

Preface

This book originated from an international conference which the present editor organized in October 1988 while he was at the Faculty of Law of the University of Tokyo. The Conference, which focused on CoCom and its related export control system, attracted a large audience from among academics, government officials and businessmen. It may be recalled that this was only a year after the Toshiba Machine/Kongsberg incident which resulted in renewed efforts on the initiative of the United States for the harmonization of export controls. The uneasy relations between the United States and the European Allies in CoCom became even more strained when the United States enacted the Omnibus Trade and Competitiveness Act in 1988 amidst protests from the allies. This Act was controversial in that, *inter alia*, it contained a provision which penalized foreign entities for violations of CoCom embargo.

The political climate surrounding CoCom began to change as the “new thinking” in Soviet foreign policy gradually took shape. This was accelerated by the breathtaking changes in Eastern Europe in the latter half of 1989. There was some uneasiness on the part of officials involved in CoCom control when people started talking about the “withering away” of CoCom in the autumn of 1989.

At the high level meeting in June 1990, CoCom member countries agreed to a substantial reduction of the list. A new minimum list – core list – is to be prepared by the end of 1990. The GDR was given a preferential treatment and three Central European countries will receive similar treatment once they introduce a proper export control system which they promised to complete by October 1990. According to a senior Hungarian official in charge of CoCom related issues, Hungary will cease to be a CoCom proscribed country in the future. This view was shared by people in Czechoslovakia and Poland. On the other hand, it is worth noting that the Soviet Union failed to benefit from the relaxation of controls, primarily due to its political and economic instability.

Thus, despite the changes in the overall political climate, it seems that CoCom will continue to function for some years. Admittedly, the scope of control has been narrowed by removing 30 items from the list in June 1990. However, it should be noted that in some areas, the control has been tightened. Some officials firmly stated that since the list has been shortened, in turn, the level of enforcement will be raised and that a concerted effort by the members for stricter control was needed.

Some people in the U.S. government indicated as early as the end of 1989 that the focus of CoCom might shift to the area of nuclear non-proliferation and control of chemical weapons. This idea seems to have come closer to reality with the crisis in the Middle East. The U.S. government has informally raised the issue of developing a multi-lateral regime for this purpose.

In fact, notwithstanding some recent changes, all the old problems which had caused conflicts within and outside CoCom still exist. The United States is still exercising export controls in an extra-territorial way via its extensive reexport control; the Omnibus Trade and Competitiveness Act remains unaltered. Furthermore, the issue of using (or abusing) export controls for the benefit of the industry was raised again when the United States turned out to be the first country to incorporate the latest changes in the CoCom list in domestic law. By going far ahead of the Allies, U.S. companies are suspected to have enjoyed some advantages vis-à-vis European and Japanese companies.

This volume, which contains papers presented at the Tokyo Conference and later up-dated, is expected to contribute to the discussion on current legal and political issues concerning export controls. It also merits the attention of those specializing in International Law and Conflict of Laws.

The present editor is indebted to the Toyota Foundation, especially Mr Takashi Asada, Managing Director, Mr Yoshinori Yamaoka, Programme Officer, and Professor Ichiro Kato, the Chairman of the Grants Committee, for their generous and warm support in organizing the Conference and preparing this volume. The editor wishes to express his gratitude to the contributors and to commentators at the conference as well as to Professor Koji Shindo, then the Dean of the Law Faculty at the University of Tokyo, who kindly gave an opening speech at the Conference. The editor's gratitude is also due to Professor Kanji Seki, the Dean of the Department of International Studies at Ritsumeikan University, for hosting the second part of the Conference in Kyoto, at Ritsumeikan University and to Mr. Shunichi Himeno, Managing Director of the International Business Law Institute, for supporting the Conference in Tokyo. His special thanks goes to Professor F.J.M. Feldbrugge, then the Sovietologist in Residence at NATO, who has kindly made arrangements for the publication of this volume. The editor also would like to thank Mr Alan Stephens and Ms Selma Hoedt of Martinus Nijhoff for their assistance and patience in publishing this book.

Finally, the editor wishes to thank Midori Oda, who helped her husband in organizing the conference and later painstakingly putting the papers on computer discs for publication.

HIROSHI ODA