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March 3rd, 1959.

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COCOM Document No. Sub-C(59)1B

COORDINATING COMMITTEE

CHAIRMAN'S REPORT

ON

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A MEETING OF THE SUB-COMMITTEE ON EXPORT CONTROLS

18th - 20th November 1958

BELGIUM(LUXEMBOURG)

Mr. Blondiau (Chairman)
Mr. Vaisiere
Mr. Poirier

CANADA

Mr. Bailey
Mr. Charland

DENMARK

Mr. Lund
Mr. Nielsen

FRANCE

Miss Boussac
Mr. Guinebault
Mr. Poirier
Mr. Muzard
Mr. Abadie

GERMANY

Dr. Kruse
Dr. Schaffrath
Mr. Campbell
Mr. von Hahn
Mr. Veth
Mr. Günther
Mr. Lehmann

ITALY

Mr. Cortese de Bosis
Mr. Paoli

JAPAN

Mr. Nikai
Mr. Yanagiya
Mr. Mitsui

NETHERLANDS

Mr. Blik
Mr. de Roo
Mr. de la Vieter

NORWAY

Mr. Schoeyen

UNITED KINGDOM

Mr. Maddocks
Mr. Cazalet
Mr. Smith
Mr. Wood

UNITED STATES

Mr. Allen
Mr. Goinga
Miss Novikola
Mr. Hendersen
Mr. Borton
Mr. Anderson
Mr. Rehfeld

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(Report of the Chairman of
the working Group)

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References: COCOM Documents Nos. 2749, 3030, 3058, 3195.1 - 11, 3209, 3258(Revised), 3259, 3260, 3264, 3269, 3292, 3317, 3318, Sub-C(58)2. Export Controls W.P.7.

Note: The following document is a detailed report of the discussions which took place in the Sub-Committee on Export Controls. A number of general statements were made in the Committee both before and after the Sub-Committee held its separate meetings. These statements, together with a brief report made to the Committee by the Chairman of the Sub-Committee will be found in COCOM 3317.

I. IMPORT CERTIFICATE/DELIVERY VERIFICATION SCHEME.

(a) Standard wording of ICs and DVs (COCOM Documents 2749, 3209, 3259, and Sub-C(58) 2 paras. 32 - 36.)

1. The UNITED STATES Delegate stated that the procedures at present adopted in the United States for ensuring that DVs contained sufficient details to enable the goods to be identified were set out in COCOM Document No. 3259. He explained that about a month before the United States control authorities had made photostat copies of one hundred DVs issued in New York and had checked them for all the information they contained, such as the IC number and the names of parties to the transaction. A few technical irregularities had been found. When errors had come to light, the firms concerned had been contacted. The United States authorities had come to the conclusion that spot checks of this kind helped to make the system more effective.

2. The DANISH Delegate said that since September a new DV form had been in use which his authorities thought would effect an improvement in the system. The importer was instructed to give the same specification as appeared on the IC and the Danish authorities obtained copies of the DVs issued by the Customs and checked them against the relevant ICs.

3. The JAPANESE Delegate recalled that full details of the new regulations in force in Japan were given in his Government's Memorandum (COCOM Document No. 3209.

4. The ITALIAN Delegate stated that DVs were issued in Italy by the Customs post through which the goods were imported and contained a description of the goods which was based on the Customs tariff nomenclature. The DV gave a full description of the name of the foreign exporter, the name of the Italian importer, the value of the goods and details of the weight or number of pieces. The Customs post would put the IC number on the DV form if so requested.

5. The GERMAN Delegate said that the remarks made by his Italian colleague applied to all countries where DVs were issued by the Customs. The Customs always used the Customs tariff wording on DVs, whereas ICs were issued with the wording of the International Lists which differed considerably from the wording of the Customs tariff and thus made comparison difficult. It was important for the DV to have on it the number of the relevant IC, although even then there was the possibility of a mistake occurring. He believed that it might be preferable to issue an extra copy of the IC on which it would be certified that the goods had been imported, and which could then serve as a DV.

6. The UNITED KINGDOM Delegate said that a new system had now been in force since October 1957. It was fully described in COCOM Document No. 2479 and was now working with 75% efficiency. It was hoped to improve upon this figure and steps were being taken to make the system more effective. Where

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it was felt that the authorities of the exporting country were not able easily to relate the DV to the IC, invoice numbers were also included on the DV so that the exporter could be approached in order to see which particular transaction was concerned.

7. The CHAIRMAN said that the object was simply to achieve as much standardisation as possible in countries where DVs were issued by the Customs and not by the same authority which had issued the IC. When the IC/DV system had been established in 1952 it had been decided that the official administrations would be responsible for the control system and that business circles should be burdened with as little formality as possible. If the standard practice were now to involve mentioning invoice numbers on DVs it would mean that the business community would have to supply more documents to the centre of administrative authorities and he thought that this should be avoided.

8. The UNITED KINGDOM Delegate pointed out that his authorities found it useful to use invoice numbers because the Customs import documents related principally to duty, which was usually calculated on an ad valorem basis, thus the invoice always accompanied the Customs documents and was immediately available.

9. The GERMAN Delegate said that he agreed with the Chairman's point of view. The controls had to be as effective as possible but on the other hand there should be as few difficulties as possible imposed on the business community. He added that he saw no advantage in using the invoice number because it was not available when the IC was issued.

10. The CHAIRMAN summed up the discussion by saying on the whole the IC/DV system was working well and there were few difficulties. The Sub-Committee would be able to see at a later date if it were still necessary to try to improve the procedure. It must always be borne in mind that too much should not be demanded of the business community.

(b) Return of unused ICs (COCOM Sub-C(58) 2 paragraphs 58 and 59.)

11. The GERMAN Delegate said that it was important that unused official documents should not be left in the hands of private firms. A German importer was obliged to return the IC if a transaction did not take place or if it were concluded on some other basis. If the IC had already been sent to the foreign exporter, the importer had to inform the office which issued the IC accordingly.

