

Continuities and Discontinuities: Japan, the United States, and Trade Controls before and after World War II

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I

The fiftieth anniversary of World War II, and the end of the Cold War have recently drawn scholars' attention to prewar and wartime years.¹ Despite the intensity of controversies about the Cold War before the disintegration of the USSR, they have been increasingly set free from the Cold War syndrome. Now they often go back to the days before the Cold War, searching for the origins of international relations today. This article, with its focus on export controls, discusses how far World War II and the demise of the USSR became watersheds in the history of Japanese trade controls vis-a-vis Japan's relations with the United States.

Partially due to the semi-independent status of Japanese foreign trade after the opening of the country in 1854, official trade controls by the Japanese government started only in the 1930s. The main purpose of the controls before the end of World War II was to help the war economy; therefore, wartime trade control legislation was entirely nullified during the allied occupation of Japan. Nevertheless, postwar trade restrictions originated in the 1930s, as an analogous control sys-

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tem was created after the war: At first, the Supreme Commander for the Allied Powers (SCAP) screened trade, and later the Ministry of International Trade and Industry (MITI) assumed power to control trade. Japanese prewar and wartime policies indeed paved the way to postwar East-West export controls.²

Differences of course existed. The Japanese government, as the main actor, used prewar and wartime trade controls to solidify its spheres of influence, while postwar Japanese controls became integrated into US Cold War strategies. Prior to the end of the war, the Japanese government tried to achieve autarky within the "Greater East Asia Coprosperity Sphere" by controlling trade. However, at the initial stage of the occupation, priority of trade controls was the demilitarization of Japan, and from 1948/49 to restrictions of Japanese exports against Communist countries.

Also salient in Japanese postwar control policies is a wide gap between rhetoric and reality. In contrast with prewar days when trade controls were publicly admitted as a matter of military and economic factors combined,³ after the war the "economic interpretation of military issues" prevailed. Japanese deep regret for wartime experiences, as well as the constitution of 1946, molded a postwar direction for Japanese policies: concentration on economic development, the renunciation of war, and the pursuit of peace. Yet given the intensity of the US-USSR conflict, Japanese policymakers soon had to face tough questions: whereas Japanese postwar export restrictions against Communist countries had clear military implications in US Cold War strategies, the Japanese government had to expound its control policy as congenial to the Japanese constitution which does not "recognize the right of belligerency of the state." Export control policies, therefore, had to be a measure of Japanese cooperation with the United Nations or a matter of economic policy, with a smoke-screen thrown over their military aspects.

Such continuities and discontinuities which have shaped postwar Japanese and US trade control policies are now changing because of the end of the Cold War, the relative decline of US economic power, and the information revolution. Since the Enhanced Proliferation Controls Initiative (EPCI) of President George Bush in December 1990,⁴ international export controls have moved from East-West controls to nonproliferation of weapons of mass destruction (atomic bombs, chemical and biological weapons, and missile technologies) and to controls

of advanced conventional weapons. The targets of export controls are no longer Communist countries but are claimed to be those which cause serious regional instability by using or developing those weapons. Thus, the Japanese struggle between rhetoric and reality has significantly decreased today, as nonproliferation is much more compatible with the Japanese constitution.

Above all else, however, the most profound change both in Japan and the United States is the decreasing government roles in export controls. Due to the revolution in information technology, the increase of multinational corporations, and the necessity to control the flow of low technology products in the case of nonproliferation, a government today can no longer carry out export controls as effectively as it did in the 1940s or the 1950s. The introduction of the "know" controls and the enforcement of encryption controls, which this paper discusses later, reveal declining government functions and changing roles of the nation-state in international relations today.

