sup>107</sup> The European Parliament, however, appears unwilling to accept such extraterritorial application of U.S. laws.<sup>108</sup> The European Parliament passed a motion for a resolution stating that the United States should consult COCOM members before undertaking unilateral controls.<sup>109</sup>

The European Parliament has also suggested that U.S. export controls have caused damage to Western unity and the Western European economy,<sup>110</sup> and blamed the United States for obstructing trade between the United States and Western Europe.<sup>111</sup> Indeed, the European Parliament argued that unilateral controls imposed by the United States have done more to damage the economy of Western Europe than they have to prevent the growth of military strength in Eastern-bloc nations.<sup>112</sup> Some observers in the European Community have taken the position that if the United States does not relax its laws, "Europe will have no alternative but to compete" against the United States in the field of technology.<sup>113</sup> Accordingly, the European Parliament has called for the dismantling of controls on the transfer of technology among COCOM members as well as among COCOM members and third countries that respect COCOM rules.<sup>114</sup>

Since the Toshiba incident was uncovered, the Japanese government has taken steps to ensure that violations of COCOM regulations do not occur again. The Prime Minister's Cabinet has approved legislation that would tighten controls on the export of strategic goods and stiffen penalties for violations.<sup>115</sup> The legislation revises Japan's Foreign Exchange and

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106. See Farnsworth, *supra* note 1, at D6, col. 6.

107. On Trade, *supra* note 23, at A2, col. 1; see Amendment No. 355 to Omnibus Trade and Competitiveness Act of 1987, 133 CONG. REC. S8989 (1987).

108. On Trade, *supra* note 23, at A2, col. 2; European Parliament, *supra* note 43, at 24; Feldman, *supra* note 99, at 242, 243; Gonzalez, *supra* note 91, at 452.

109. *European Parliament Report*, *supra* note 43, at 24.

110. *Id.* at 8.

111. *Id.* at 7.

112. *Id.*

113. *Id.* at 24.

114. *Id.* at 8.

115. Jameson, *supra* note 21, at 1; see *Japanese Official Going to U.S. To Discuss*

Trade Control Act by providing for the review of exports that might pose a threat to international peace and security.<sup>116</sup> The Japanese government has also increased the size of the staff that monitors such strategic exports.<sup>117</sup> In addition, the government has barred Toshiba from trading with Eastern-bloc nations for a period of one year.<sup>118</sup> The MITI Minister personally appealed to many Japanese exporters to comply with COCOM rules.<sup>119</sup> As a further means of strengthening COCOM compliance, the Japanese Foreign Ministry has requested and been given the power to monitor the export of sensitive goods.<sup>120</sup>

Japanese business leaders, however, are strongly opposed to the tightening of export controls.<sup>121</sup> Many exporters fear that the new controls will seriously hamper their ability to sell high-technology goods to Eastern-bloc and other potentially hostile nations.<sup>122</sup> Despite intense lobbying efforts by Japanese businessmen, the Japanese Prime Minister's Cabinet passed the new laws.<sup>123</sup>

### C. *Multilateral Measures*

Recent meetings of COCOM members have set the stage for a "more realistic approach to export controls."<sup>124</sup> Groups

*Toshiba Affair* (July 10, 1987) (LEXIS, Nexis library, Asahi News Service file) [hereinafter *Japanese Official*].

116. See *Japanese Official*, *supra* note 115 (July 10, 1987) (LEXIS, Nexis Library, Asahi News Service file).

117. *Id.*; *Japan Takes Steps To Tighten Exports to the Soviet Bloc*, (July 1, 1987) (LEXIS, Nexis library, Asahi News Service file) [hereinafter *Tightened Exports*].

118. *Tightened Exports*, *supra* note 117.

119. *Id.*

120. Jameson, *supra* note 21, at 1, col. 4. As an additional protective measure, Japan should include the Ministry of Defense in the monitoring of exports and the setting of policy. This would enhance COCOM compliance and improve international security. See McIntyre & Cupitt, *supra* note 30, at 93 (the role of the Foreign Trade Ministries is stressed while the Defense Ministries play a minor role in the trade restriction process, as compared to that of the Department of Defense in the United States). *But see* Recent Development, *supra* note 2, at 198 n.6, 207 n.64 (the U.S. Department of Defense's involvement in trade policy has been a source of frustration in the United States' attempt to relax restrictions).

121. *Japanese Firms Angered over Plans To Tighten Export Controls* (July 31, 1987) (LEXIS, Nexis library, Asahi News Service file).

122. *Id.*

123. Jameson, *supra* note 21, at 1, col. 3 (the Cabinet has approved the legislation to tighten the export controls).

124. Recent Development, *supra* note 2, at 209.

of technology experts, including those from the private sector, are currently establishing a set of rules to evaluate what items should be removed from the COCOM list.<sup>125</sup> They are also seeking to step up sanctions for those that violate the COCOM rules.<sup>126</sup> COCOM officials describe this process as an attempt at "building higher fences around fewer items."<sup>127</sup>

More fundamentally, however, COCOM members must develop a generally acceptable definition of strategically-significant products for the COCOM list.<sup>128</sup> The definition must, for the first time, separate those items that are militarily significant from those that are merely militarily applicable.<sup>129</sup> To this end, European members of COCOM should consider instituting a sub-group within COCOM to set unified positions concerning trade policy<sup>130</sup> and to facilitate collaboration with the United States. This organization would be analogous to Eurogroup, a sub-group of European nations within NATO.<sup>131</sup>

### 1. NATO's Eurogroup

Eurogroup was formed in 1968 to strengthen and unify Europe's contribution to NATO.<sup>132</sup> It seeks to coordinate the defense efforts of the Western European nations by providing for the "harmonisation of European views on important political/strategic questions."<sup>133</sup> The group is open to all Euro-

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125. *A Littler List*, *supra* note 1, at 67.