12. The ITALIAN Delegate stated that if an IC were not used by an Italian importer the latter would have to return it to the issuing authorities. If the IC had already left the country, in dubious cases the Italian authorities took action through diplomatic channels to ensure that the IC was not misused.

13. The FRENCH Delegate observed that in his opinion this was a problem which occurred only when non-member Countries were concerned. In the case of an export from France, the French authorities would issue a certificate of non-use or partial use. In the event of a proposed import into France, the French authorities, should the goods not arrive, would make the necessary investigation to see what had happened and would ask the French importer to return the IC. Since the last meeting of the Sub-Committee, widespread spot checks had been made but no case had been found of an IC being issued and no import taking place subsequently. If such a case were to occur, it would always be possible to find out what was happening through diplomatic channels.

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14. The GERMAN Delegate illustrated the importance of returning unused ICs with the following example: an importer would ask for an IC for a particular transaction, then having obtained it would buy the same quantity of goods in the same country but with the intention of sending the goods to a different destination. The original IC would be used for this second, illegal, transaction. It would not be possible of course to obtain a DV but by the time the fraud was discovered the transaction would already have taken place.

15. The CHAIRMAN pointed out that the name of the foreign exporter appeared on an IC and the exporter could ship the goods only to the country named on the IC. It was much simpler to follow up an unused IC when another Member Country was concerned; when non-Member Countries were involved it was necessary to make enquiries from the importer and even to use diplomatic channels to get back the unused IC.

16. The UNITED STATES Delegate informed the Sub-Committee that his authorities had made a special check after the last meeting and only one case of possible irregularity was found. If the United States authorities rejected a licence application they returned the IC or, if it were approved for a smaller amount, that amount would be marked on the IC. Furthermore the business community were notified in the published regulations that ICs must be returned if they were not used. So far this rule had been well observed.

17. The CHAIRMAN summed up the discussion by saying that this was a question of minor importance but there was a certain danger in leaving unused ICs in commercial hands. There was not the same danger where Member Countries were concerned but such ICs had sometimes been used illegally in non-Member Countries. Participating countries should arrange to have unused ICs returned, working through diplomatic channels when necessary.

(c) Facsimiles of signatures on ICs and DVs; Copies of ICs and DVs in use

18. The UNITED KINGDOM Delegate suggested that it might be possible to effect some small improvements in the procedure. The Netherlands Delegation, for example, had circulated facsimiles of the signatures of their control authorities and, from time to time, the United Kingdom services had received requests for the legalisation of signatures at Consulates. It sometimes happened that new IC and DV forms were issued without warning, in which case it would be better if specimens were circulated before the new forms went into use.

19. The UNITED STATES Delegate hoped that the United Kingdom proposal would include a reference to the validating seal put on documents. Nineteen separate field offices were authorised to issue ICs in the United States and his authorities therefore attached less importance to the signature which appeared on an IC than to the seal which was more difficult to forge. They had some time ago submitted to the Committee samples of the seal they used.

20. The ITALIAN Delegate said that copies of the documents in use were circulated to member countries and to cooperating countries through the Ministry of Foreign Affairs. ICs were issued by the Ministry of Foreign Trade but DVs were issued at the various Customs posts, and since each post had its own stamp and signatures it would not be possible to circulate facsimiles.

21. The FRENCH Delegate said that his authorities had no objection to circulating facsimiles of the signatures in use, but they did not think that this would be a particularly useful measure. It was always possible to compare the signatures on the original IC and the copy before issuing an export licence.

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22. The UNITED KINGDOM Delegate said he realised that not all Member Countries were as centralised as the United Kingdom as far as signatures on ICs and DVs were concerned. He therefore withdrew his proposal to circulate facsimiles. He would be interested to know, however, if other Member Countries had been faced with requests for the legalisation of signatures.

23. The CHAIRMAN summed up the discussion by saying that there seemed to be little need to circulate copies of the documents in use since they were already well known. It would in most cases be impossible to circulate facsimiles of the signatures of the officials concerned with the issue of ICs and DVs, especially when there were changes in personnel. He therefore recommended that attention should be paid to the stamps used on documents rather than the signatures. With respect to the legalisation of signatures it seemed that only the United Kingdom had been faced with such requests, and it was sometimes the importer himself who asked for legalisation rather than the official organisation. The Chairman expressed the general feeling in saying that it was not an important question where Member Countries were involved; in the case of non-Member Countries the matter could be arranged on a bilateral basis if the need arose.

II. T.A.C. SCHEME: T.A.C. Questionnaire

(COCOM Documents Nos. 3195.1 - 11, Sub-C(58) 2 Annex A (paragraphs 49 and 50))

(a) General Comments

24. The CHAIRMAN opened the examination of the replies which had been given to the TAC questionnaire by inviting general comments. He informed the Committee that in the diversion case mentioned in the German answer to question C 3 (c) (COCOM 3195.4), the foreign forwarding agent had been sentenced to one year in prison but the case was not yet completed since an appeal had been lodged.

25. The CANADIAN Delegate said that although there had so far been no need to implement the T.A.C. scheme, Canadian regulations were sufficient to prevent movements of goods through Canada to the Soviet Bloc.

26. The DANISH Delegate said that his authorities had the power to stop the transshipment if it was accompanied by insufficient or unsatisfactory documents.

27. The FRENCH Delegate observed that France was very little used as a transit country. The only difficulty was likely to arise in the case of goods coming from Spain but it seemed highly unlikely that the ~~matter~~ **MATTER** would supply strategic goods to the Soviet Bloc.

28. The ITALIAN Delegate stated that in Italy it was the task of the Customs officials to see that the laws entrusted to them were properly applied. For this reason, in the case of transactions involving the export and transiting of strategic goods (items included in the "Esport" List), the Customs officials had to see that the arrangements in force relating to currency and economic prohibitions and T.A.C. regulations were adhered to scrupulously. Consequently, in the case of transactions involving goods covered by the T.A.C. scheme, the Customs authorities, in addition to the purely fiscal controls exercised, made sure that:

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COCOM Document No. Sub-C(59)1B(1) In the case of exports:

The licence really existed.