II

Because Japan's policy of seclusion since the beginning of the 17th century had restricted Japanese contact with foreigners, Japanese trade with the United States at government levels started only after the arrival of Commodore Matthew Perry in 1853. Under the Treaty of Peace and Amity (the Kanagawa treaty) of 1854, the Japanese opened the ports of Shimoda and Hakodate. However, as the main purpose of the Kanagawa treaty was to rescue shipwrecked seamen, a substantial increase of US-Japanese trade had to wait until the Treaty of Amity and Commerce of 1858. In this treaty, four ports—Kanagawa, Nagasaki, Niigata, and Hyogo—were newly opened in addition to Hakodate.⁵

In 1858 the Netherlands, Russia, Britain and France concluded similar treaties. Yet, all of them ended up as unequal treaties, partially due to the ignorance of the Tokugawa shogunate. In the treaties, Japan accepted the principle of free trade, but neither denied extraterritorial rights nor secured tariff autonomy. The Japanese of course could not maintain free trade. A barrage of foreign criticism arose when the Meiji government instituted trade protection measures. Thus, it often had to resort to indirect controls as if they were initiated by private companies,⁶ while the government spent its enormous energy for obtaining equal status.⁷ In 1899 extraterritorial rights were abolished. Yet not un-

til 1911 did Japan attain full tariff autonomy.

Partially because of the lack of a free hand and its obligation to abide by the free trade principle, the Japanese government had rarely invoked direct trade controls until the 1930s. In that decade, trade controls by the government rapidly increased, at the outset mostly for economic reasons. But soon military reasons outweighed economic factors, as the Japanese military aggression of the 1930s necessitated tighter trade controls.⁸

The Great Depression of 1929 and the resulting world-wide trade war provided the first turning point in the history of Japanese trade controls. The Japanese decision to leave the gold standard in 1931 brought a substantial depreciation of the yen: 100 yen were worth 49.37 dollars in November 1931, whereas in March 1933 they dropped to 21.11 dollars. This facilitated Japanese exports considerably.⁹ Inundated with Japanese products amid economic difficulties, importing countries such as the Netherlands, France, and the United Kingdom introduced various counter measures including high tariffs against Japan.¹⁰ Plagued by the trade war, one year after the formation of the Foreign Exchange Control Law of 1933, the Diet enacted the Trade Adjustment and Commerce Protection Law, which authorized the Japanese government to invoke retaliatory tariffs and restrictions on exports and imports.¹¹

The revision of the Exporters' Association Law of 1925 also broadened the government controls in the 1930s.¹² The law originally set up exporters' associations to allow them to control the export of essential items. However, the revisions of the law in 1931, 1934, and 1936 each time extended government power over the associations. In 1931, the Ministry of Commerce and Industry (MCI) requested the associations to obtain permission from MCI in imposing controls on their members. Three years later MCI could directly order them to change export volumes and prices. In 1936 government officials were empowered to inspect businesses, stores, warehouses, and factories involved in foreign trade.

As the 1930s was a decade of Japanese military aggression, Japanese policymakers soon had to wrestle with trade issues from a military perspective, not just as a part of economic policymaking. The trade war made exporting difficult for Japan, while military operations and the rise of heavy and chemical industries in Japan swelled the volume of imports, so that tightening of trade controls became necessary. Thus, in

1937 when the Sino-Japanese war broke out, Japanese trade controls entered a second stage by the enactment of the Foreign Trade Association Law and the Temporary Measures Law Relating to Exports, Imports, and Other Matters.

The Foreign Trade Association Law of August 1937 created importers' associations for the first time, and revamped trade associations to make it easier for the government to exert leverage both on exports and imports. The Central Board of the Foreign Trade Association grouped all exporters' and newly established importers' associations under its umbrella.¹³

This reorganization allowed the government to apply the Temporary Measures Law of September 1937 more easily. The law, which specifically addressed the war in China, became a pivot of Japanese trade control policies until 1941. Given a wide array of direct authority over exports and imports, MCI commenced licensing policies: to export or import listed items, traders had to obtain a license from MCI and present it to customs. The list of controlled items was attached to the Ordinance on Temporary Permission of Exports and Imports. Licensing policies, similar to MITI's policy after World War II, indeed stemmed from this Temporary Measures Law of 1937.¹⁴

