

China's new U.S. status to speed COCOM clearance

Now a 'friendly non-ally', China can buy high-tech goods that U.S. once barred



"Program it in Chinese, please"

The U.S. government has raised the technological level of goods which can be licensed for export to China. As a result, China has been moved from country group P (created in 1980 solely for China) to country group V under the Export Administration Act. This places China alongside many friendly, non-allied countries, as well as U.S. allies. That is good news for trade. But many businessmen don't realize that high technology exports to China still have to pass through an international vetting system. Exporters must allow enough time for this structure, called COCOM, to review the proposed export, or face penalty payments and lost sales.

All high-technology trade between Japan and the NATO allies (except Iceland and Spain) and the Communist nations of Asia and Europe (except Yugoslavia) is administered through COCOM, the Coordinating Committee for Multilateral Export Controls. Formed in 1950, COCOM attempts to co-ordinate at its Paris headquarters national security export controls among the member nations.

Control of strategic technologies and commodities is not new. Nations have always known that transfer of technology could aid the enemy. But controls were unilateral. This concept changed with the advent of the Soviet Bloc at the end of World War II, when it became obvious that Soviet-style communism endangered the security of free Europe. As early as 1948, the United States asked its Western allies to co-ordinate embargo policies. Early negotiations were private and secret. Indeed, there is no formal history of COCOM. But its goals are well known. Such events as the elimination of democracy in Eastern Europe, building of the Berlin Wall, proclamation of the Maoist regime in China, explosion of the Soviet atomic bomb, and Soviet efforts to destabilize the non-communist nations brought home the strategic importance of COCOM.

Recent advances have made high technology an international industry rather than an American monopoly. At the same time, Soviet actions in Poland and Afghanistan, and Soviet efforts to develop offensive strategic weapons systems, have demonstrated dramatically that the western industrial community, rather than unilateral actions, must control technology transfers. The Soviet Union is acutely aware of the effectiveness of such multilateral controls. The KGB and the Chief Intelligence Directorate of the Soviet General Staff (GRU) are spending heavily to acquire strategic technology from allied nations.

What about China? It is a communist country; but is it a threat to the West?

Exports of strategic commodities and technologies to China have been controlled for many years because COCOM nations feared that, like the other "proscribed destinations," China would try to develop sophisticated weapons that could harm us. China has followed policies for the past six years that have mellowed our view. In any

number of ways, China has shown itself keen to be a mature member of the world community. In addition, China and the COCOM nations share certain strategic interests; for example, containment of the Soviet Union in Asia.

Far more important, however, are the Chinese regime's efforts to satisfy consumers' demands. Through economic and scientific co-operation, we hope to continue that process. China is not an adversary nation. Co-operation is clearly in our mutual security interests.

Changes in our high-technology trade policy are part of an evolutionary process going back to the Nixon/Kissinger initiative of 1971. After learning more about the Peking regime and its foreign and domestic policies, President Ronald Reagan signalled that the U.S. saw China as a friendly, non-allied nation. This move released technology necessary for the continued modernization of China's agriculture, educational institutions, and manufacturing industries. But for Chinese and U.S. business the transfer of higher technology has been agonizingly slow. The new policy establishes clearer guidelines on what can be routinely approved for export. Businessmen should

not assume, however, that exports to China will be approved instantly. Country group V covers the entire world, except Canada (not included in any country group), Libya, Latin America, and the communist countries of Europe (except Yugoslavia) and Asia. Group V countries are not treated exactly the same. In practice, however, we will ship fairly freely to most of those countries everything except commodities that could affect adversely the United States or other COCOM members, or advance nuclear policies which we do not support. We are not allied with China; therefore, we have deemed it prudent to control at least that much. Nevertheless, COCOM rules require a review of these exports by the other member nations.

Every commodity followed by an A on the CCL (Commodity Control List) is controlled by COCOM. This means that whenever we or one of the other allies wishes to ship one of those commodities to a controlled destination, we must seek the permission of the rest. This healthy check and balance helps to create uniform export control laws and prevent inappropriate shipments. For example, though the U.S. will routinely ship certain commodities, prudence requires us to examine export patterns and try to deny strategic commodities to users who are developing offensive strategic weapons. The prudent corporate export manager must understand that this multilateral review takes time. Do not make contract schedules without taking into account the COCOM licensing factor.