The bank authorisation had been granted.

The T.A.C. had really been issued, when the goods were intended for the Sino-Soviet Bloc.

(2) In the case of transit shipments:

The currency document had been issued when it was a case of indirect transit. This document was issued by the banks, upon prior authorisation from the competent ministry. The T.A.C. really existed, when the shipment was subject to T.A.C. regulations.

It should be added that the Italian authorities exercised a preliminary control even over direct transit transactions involving goods belonging to persons residing in Italy. The currency arrangement in force necessitated, for the purchase and resale by residents of foreign goods on the "Esport" List, the issuance of an authorisation by the Italian Foreign Exchange Office or by the Ministry for Foreign Trade, depending on the case involved.

29. The CHAIRMAN observed that no replies to the T.A.C. questionnaire had been received from the Delegations of Greece, Portugal or Turkey. He believed that it would be useful if the Secretariat informed these Delegations that their replies would be of value to the Sub-Committee in assessing the effectiveness of the T.A.C. scheme. He pointed out that Luxembourg was in a Customs union with Belgium, and thus the Belgian reply to the questionnaire also covered the Grand Duchy of Luxembourg.

(b) Replies to individual questions.

"To what extent do your T.A.C. regulations permit your authorities to detain shipments of strategic goods where there is good reason to believe or suspect that they are en route for an ultimate Soviet Bloc destination?"

30. The CHAIRMAN observed that all delegations considered that their regulations were sufficient to detain shipments if necessary.

"Have you seen any evidence of falsified or forged T.A.C. certificates?"

31. The CHAIRMAN remarked that all delegations had replied "No" to this question.

"Have any T.A.C.s been issued to local residents acting as a principal for shipments of strategic goods from third countries to the Soviet Bloc? If so, is a problem created which might lead to a weakening of the T.A.C. scheme?"

32. The CHAIRMAN stated that there seemed to be no difficulties over this point. The cases reported by the Netherlands Delegation (COCOM 3195.10) were of a special nature since they concerned aviation fuel to be used in the Soviet Bloc by Western airlines.

33. The GERMAN Delegate pointed out that the country of transit did not necessarily know which was the country of origin of the goods. In the case of non cooperating non-Member Countries there was of course no T.A.C. and in the case of non-Member Countries which did cooperate, the T.A.C. could be issued if the country of origin gave its agreement to the movement of the goods.

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34. The NETHERLANDS Delegate pointed out that the question was concerned with middlemen resident in Member Countries and in this case the oil company in question were actually owners of the goods.

35. The FRENCH Delegate emphasized the importance of ensuring, before the issue of the T.A.C., that the middleman was a principal in the transaction and that the ownership of the goods actually passed to him at one stage, and that he did not merely remain an agent throughout the transaction.

36. The UNITED STATES Delegate informed the Sub-Committee that since his authorities had replied to the questionnaire, they had issued two T.A.C.s for goods consigned to Poland from cooperating non-Member Countries. They were ready to accept responsibility for goods in transit from non-Member Countries provided the latter cooperated in the T.A.C. scheme.

"Have any enquiries been received from transshipping countries regarding strategic shipments which were detained in transit because they were not accompanied by T.A.C.s issued by your Government but were stated or known to be destined to the Soviet Bloc ? Total number of shipments involved ?"

37. The CHAIRMAN stated that only one case had come to the attention of the Sub-Committee and this had been effectively prevented.

"What is your estimate of the effectiveness of the T.A.C. scheme ?"

38. The CHAIRMAN stated that delegations were practically unanimous in agreeing that the scheme was effective where it was in force, but in some cases was only relatively effective when third countries did not cooperate in the scheme.

"What are the weaknesses or loopholes in the T.A.C. scheme ? How may they be remedied ?"

39. The UNITED KINGDOM Delegate said that he fully realised that the problem in his own country was different from that in other Member Countries because his authorities were concerned almost exclusively with shipments arriving by sea. However, they were so well impressed with the result of their transshipment licensing scheme put into effect in November 1951, that they had recommended its adoption by other Member Countries.

40. The GERMAN Delegate said that he did not think that it would be possible to apply the United Kingdom scheme in continental Europe because of practical difficulties. He asked whether the United States comment that the T.A.C. Scheme would be more effective if Member Countries fully implemented their existing controls applied to cases of direct transit.

41. The UNITED STATES Delegate replied that his authorities were empowered to inspect any goods in transit to the Soviet Bloc through the United States, but he realised that some countries could not apply the T.A.C. Scheme to goods in direct transit. Goods consigned to Western countries went through on a general licence but this did not apply to destinations in the Soviet Bloc.

42. The FRENCH Delegate agreed with his German colleague that it would not be possible to introduce a scheme on the lines suggested by the United Kingdom. In the experience of his authorities, control would be much easier if Austria and the free zones of Switzerland applied the T.A.C. scheme.

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43. The UNITED STATES Delegate commented that the question of non-Member Country cooperation posed a particularly delicate problem. Austria and Switzerland for example did cooperate in some ways as far as goods of their own origin were concerned. He suggested that special attention should be paid to this problem during the next few months, then at the next meeting of the Sub-Committee it might be possible to frame concrete recommendations to the Committee.

44. The CHAIRMAN summed up by saying that it did not seem necessary at the moment to modify the T.A.C. scheme, which was somewhat difficult to apply but which had nevertheless resulted in an important drop in the amount of illegal transactions. Difficulties were more likely to occur where non-Member Countries were concerned; the Sub-Committee should take note of those difficulties but the Chairman felt it should be left to the Committee to take up the question of policy in this respect.

"T.A.C.s issued to local exporters for shipments of strategic goods to the Soviet Bloc."

45. The CHAIRMAN noted that a relatively small number of T.A.C.s (64 during 1957) had been issued to exporters in Member Countries for shipments of strategic goods to the Soviet Bloc.

Statistics of shipments of strategic goods in transit to the Soviet Bloc.