In the 1930s, strategic necessity made Japanese policymakers lean toward import controls. The lack of competitive industrial capacity, the paucity of natural resources, and the heavy dependence on war materials from third countries such as the United States conditioned the Japanese war economy from the very beginning. To acquire foreign currencies, the government redoubled its effort to restrict imports of luxuries and nonessential commodities. But import controls resulted in a contraction of exports. The Japanese government in turn tried to boost exports to third countries, which only accelerated the deterioration of stability within the yen bloc with the concomitant curtailment of Japanese exports to the bloc.¹⁵

This vicious circle worsened after the outbreak of World War II in September 1939 and the conclusion of the Tripartite Pact one year later. Trade controls became even more stringent due to the abrogation of the US-Japan Commercial Treaty in 1940. Since Japan depended on the United States for 36% of its imports in that year,¹⁶ the tightening of US export restrictions against Japan boded ill for the Japanese economy and war preparations.

In view of an approaching war, the Japanese government quickly

tightened controls in various areas such as wages, prices, sales and production under the National General Mobilization Law of 1938.¹⁷ The government not only initiated yearly planning for exports and imports, but introduced the link system where priority was imports of materials used for production of export goods.

The enactment of the Trade Control Law of May 1941, on the basis of the National General Mobilization Law, set the final stage of prewar trade control history.¹⁸ The Trade Control Law for the first time vested MCI with authority to order exports and imports directly. It also enlarged MCI's power to control trade, transfer, disposition, possession and circulation of the ordered items. Although the basic framework of controls remained the same as that under the law of September 1937, listed items reached above 170 for exports and 260 for imports in 1941.

After the freezing of Japanese assets by the United States in July 1941 and the outbreak of the Pacific War in December of the same year, trade controls were entirely built into war operations. The newly established Ministry of Greater East Asian Affairs assumed power over trade controls in 1942.¹⁹ The Japan Foreign Trade Control Organization, formed in the same year, supervised trade within the Coprosperity Sphere; the Foreign Trade Management Corporations, established in the next year, directly dealt with storage and transactions. Licensed items had to go through the corporations under the supervision of the Japanese government, so that traders in private sectors could no longer engage in trade freely. With the decline of the number of traders from more than 6,000 to 600 by November 1943, these corporations paved the way for full-fledged state-controlled trade.²⁰

III

Looking back at Japanese trade and the Pacific War from the vantage point of fifty years later, we are struck by how fragile the Japanese economy was. The high dependence of prewar Japanese trade on the United States and European countries did not augur well for Japanese war operations. Unremittingly struggling to balance trade, the Japanese government never attained autarky within the "Coprosperity Sphere", but only generated further hardships and anti-Japanese feelings in the occupied areas.

After all, the United States has been an important trade partner for Japan since the late 19th century until today, with a temporary setback during the Pacific War. Yet even though the setback was temporary,

that aberration and the lack of a rational analysis of the Japanese economy prepared the road to the Missouri. A lesson of the Pacific War is that so long as the economic capacity of the United States remains large, Asianism without the United States is economically unrealistic for crafting post Cold War policies.²¹

Among continuities between the prewar and postwar periods, those in the fields of government and economy attract attention in Japan today. "Continuities and discontinuities" have been discussed well before the 1990s by scholars such as Takafusa Nakamura and Akira Hara either as an origin of the postwar Japanese economic development or as a catalyst for solidifying state monopolistic capitalism in Japan.²² Recently the arguments have become much more lively due to the end of the Cold War, the 50th anniversary of the end of World War II, and the information revolution. For instance, amid the recent strident calls for deregulation in Japan, Yukio Noguchi invokes history by using the term "1940 nen taisei" (the system of the 1940s). In his view, many government roles which stem from the 1940s are no longer useful, but are obstacles to deregulation and the future economic development of Japan.²³

In the realm of trade controls, despite the abolition of wartime control legislation and organizations, the trade procedures taken by SCAP show continuities clearly. For instance, during the occupation, SCAP initially carried out trade according to twelve-month export and import programs, and the War Department in Washington granted the final approval to these programs through SCAP.²⁴ Although the control authority shifted from the Japanese government to the United States after the war, the export and import programs themselves smacked of the yearly planning of trade by the Japanese government prior to the end of the war.