The U.S. government in the past has taken 60 to 180 days to review export license requests. Now, for China, processing can be cut to about one month. On top of that, COCOM approval can take from 45 to 120 days; but very few applications for exports to China are refused.

Another factor to keep in mind is the American laws governing re-export licenses. Unless the commodity you wish to ship is covered by an administrative note to the CCL, your re-export will not require a U.S. license if COCOM grants full approval. In other words, if your firm is based in London, and you wish to ship to China an American computer that is not covered by an administrative note to the CCL or is not an A item, you are wasting time asking for a U.S. re-export license—you don't need it. Just ask your home government for its export license, and then go through COCOM.

There is an exception to this advice. Exceptionally complicated, state-of-the-art exports may take longer to move through the system. If your export is breaking completely new ground at technology levels far above those approved before, and you need a re-export license, you may wish to give the U.S. government a "heads up" prior to COCOM review.

The Office of East-West Trade of the Department of State co-ordinates the position on U.S. and foreign requests to ship commodities through COCOM. This is done through the Economic Defense Advisory

Committee (EDAC), a group chaired by State and made up of officials of the Defense, Commerce, and Energy Departments, and the intelligence community. I chair the Case Processing Sub-Committee of Working Group One of EDAC, and co-ordinate the activities of the different agencies on all U.S. and foreign cases. EDAC is a ladder organization, so if a case can't be resolved at my level, it can be raised to other levels in EDAC, and even go to the President, if necessary.

The Commerce Department has primary responsibility for answering technical questions on U.S. cases (except for munitions, which are handled by State); however, if an American export gets into trouble, my office co-ordinates the U.S. government response, either directly, or through EDAC. Trouble can often be avoided if the U.S. exporter thinks ahead: for example, in setting delivery dates. Unless you absolutely have to set a short deadline, don't. More than 1,000 cases a year are handled in committee, each requiring many hours of research. Even more will be handled because of the new liberalization. It is not always easy for another country to hasten its review. And every time we ask, we commit ourselves to returning the favor, something we are not always capable of doing.

When requesting permission to export, don't just list the trading organizations. Find

the name of the real end-user, what his street address is, a phone number (if possible) and what he intends to do with the export. Tell us if the item has been previously exported to a COCOM controlled destination and what the previous license numbers were (if any). This will hasten processing. Also, try to provide us with a complete set of parameters, complete information on the system the equipment will be used with, and so on. These tips will help American cases to be processed quickly, and will help us process foreign cases as well.

One Chinese law in particular is likely to have a major impact on sales of high technology to China in the future, and thus be of COCOM concern. This is the Joint Ventures Law, promulgated in July 1979. The law permits foreign investors to participate in both the management and ownership of economic enterprises. Because of low labour productivity and a variety of factors and trade practices, few joint ventures cropped up right away. But I expect this will change. Increased productivity gained through incentive programmes, depoliticizing of the appointment of managers, and a clearer legal environment have made investing in China more attractive. Adding to the attractiveness of joint venture investments, no maximum has been set on the percentage of foreign holdings. The trouble with joint ventures is that they can be very

complicated, involving packages of individual transfers of technology spanning several years, even more than a decade. Because of the impact such a venture may have on technology flows, I suggest that when applying for export licenses companies take extra pains to explain what the transaction involves. Cite previous examples of approval of similar technology. Explain explicitly what the export involves, and what it does not involve. In addition, suggest a calendar that realistically phases technology transfer. This will cut valuable time from case processing, and could save a case.

The international process should not be feared. Co-operative licensing practices protect all of us by co-ordinating the levels of appropriate COCOM exports among the industrial countries and developing a unified response to technological threats. This is a far more effective tool than a patchwork of individualized, unilateral policies, no matter how strong they might be. But so long as relations with China continue to improve, and your export request is reasonable from a strategic point of view, the sale will be allowed.

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