46. The UNITED STATES Delegate said that he was surprised that no Member Country had submitted any statistics concerning strategic goods of Swiss origin transitting through their territory to the Soviet Bloc. He was sure that such cases existed and he asked Delegations to reinvestigate this question. He also asked what experience Member Countries had had with respect to use of the facilities, such as duplicate copies of licences, made available by the Swiss authorities.

47. The BELGIAN Delegate said that his authorities had issued T.A.C.s on the basis of photostat copies of Swiss export licences.

48. The CHAIRMAN invited Member Governments to provide, in time for the next Sub-Committee meeting, statistics on Swiss or Swedish transit goods shipped on to the Sino-Soviet Bloc upon presentation of duplicate copies of export licences issued by Switzerland or Sweden. In conclusion he said that the T.A.C. Scheme seemed to be working satisfactorily. There was less fraudulent traffic than before the scheme was put into operation and there was no need to modify the present regulations.

III. ENFORCEMENT PROBLEMS

(a) Arising from the revised lists

49. The CHAIRMAN said that it would be useful if all delegations confirmed that the new Lists had been published and were in force in their countries. ICs and DVs should no longer be issued for items which had been deleted from the embargo List and a DV should not be issued for a deleted item even if an IC had been issued while the item was still under embargo.

50. The GERMAN Delegate said that, because of the technical difficulties of translation and comparison with the Customs tariff, his authorities would not publish the new List before January 1st, 1959. He confirmed

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that no more ICs or DVs were being issued for items which had been deleted from embargo.

51. The CANADIAN Delegate informed the Committee that his authorities had published the new Lists on the 23rd August.

52. The DANISH Delegate said that the new Lists were not yet printed but ICs were no longer being issued for deleted items.

53. The UNITED KINGDOM Delegate said that the new Lists had not yet been completely embodied in the necessary statutory instruments but he expected that they would enter fully into force in January 1959. There had been a number of technical difficulties in defining exactly what was covered by the International Lists. ICs were not issued for deleted items.

54. The ITALIAN Delegate said that the new Lists had entered into force in Italy on the 15th August.

55. The FRENCH Delegate said that the changes had come into force in his country on the 15th August 1958. Nevertheless for technical reasons, such as those mentioned by the German and United Kingdom Delegates, it had not been possible to establish the complete list of goods subject to the I.C./D.V. system. Publication was expected to take place after the Atomic Energy List review had been completed.

56. The GERMAN Delegate then made two suggestions. He first stressed that the German Customs authorities charged with the control of export documents used lists based on the Customs Tariff definitions, in deciding whether or not goods were subject to export licensing. Consequently considerable difficulty arose in the establishing of these internal lists, since it was sometimes almost impossible to determine exactly which items in the Customs Tariff Nomenclature corresponded to the International List definitions. The Delegate therefore proposed that, at some future stage, a questionnaire might be constituted in order to see if other Member Governments encountered the same difficulties. He wondered moreover if it might not be useful to agree upon uniform transposition for all Member Governments using the Brussels Tariff Nomenclature.

57. The UNITED KINGDOM Delegate pointed out that the Brussels Tariff related principally to imports, and did not have much connection with exports. His authorities had tried to see if the Brussels Tariff were adaptable to export control requirements, but the results of their investigation had not been promising.

58. The NETHERLANDS Delegate observed that there was uniformity only as far as the main headings were concerned. Countries using the Brussels Tariff added their own sub-categories and thus differences in practice could occur. In any event the Benelux countries would not be ready to use the Brussels Tariff until 1960.

59. The CHAIRMAN summed up the discussion by saying that the new Lists were either already published and in force or else the necessary preparations were well in hand. It was agreed that the I.C./D.V. system should not be applied to items deleted from the embargo list.

60. The UNITED STATES Delegate said there would appear to be two categories of problems involved, (1) those relating to transition from the old to the new Lists and (2) basic problems which could be expected to arise in connection with the enforcement of any embargo. With respect to the former, these could be expected to be of a temporary character involving such questions as the issuance of licences by customs authorities through administrative

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error because of mistakes in the identification of items due to the changed Lists and revised definitions. Such errors were understandable and the United States authorities would view them with sympathy. Once the List revisions had been completed and in use for a short period, this type of problem would tend to disappear. The second type of problem was more basic and related to attempts to divert embargoed items to the Sino-Soviet Bloc. Most items on the new Lists had been carefully defined with specifications which should enable licensing and control officers to recognize embargo goods. Many items were types which did not move frequently in trade channels. Diversion attempts might, therefore, be expected to be more sophisticated and well-financed. Document forgery, bribery, and subornation might increase and should be guarded against. This did not mean that the old methods of diversion should be expected to cease, and Member Governments should continue to guard against the usual tactics of transshipment, use of free ports, the shipment of parts for assembly at destination, etc. The new Lists were in some respects more vulnerable than the old Lists, because parts of items formerly embargoed were now free and the definitions of other had been narrowed. There were no indications that Bloc efforts to divert borax, cobalt, molybdenum and ball-bearings had ceased. Other items might emerge as important Bloc targets. The Delegate stressed the importance of all Member Countries being alert and vigilant at all times to prevent the diversion to the Bloc of any item on the Lists, all of which were highly strategic.

61. The UNITED KINGDOM Delegate said that the new Lists made it desirable for Customs officers to have more information on the items controlled. In this connection they found that a descriptive booklet such as the United States Commodity Identification Manual was extremely useful.

62. Certain other delegates shared the opinion expressed by their United Kingdom colleague, and the UNITED STATES Delegate said that his authorities realised that the old Manual was out of date. They had been reluctant to carry out a revision until they had been assured that all Members of the Committee found the Manual useful but, in view of the opinions which had just been expressed, they would consider revision, at least for the items where this was possible. The Delegate said that he had some sample sheets available which Delegations could show to their experts, and that suggested changes would be welcomed.

(b) Illegal Diversions

(COCOM 3030, 3058, 3269, 3318, and Sub-C(58) 2, Annex B para. 8.)