Implementation of SCAP policies through Japanese intermediary organizations also reminds us of the handling of wartime trade by the Japanese government. At the outset, SCAP dealt with external trade, while the Japanese government handled internal trade matters with postwar trade associations. These associations, which were formed one by one after the dismemberment of the Foreign Trade Management Corporations in June 1946, numbered 35 for exports and 43 for imports in April 1947.²⁵ In the same month, the trade associations were re-organized into four Government Corporations, one each for minerals and industrial products, textiles, raw materials, and foodstuffs. Inter-

posed between the Japanese government under SCAP and private traders, the Government Corporations handled such work as placing orders, purchasing, and storage for trade, so that their function was similar to that of the wartime Foreign Trade Management Corporations.

SCAP initially controlled trade fully, but in August 1947 it started to transfer Japanese foreign trade into private channels. The "virtual peace" settlement policy, which the National Security Council (NSC) recommended in October 1948 in a paper entitled "Recommendations with Respect to U. S. Policy toward Japan" (NSC13/2), further accelerated the normalization of trade.²⁶ With the formation of MITI, the enactment of the Foreign Exchange and Foreign Trade Control Law (FEFTCL), and the introduction of a fixed exchange rate in 1949, SCAP made considerable strides toward the normalization of trade by the end of that year.

In the end, what remained as a wartime legacy even after the occupation was the licensing policy by the Japanese government. Despite the gradual transfer of trade control power to the Japanese government, SCAP restricted exports of strategic items until March 1952, just one month before the end of the occupation.²⁷ Thereafter, MITI carried out strict export controls under the FEFTCL by using licensing procedures. Continuity since 1937 is clear here, although the targets of postwar controls shifted to Communist countries.

On the other hand, discontinuities also existed. Postwar trade restrictions, for instance, no longer helped the Japanese war economy, but were applied against Communist countries. At first, export controls by the United States aimed at impeding resurgence of German and Japanese militarism by restricting the export of materials for their heavy and chemical industries. Japan and Germany, thus, remained in the same country group until March 1948 for granting US licenses to exporters. This Second-World-War type of trade controls, however, did not last long. The US-USSR rivalry had already led the Army and Navy Munitions Board to request tighter trade controls in September 1945.²⁸ But the policy change at the top level of the US government did not come until December 1947, when the NSC decided to introduce a new type of export controls along with the Marshall plan.²⁹ In March 1948 the new country groups comprised "R" for Europe, and "O" elsewhere. "R" included Western Europe, the USSR, and Eastern Europe. To provide a domestic legal basis for East-West export controls,

the US Congress passed the Export Control Act (ECA) in 1949, although both the ECA and the "R" group did not ostensibly single out the Soviet bloc as a target.

By the end of 1949, export controls in strategic items had expanded internationally. The United States carried out its negotiations at first through the channel of the Marshal plan; thereafter, it also used military assistance as leverage. In November 1949, the representatives of the United States, the United Kingdom, France, Italy, and Belgium reached an agreement to establish an informal organization on East-West export controls in strategic items. In February 1950 the Paris group—often called COCOM, which consisted of the Consultative Group (CG) as the upper decision-making body, and the Coordinating Committee (COCOM) as the lower level standing committee—opened its first meeting.

