

EUROPEAN COMMUNITIES - EUROPEAN PARLIAMENT - OPINION ON US  
RESTRICTIONS ON TECHNOLOGY TRANSFER\*

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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

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\*[This document was made available by Mr Peter Juhler, Attaché (Press and Information), Delegation of the Commission of the European Communities, Canberra.]

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.