63. Following a short discussion, the Sub-Committee decided to recommend to the Committee that in future the names of countries should be given in all documents concerning illegal diversions. It was clearly understood, however, that the names of individual firms would not be mentioned.

64. The UNITED STATES Delegate said that this year the International Lists had been reviewed at length and the Committee now had an embargo list, every item of which was considered to be highly strategic. The United States authorities felt that the Committee's efforts would have been to little avail unless there were a strong system of enforcement and means of preventing these strategic materials from reaching the Sino-Soviet Bloc. The International Lists were no stronger than the enforcement thereof and the effective implementation of agreed control procedures was vital to all Member Governments. His authorities had submitted details of a number of diversion cases in COCOM Documents Nos. 3030 and 3269. The Delegate referred to the desire expressed by other delegates at the last meeting to approach the problem according to categories of loopholes and causes of diversion, and noted that the United States authorities had submitted their cases on this basis with

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the cause or causes of diversion listed under each case and all categories of causes summarized in the memorandum submitted by his Delegation. He hoped that all Members of the Sub-Committee would participate in the Working Group and that other delegations would also submit cases which had come to their notice. He was gratified to note, in this connection, that the German Delegation had submitted a diversion case for the Committee's consideration (COCOM Document No. 3058) and expressed the hope that other delegations would take similar action. The United States Government hoped that other delegations would take a leading part in the discussion of cases which were of particular concern to them. In their view the primary objectives of enforcement as it related to the Working Group, were twofold: (1) to prevent the diversion of strategic commodities to the Bloc in active cases where the diversions had not yet been accomplished; the cooperation of Member Governments could be very effective in this connection; and (2) in cases where the diversions had already taken place, to establish, through exchanges of information among Member Governments, complete facts in regard to such cases in order that Member Governments might all determine just what they were up against, be in a position to guard against the repetition of similar tactics, and perhaps evolve means of preventing similar diversions in the future. The Delegate thought it particularly desirable to have Working Group specialists get together on these cases in order that they might share information on cases, diversion patterns, possible loopholes in controls, etc. with a view to developing improved investigative and enforcement techniques. He strongly endorsed frequent meetings of the Working Group and suggested that perhaps some system could be developed whereby there would be a constant availability of representatives of interested Member Governments to consider active cases from time to time as they should arise.

65. A Working Group comprising representatives of all delegations was then set up to consider the diversion cases contained in COCOM Documents Nos. 3269 and 3318. The Working Group met separately under the Chairmanship of M. Blondiau on November 19th and 20th and reported to the Sub-Committee on November 20th. The report of the Chairman of the Working Group will be found at Annex A to this Document.

IV. STATISTICAL PROBLEMS

(COCOM Document No. 1766.)

66. The GERMAN Delegate proposed that if a Member Country had submitted an exceptions case and had obtained the Committee's approval, the latter should be informed if the transaction were later to fall through. It sometimes happened that enquiries for the same equipment were made in several Member Countries, several exceptions requests would then be made and there was a danger of duplicating statistical returns.

67. The UNITED KINGDOM Delegate said that United Kingdom statistics for exports of List I, Munitions List and Atomic Energy List items were based on licences issued. List IV statistics were based mainly on Customs returns showing actual exports. The United Kingdom would continue to report to the Committee in this way and would not show any follow up of exceptions cases which had been submitted to the Committee. The statistics did show where export licences had been cancelled. Information could always be obtained bilaterally from the United Kingdom Delegation as to whether or not a United Kingdom exporter was successful in obtaining an order after enquiries had been made in several Member Countries, but this information would not be shown in the statistical returns.

68. The CHAIRMAN drew the attention of the Sub-Committee to the provisions laid down in paragraph 31 of COCOM Document No. 1766, and emphasized that delegations should include details of cancelled licences in their statistical returns.

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COCOM Document No. Sub-C(59)1BV. EXCHANGE OF VIEWS CONCERNING THE APPLICATION OF SECONDARY CONTROL

(COCOM Document No. 2869.52)

69. The GERMAN Delegate said it was difficult to obtain statistics relating to the export of List IV items, because his authorities required no licences for such exports. Their returns were compiled partly on the basis of statistics from the Ministry of Economics and partly on information received from industrial sources.
70. The UNITED KINGDOM Delegate stated that the application of secondary control was working satisfactorily and that no difficulties had been met. There was close cooperation between the Export Licensing Branch and the Customs to produce the necessary statistics.
71. The ITALIAN Delegate stated that, generally speaking, export licences were not issued in Italy for List IV items (except in the case of certain items difficult to define). The periodical statistical returns required by the Committee were established, according to the case involved, on the basis of the data supplied either by the Central Institute of Statistics, the Customs authorities, or by professional organisations.
72. The DANISH Delegate informed the Sub-Committee that his statistical returns referred mainly to licences issued, since export licences were required for nearly all goods sent to destinations outside the European Payments Union, the Dollar Area and Finland.
73. The UNITED STATES Delegate said that the policy adopted in his country was very similar to that followed by the Danish authorities. His Government reported to the Committee when a licence expired or was cancelled. He stressed the importance of reporting such exports with particular reference to nickel and rotating electrical machinery.
74. The FRENCH Delegate stated that export licences were necessary for List IV exports. The relevant statistical returns were based mainly on Customs statistics.
75. The BELGIAN Delegate stated that licences were required for all exports from the Belgo-Luxembourg Economic Union to the Soviet Bloc. The statistical returns supplied by the Belgian authorities showed actual exports.
76. The JAPANESE Delegate said that, with the exception of two items, 4410 (tankers) and 4661 (nickel), List IV exports were not subject to licensing. Returns were based on Customs figures.
77. The NETHERLANDS Delegate said that his authorities required licences for all exports to the Soviet Bloc. Statistics had so far been based on licences issued; in future account would be taken of those which remained unused.
78. The CHAIRMAN summed up the discussion by saying that all Member Countries had taken the necessary steps to conform with the Coordinating Committee's recommendations on establishing a form of secondary control, whether they issued export licences or not. Having then raised the question of statistics relating to Dependent Overseas Territories, he said that this was a matter of policy which should be left to the Coordinating Committee for a decision. The Sub-Committee merely noted that Belgium included the Belgian Congo and the United Kingdom included Hong Kong in their returns.