Enmeshed in Cold War strategies initiated by the United States, US and SCAP policies toward Japan underwent a drastic change during the occupation. The frail Japanese economy, the intensifying US-USSR conflict, and the turbulence in China all precipitated changes in the occupation policies by Washington and SCAP. The shift in trade controls had become clear by February 1949 when a paper by the NSC "U. S. Policy Regarding Trade with China" (NSC41) was formulated.³⁰ Now Japanese heavy and chemical industries should be resuscitated. The United States started to restrict its exports of strategic items, not against Japan but against Communist countries in Asia. Japan also began to tighten its export controls to the Soviet bloc.³¹

Even after Japan regained its independence, the United States wielded strong influence over Japanese trade. The US administration did so, for instance, in the Japanese entry in 1952 into COCOM and the China Committee (CHINCOM), a newly established export control organization which focused on Communist controlled areas in Asia. As the recently declassified Japanese primary sources show, in 1949 and the early 1950s the United States tried to integrate COCOM into the North Atlantic Treaty Organization (NATO) and to establish in Tokyo a Far Eastern export control organization separate from COCOM in Paris. That Far Eastern organization was to be incorporated eventually into a regional defense organization in East Asia. Yet the European members circumvented this American scheme, so that COCOM remained an informal organization despite its close link to NATO. Instead of a separate Far Eastern organization located in Tokyo, CHINCOM was

established in Paris in 1952 within the CG/COCOM framework.³²

A regional defense organization in East Asia such as the Pacific Pact was not established at that time. However, in the early 1950s the United States successfully linked export controls to US military assistance. Most of the Mutual Defense Assistance Agreements (MDAA), which the United States concluded with recipients of US military assistance under the Mutual Defense Assistance Act of 1949, contained a provision on export controls.³³ For example, Annex (D) of the US-Japan MDAA of 1954 directed export controls against "nations which threaten the maintenance of world peace".³⁴ Thus, by the middle of the 1950s, a dual structure of global export controls had been made: COCOM as a group of industrially advanced countries, and the MDAA recipients which encompassed more countries than the COCOM members. What made international export controls effective was not COCOM itself as an informal organization, but the solid military framework such as the MDAAs, NATO or the US-Japan Security Treaty. The making of a dual structure was indeed the consummation of the postwar global East-West export controls. This was an entirely different export control network from the one before and during World War II.

Finally, what made postwar Japanese export controls different from prewar and wartime controls was the gap between rhetoric and reality. In 1946 when the Japanese constitution was promulgated, demilitarization of Japan and reliance on the United Nations for its security seemed to be an ideal solution for postwar Japan. The preamble of the constitution, thus, expressed "the Japanese desire for peace for all time" and their trust in "the justice and faith of the peace-loving peoples of the world". Furthermore the famous Article 9 renounced both war and "the threat or use of force as a means of settling international disputes." "The right of belligerency of the state," it declared, "will not be recognized." The intensification of the US-USSR conflict, however, soon brought a cleavage between rhetoric and reality, as Japanese role in East-West export controls did not fit in well with the so-called "peace constitution". By December 1949 when the FEFTCL was enacted, Japanese export controls had already restricted strategic items against Communist countries. But the law only listed the "balance of international payments" and the "healthy growth of foreign trade and domestic economy" as reasons for license requirements. It did not refer to any military factors.

The Japan Industrial Fair case of 1969 well exemplifies such a gap between rhetoric and reality. After MITI rejected export license applications for 19 items to be exhibited in Peking and Shanghai in the same year, the Japanese organizers of the fair filed suit. In the Tokyo District Court, the Japanese government had to defend MITI's action using only economic reasons specified in the FEFTCL (i.e., "healthy growth of foreign trade and domestic economy"). The government explained to the court that Japan could not develop its economy without close cooperation with liberal countries. If Japan violated COCOM restrictions, it maintained, the United States and other liberal countries would retaliate Japan; therefore, abiding by COCOM agreements was legitimate to achieve the "healthy growth of foreign trade and domestic economy". But the chief judge of the Tokyo District Court in July 1969 requested the government to apply the FEFTCL only for "pure and direct" economic purposes, and to enact new domestic legislation to carry out COCOM agreements.³⁵

It was only in the 1980s that the FEFTCL included security provisions, and thereby narrowed the gap between rhetoric and reality.