126. Farnsworth, *supra* note 1, at D6, col. 6.

127. *Id.*

128. Aepfel, *supra* note 31, at 117; Hunt, *supra* note 34, at 1288; McIntyre & Cupitt, *supra* note 30, at 86.

129. Mountain, *supra* note 87, at 95. "[S]ince the Soviets already have demonstrated ability to produce rifles, U.S. technology involved in making rifle barrels, unless the result were markedly better or less expensive, could be acquired by the USSR with no appreciable effect on American security." *Id.*

130. Among the different Western European nations there are different attitudes and approaches concerning COCOM and technology transfers to the Eastern bloc. McIntyre & Cupitt, *supra* note 30, at 88, 89 (the chart illustrates the different views of the key COCOM members in their application and philosophy concerning technology transfer to the East).

131. NATO INFORMATION SERV., *THE EUROGROUP 3* (1975). It is not necessary to include Japan as a member of the sub-group inside of COCOM because Japan has historically been willing to follow the U.S. policies. McIntyre & Cupitt, *supra* note 30, at 89. Although this does not guarantee that Japan will continue this policy, there is, however, no effective domestic group inside Japan demanding the elimination of Japan's membership in COCOM. *Id.*

132. NATO INFORMATION SERV., *supra* note 131, at 10.

133. *Id.*

pean members of NATO.<sup>134</sup> Defense ministers from these ten nations suggest topics for discussion and consult technical experts from each member nation who are most familiar with the topics.<sup>135</sup> All members of NATO, including non-Eurogroup members, are briefed on the decisions made in the meetings.<sup>136</sup>

Each Eurogroup chairman is elected to a one-year term.<sup>137</sup> The Staff Group handles daily business and supervises the sub-groups that specialize in specific NATO issues and projects.<sup>138</sup> Each sub-group is chaired by a Eurogroup member country.<sup>139</sup> Other non-Eurogroup members are allowed to take part in the sub-group if the topic is of general concern.<sup>140</sup>

Eurogroup has enhanced cooperation among NATO member nations. For instance, it has created a NATO Integrated Communication System to enhance political and military command during a crisis.<sup>141</sup> Currently Eurogroup is working toward standardizing NATO military equipment and tactics while allowing Western Europe to continue independent research and development efforts.<sup>142</sup>

## 2. COCOM's Sub-Group

Western European members in COCOM should consider forming a sub-group similar to Eurogroup. Their aim would be to unify and strengthen COCOM policies by agreeing on a single Western European agenda. This agenda would recognize the similar trade and security needs of Western European na-

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134. *Id.* at 5, 9. Although eligible, Iceland is not a member of Eurogroup. 1 UNION OF INT'L ASS'NS, YEARBOOK OF INTERNATIONAL ORGANIZATIONS F4431 (22d ed. 1985).

135. *Id.* at 15.

136. *Id.* at 18. "[I]nformation on the work of the Eurogroup is distributed throughout the Alliance; and access to information on the activities of the Eurogroup is given to the NATO International Staffs." *Id.*

137. *Id.* at 16.

138. *Id.* at 16-17. The Staff Group normally consists of the Defense Counsellors from the national delegations of member countries at NATO headquarters. *Id.*

139. *Id.* The Minister of Defense of the nation chairing the sub-group reports on the progress of the sub-group to his colleagues at meetings. *Id.*

140. *Id.* at 17-18.

141. *Id.* at 22. The Eurogroup has also sponsored joint air, sea, and naval exercises. *Id.* at 25.

142. *Id.* at 14.

tions.<sup>143</sup> The effort would resolve a substantial part of the disunity that exists among COCOM members.<sup>144</sup> Furthermore, the United States would no longer be compelled to negotiate with many COCOM nations; it would have to be concerned with only one group. This streamlining would aid COCOM as an entity in solving such difficult questions as what constitutes a strategic item.

The body would consist of the Ministers of Trade from the sub-group's various members. The Ministers of Defense would also participate as needed. A Trade Minister from one of the member nations would chair the group and would be chosen by the members.

The group would make use of the COCOM staff for administrative duties. This arrangement would both save money and maintain unity. The group would consult technical experts so that the trade ministers could make informed decisions. Any proposal would be brought to the COCOM meetings for presentation and negotiation.

If a potential member nation decided not to join, the group could still be effective. Any reduction in the disunity among the Western European nations concerning trade restriction policies would be positive. Eurogroup has managed to be effective although every eligible NATO nation originally did not join.<sup>145</sup> It must be noted, however, that the COCOM sub-group would aid only in providing a positive environment for strengthening COCOM and resolving its problems. COCOM ultimately can be improved only when its members genuinely wish to cooperate.

### CONCLUSION

The illegal sale of technology by Toshiba to the Soviet Union illustrates the interdependency of the Western allies and the need for a multilateral agreement that is mutually beneficial. Such an agreement will arise only when the Western nations devise a more workable approach to export controls. COCOM is an important organization for the United States

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143. See McIntyre & Cupitt, *supra* note 30, at 104 (West Germany, France, Great Britain, Japan, and Italy all rely far more on trade than does the United States).

144. See *supra* notes 80-91 and accompanying text.

145. NATO INFORMATION SERV., *supra* note 131, at 5.

and its allies. Its survival depends, however, upon the members' willingness to trim their export control lists and enforce them more effectively. COCOM members have made recent efforts to achieve these goals. These are credible efforts, but they constitute only a beginning.

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