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COCOM Document No. Sub-C(59)1BVI. NON-MEMBER COUNTRY COOPERATION(a) Division of work in relations with non-member countries

(COCOM Document No. 2869.51)

79. The CHAIRMAN said that it was well known that the most serious loophole in the T.A.C. and I.C./D.V. schemes was caused by the lack of cooperation from certain non-Member Countries. He had grave doubts, however, that the Sub-Committee was the proper forum for discussing this aspect of relations with non-Member Countries.

80. The UNITED KINGDOM Delegate said that he shared the Chairman's doubts. It was entirely a diplomatic problem to take account of the political sensibilities of non-Member countries, particularly those in Europe. He considered that the matter had been sufficiently ventilated in the Coordinating Committee in July (COCOM Document No. 2869.51) when the United States Delegation had raised the question of informing non-Member Countries of the changes in the International Lists. The Coordinating Committee could take up the matter again whenever it thought fit.

81. The SUB-COMMITTEE decided that this question went beyond its terms of reference and proceeded to the next item on the agenda.

(b) Controls enforced by non-Member Countries

(COCOM Documents Nos. 3258, 3260, Sub-C(58) 2 paragraph 66)

82. The UNITED STATES Delegate drew the attention of the Sub-Committee to the memoranda submitted by his authorities (COCOM Documents Nos. 3258, 3260). They hoped that all Member Countries would use to the maximum the facilities made available by non-Members.

83. The FRENCH Delegate informed the Sub-Committee that his authorities had issued ICs for goods from the following countries: Austria, Brazil, Chile, Belgian Congo, Mexico, Nigeria, Sweden, Switzerland, Federation of Rhodesia and Nyasaland, Malaya. A check was carried out six months after the issue of the IC and, as far as it was possible to ascertain, all the goods had arrived in France. The French authorities had also obtained a DV from Yugoslavia for a consignment of borax.

84. The UNITED KINGDOM Delegate gave details of the ICs which had been issued by his authorities during the year 1957 and the period January - September 1958. Statistics for the first half of 1958 might be incorporated in the compilation to be prepared by the Secretariat.

85. After further discussion, it was decided that all delegations should submit to the Secretariat by the 15th December statistics of the ICs issued during the first six months of 1958 as regards both cooperating and non-cooperating non-Member Countries. The SUB-COMMITTEE then discussed more fully the French Delegation's reference to a DV issued by the Yugoslav authorities.

86. The UNITED STATES Delegate said that his authorities had tried unsuccessfully for many months to obtain DVs from Yugoslavia. So far only the thorough pursuit of individual cases through diplomatic channels had led to successful results, and the shipment of some consignments had had to be suspended until assurances had been received that they would not be reshipped. He urged all delegations to keep a very close watch on their trade with Yugoslavia.

87. The GERMAN Delegate stated that his authorities had obtained DVs

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from Yugoslavia since the beginning of 1957, although they had asked for them only where goods of particular importance, such as borax and copper, were concerned. He circulated a copy of the document provided by the Yugoslav authorities and said that his Government considered its terms satisfactory.

88. The UNITED KINGDOM Delegate said that in the last few months a thorough examination of United Kingdom trade with Yugoslavia had been made and nothing suspicious, such as sudden increases in trade in particular commodities, had come to light.

89. The CHAIRMAN summed up the discussion by saying that it would be useful to request non-Member Countries to furnish proof of the arrival of the goods, in addition to the end-use certificate called for before the export took place. The SUB-COMMITTEE then proceeded to a close examination of the United States memorandum (COCOM Document No. 3260) on the cooperation afforded by various non-Member Countries.

(c) Bilateral negotiations

(COCOM Sub-C(58) 2, paragraph 66)

90. The SUB-COMMITTEE decided that this question went beyond its terms of reference and proceeded to the next item on the agenda.

(d) Documentation and addresses of cooperating authorities

(COCOM Document No. 3264, Sub-C(58) 2 paragraph 61.)

91. The CHAIRMAN paid tribute to the United States Delegation for submitting a very complete document (COCOM Document No. 3264) listing the names and addresses of the authorities in non-Member Countries which cooperated in the T.A.C. and I.C./D.V. schemes. The SUB-COMMITTEE agreed that delegations should study the United States Memorandum further and send any necessary corrections or additions to the Secretariat by the 31st December. Nil returns should also be submitted. The Secretariat would then compile a composite document for ease of reference.

VII. INSURANCE.

(COCOM Document No. 3292, Sub-C(58) 2 paragraphs 82 - 90)

92. The BELGIAN Delegate informed the Sub-Committee that one of the general conditions of the Standard Antwerp Maritime Policy was to the effect that the insurers were not liable in cases of seizure or confiscation when the person insured engaged in prohibited or clandestine commerce. He confirmed that there was no legislation in Belgium to compel insurers to follow the control regulations but he was sure that there was no direct cooperation by insurance companies in contraband traffic.

93. The GERMAN Delegate drew the attention of the Sub-Committee to the activities of a Soviet insurance agency in Western Europe, which was prepared to underwrite goods consigned to the Soviet Bloc at lower premiums than those charged by Western companies.

94. The FRENCH Delegate confirmed the statement he had made at the previous meeting of the Sub-Committee and said that his Government were already applying the maximum control possible. He explained that, with respect to maritime transport insurance, article 7 of the general insurance policy stipulated that insurers were not liable for the following causes or consequences thereof: ..., violation of blockade, ..., prohibited or clandestine trade. As regards land transport, chapter III laid down the risks which

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were not covered. Article 3, in particular, stated that "insurers were expressly free from all liability for the following causes: ..., any consequences whatsoever of contraband and prohibited or clandestine trade."

95. The DANISH Delegate stated that there was no legislation specifically to prohibit the insurance of embargoed goods, but that Danish companies were not aware that such insurance had ever been effected.

96. The ITALIAN Delegate stated that the regulations in force in Italy provided for no special measures as regards the insurance of embargoed goods. Among the general conditions for insuring the transport of merchandise, however, there was an article, normally included in every contract, which listed among the risks not covered, damage, loss and expenses resulting wholly or in part, directly or indirectly, from contraband or prohibited or clandestine trade".

97. The NETHERLANDS Delegate stated that, as in Belgium, there was a standard contract with a clause to exclude the cover of contraband. He endorsed the remarks of the German Delegate concerning the Soviet insurance company operating in Western Europe and said that it reimbursed claims more generously than Western companies.

98. The UNITED KINGDOM Delegate said that the answers to the questions he had raised at the previous Sub-Committee meeting seemed to indicate that in all Member Countries, with the exception of the United States, the position was the same as in the United Kingdom, namely that it was not a criminal offence in itself to insure embargoed goods but most policies contained a clause which made the contract void if the insured person aided or abetted in an act which he knew to be against the law. In the United States the law affected only goods bound for or originating in China or North Korea and the United Kingdom authorities considered that the general situation was satisfactory. The question had also been raised in the context of reinsurance; here the prime responsibility lay with the insuring country of the first instance.

99. To sum up, the CHAIRMAN pointed out that the question of insurance of strategic goods had been studied very thoroughly and that all Delegations had explained very frankly the situation obtaining in their countries. At Sub-Committee level, all the required explanations on this point had been supplied.

VIII. NEXT MEETING

100. After a brief discussion, it appeared that all delegations were in favour of holding the next meeting in six months' time, by which date the new International Lists would have been in operation sufficiently long for their effectiveness to be judged.

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ANNEX to
COCOM Document No. Sub-C(59)1REPORT BY THE CHAIRMAN OF THE WORKING GROUPONILLEGAL DIVERSIONS OF STRATEGIC GOODS19th and 20th November, 1958.References: COCOM 3030, 3058, 3269, 3318, Sub-C(58) 2.

1. The WORKING GROUP decided to discuss in detail each of the cases contained in the United States memorandum on illegal shipments (COCOM Doc. No. 3269). Many of these cases were a continuation of those mentioned in the memorandum submitted by the United States at the previous meeting (COCOM Doc. No. 3030).

Case No.1

2. The DANISH Delegate asked why the Netherlands authorities had not been able to stop this diversion by means of transaction or financial controls.

3. The NETHERLANDS Delegate pointed out that the financial transactions had taken place outside the Netherlands, thus nothing could be done to frustrate the diversion. It might be possible in such cases to impose fines subsequently but there was no way of preventing them in the first place.

4. The UNITED STATES Delegate expressed concern that the Netherlands firm was still shipping borax to the Soviet Bloc as late as July, 1958, despite the fact that the United States Government had suspended the firm from export privileges and reportedly Netherlands action had also been taken against the firm.

5. The GERMAN Delegate observed that the goods had been shipped in a Polish vessel. There was the possibility in this event that goods might not be discharged at the destination to which they were ostensibly consigned.

6. The CHAIRMAN stated in conclusion that this diversion could not have been stopped because of the lack of Argentine cooperation.

Case No. 2

7. The GERMAN Delegate said that this case was an example of the successful prevention of an attempted diversion and proved the value of the T.A.C. scheme. A danger still existed, however, in that whenever a consignment was stopped, fresh instructions were given to transship the goods to another country.

8. The UNITED STATES Delegate stated that his Government had conducted a thorough investigation of this case which had developed interesting information, noting that he would be pleased to brief the Working Group on the results of the United States investigation. However, further discussion of the case was not considered necessary.

Case No. 3

9. In response to a statement by the German Delegate that diversion of the borax shipments was due to the existing loophole in the freeport of Basel where the T.A.C. procedure was not being enforced, the UNITED STATES Delegate stated that the diversions under discussion could not be blamed on the freeport of Basel, noting that the shipments had been exported from West Germany, entered Switzerland in transit status, returning to West Germany as

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transit goods en route to the Soviet Zone of Germany. The Delegate raised the question, how such transactions were feasible under the present controls, pointing out that similar diversions had taken place at the German/Netherlands border. He further inquired why the T.A.C. scheme had not been applied under the circumstances, pointing out that the Swiss Government had agreed to participate in the T.A.C. procedure as a country of origin.

10. that
The GERMAN Delegate stated/though Switzerland participated in the T.A.C. scheme, the difficulty was that the latter applied only when the transit was broken: in this case the goods remained all the time in a sealed railway waggon. Goods could only be stopped if they were recognised as an original German export. His authorities noted the numbers of the waggons carrying certain strategic items and could check on the movements of all German waggons. Difficulties occurred, however, when "Europ" waggons were used.

Case No. 4

11. The ITALIAN Delegate informed the Working Group that his authorities had now altered the licensing procedure for exports to Finland and Sweden. A comparison of previous statistics had shown a discrepancy between Italian exports of strategic goods to Sweden and Swedish imports of these goods from Italy.

12. The CHAIRMAN said that it would be useful to follow up shipments of this size through diplomatic channels. The text of the foreign equivalent of the IC should contain an engagement by the importing firm concerning the actual disposal of the goods. What was wanted was proof of arrival in the approved destination. The Swiss "Blue Certificate" was satisfactory in this respect since it contained the assurance of the Swiss authorities but he suggested that it would be useful if the Danish and Norwegian Delegations enquired into the exact status and value of the Swedish customs document "Tulseden".

Cases Nos. 5, 6 and 7.

13. After discussion of the above case (case No. 4), the CHAIRMAN suggested that sufficient borax cases had been reviewed, noting that further discussion of such cases was not necessary in his opinion. He stated that no further details were available on Case No. 5 (Diversion of 10 Tons of Boric Acid Crystals from Germany to the Soviet Occupied Zone of Germany via Sweden), which was still under investigation. As to Case No. 6 (Attempted Diversion of 13 tons of Borax Powder by a British Firm to the Soviet Occupied Zone of Germany), the Chairman said that it showed excellent cooperation between the Governments concerned. Case No. 7 (Diversion of Borax by a Firm in Switzerland) was not taken up.

Attachments 2 and 3

(Nickel and cobalt diversions)

14. Cases under Attachment 2 (Diversion of Nickel Shipments to Soviet Bloc) and Attachment 3 (Illegal Shipments of Cobalt) were examined simultaneously. The CHAIRMAN referred to a statement made by the United States Delegate at the April Working Group Meeting to the effect that some diversions of nickel and cobalt had taken place by declaring the goods as "metalware". Speaking for the BELGIAN Delegate, he stated that he had checked this matter with the Belgian Customs Authorities and the "Institut des Changes" and that no irregularities had been discovered although a few shipments of "metalware" to Switzerland and Sweden were still under investigation by the Belgian Authorities. The United States Delegate raised the question whether other participating countries had pursued similar enquiries with regard

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to nickel and cobalt. He suggested that it might be a fruitful line of enquiry to pursue, since both metals were significant even if exported in small amounts. There was no reaction to the United States Delegate's enquiries, and no comments by the other delegates.

Attachment 4

(Tantalum, nickel alloy wire and molybdenum diversions)

15. The GERMAN Delegate pointed out that in this case the actual arrival of the shipment at the approved destination was not the only important consideration. The end-use to which the material was to be put should be closely scrutinized, since proof that the goods had arrived did not necessarily mean they would be consumed locally.

16. The UNITED STATES Delegate requested delegates to familiarize themselves with the tactics of the group involved in this case, pointing out the flexibility of its operations and its ability to transfer its activities from one country to another.

Attachment 5

(Copper bars diversion)

17. The CHAIRMAN said that all members of the Working Group agreed that when an IC was issued in respect of a shipment from a non-Member Country, a copy of the IC should be sent to the Export Licensing authorities of that country. The Belgian and German authorities only followed this rule in the case of certain non-Member Countries. The other delegations would check on the practice they followed.

Attachment 6

(Oil diversion to Communist China)

18. The JAPANESE Delegate said that there was now closer cooperation in the ministries concerned, and that his authorities considered that the gap was closed. The Japanese merchant in question had been fined.

19. The UNITED STATES Delegate informed the Working Group that his authorities had developed additional information on this case which could be made available to delegates. He emphasized that, although the principal guilty party had been apprehended, other individuals involved in the case were still active and that the information on hand attested to the continued activities of these persons.

Attachment 10.

(Roller bearings diversions to Communist China)

20. The CHAIRMAN pointed out that, in view of the limited time available to the Working Group, it would not be possible to review all remaining cases. He asked whether delegates had any preferences. The United States Delegate stated that the subject case might be of interest to the Working Group, as it illustrated cooperation among participating countries in efforts to determine the accountability of the participants and the circumstances which led to the diversion. The Delegate added that the case further illustrated that investigation of particular details in a case might lead to information concerning other irregular transactions and facilitate the investigation. Secondly, the case illustrated that errors in licensing could also occur due to misinterpretation of the wording on the documents.

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21. The GERMAN Delegate agreed with remarks made by his United States colleague. He cited a case that had come to the attention of his own authorities (COCOM Document No. 3318) and that also illustrated this point. He suggested that, in the case of goods imported for exhibition at trade fairs, it should be made clear to the importing country that the goods were not intended to enter its economy.

22. The FRENCH Delegate pointed out that in France the re-export of goods imported for exhibition at trade fairs was compulsory unless an IC were obtained.

23. The CHAIRMAN said that the danger was that the authorities of the exporting country might not know that the goods were intended for permanent export, but even if they did, the time lag enabled the goods to be re-shipped to a third country before any action could be taken to stop the re-shipment.

24. The UNITED KINGDOM Delegate observed that it was important to protect the element of commercial secrecy in triangular transactions. If the supplier knew the state of the market in the third country, the intermediary could be cut out of the transaction.

25. The UNITED STATES Delegate said that with respect to temporary imports into the United States under bond for trade fairs, a United States general licence allowed the re-export of such shipments other than to Soviet Bloc countries without further formality. Therefore the United States authorities could not issue ICs for such shipments. They did not require an IC for a United States export for exhibition at a fair, but they obtained an undertaking from the exporter that the goods would not be sold without official approval which meant in effect that an IC would be required before such approval would be given. The Delegate felt that it was important for licensing authorities to be able to recognize the type of trader who was out to beat the controls in any way possible. The United States Government considered that the Working Group was a very important and useful forum for the exchange of ideas and mutual assistance in combatting fraudulent diversions. Diversions could be stopped only if all Member Countries were constantly on the alert and the control systems were sufficiently flexible.

CONCLUSION

26. In rendering his report to the Sub-Committee on Export Controls, the CHAIRMAN expressed the wish that in future meetings the Working Group be allotted more time and that its work be carried out in a less formal manner. He stated that he had seen no need to discuss each case listed in COCOM Doc. No. 3269, and expressed his belief that all Working Group delegates agreed with him on the following conclusions:

- (1) Financial controls were found to be not as efficient as expected;
- (2) In connection with exports from Argentina, the T.A.C. procedure was not applicable. Special attention should, therefore, be given to the movement of strategic goods from that country, especially boron products;
- (3) Loopholes were found to exist in transactions involving non-Member Countries. Participating countries should exercise special scrutiny in dealing with these countries. This matter should be reviewed again at the next meeting;

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- (4) Regarding strategic shipments to Sweden, extensive use should be made of diplomatic channels in determining the end-use of the goods;
- (5) Exchange among participating countries of information regarding diversion patterns and methods, and persons involved was increasing;
- (6) As a result of the revised embargo List, more attention should be paid to the description of the commodities by licensing authorities and extensive use should be made of technical facilities in identifying such goods.

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