IV

Now fifty years after the end of the war, world-wide export controls are entering a new stage. The elements which existed in the early days of COCOM such as US economic supremacy, clear targets for export controls, a stable international framework and ideological differences no longer exist or have changed markedly. Above all else, three factors affect world-wide and Japanese export controls today: first, the relative decline of US economic power as well as the economic development of non-COCOM countries such as those in East Asia; second, the disintegration of the USSR and Eastern Europe; and third, the changing role of the nation-state in export controls caused by the information revolution and by the shift of emphasis of export controls to non-proliferation of weapons of mass destruction.

The international export control network which reached the peak of its power in the early 1950s, started to lose its effectiveness especially in the late 1960s due to the relative decline of the US economy. The history of US export control legislation illustrates such transformation. While the ECA remained effective from 1949 to 1969, the US Congress always criticized administrations' lenient export control policies. Yet in the late 1960s, Congress could no longer neglect the steady decline of

US economic competitiveness. In 1969 when the Export Administration Act (EAA) superseded the ECA of 1949, US concern for international payment was for the first time written into the act. Since then the US Congress has increasingly criticized the disadvantageous burden of export controls on US industries, such as time-consuming licensing procedures, unilateral US export controls, and a lack of uniform control levels with the other COCOM countries. US export control legislation has had to squarely face West-West economic relations in addition to East-West relations.³⁶

The relative decline of the US economy also brought debilitating effects to the international export control network. In the late 1940s and early 1950s, the United States fully used its economic power as leverage in its negotiations by requesting that aid recipients either accept export controls or stop receiving US assistance. However, in the 1980s when President Ronald Reagan tried to reinforce East-West export controls, the United States could no longer do so. Instead, it resorted to import sanctions through the revised EAA of 1985, and provoked serious friction with its allies. Moreover, the economic development of non-COCOM members undermined the very basis of COCOM, which used to be "an exclusive club" of highly industrialized countries in the late 1940s and early 1950s. Compliance from non-COCOM members became much more necessary than before. This meant more difficulties in obtaining uniform cooperation from all of those countries.

Perhaps the most significant effect caused by the relative decline of US economic power is found in Japanese export controls in the 1980s. When the Reagan administration tightened export controls after the Soviet invasion of Afghanistan in December 1979, Japan could no longer afford to follow the economic interpretation of military issues with its highly developed economy and technologies. The first step away from such an interpretation was the introduction of a security provision in article 25 of the FEFTCL (control on the export of service and technology) in 1980. However, the most significant departure from the economic interpretation was the Toshiba-Kongsberg case of 1987.

In the Toshiba-Kongsberg case, Toshiba Machine Corporation as well as the Japanese trading firms Ito Chu and Wako Koeki, in collusion with Kongsberg Vaapenfabrikk of Norway, sold in 1982 four propeller milling machines and programs capable of nine-axis simultaneous control to the USSR.³⁷ Kazuo Kumagai of Wako Koeki in-

formed COCOM of this violation in December 1985. Given notice from COCOM, the Japanese government after investigations concluded by April 1986 that the alleged sale could not be substantiated. Yet, US government officials' repeated inquiries to the Japanese government eventually resulted in a public revelation of the sale in April 1987.

Significant in the Toshiba-Kongsberg case was a wide perception gap between the Americans and the Japanese. For indignant US Congressmen, the case was nothing but "treachery" and an "irreparable harm" to US security.³⁸ But many Japanese, who had interpreted export controls in economic terms, regarded Toshiba and Toshiba Machine as "poor victims" being "beaten" by the United States.³⁹ They believed that all the US pressure including import sanctions on Toshiba and Toshiba Machine in the revised EAA of 1988 were simply an attempt to browbeat the Japanese and their industry.

In the end, however, the Toshiba case generated a new awareness among the Japanese of the military aspect of export controls. As the Japanese economy had been highly developed and produced the most advanced dual-use technologies, economic activities were no longer immune from military purposes. This new awareness through the Toshiba case changed especially MITI which had been a stronghold of the economic interpretation of export controls. MITI took the initiative in establishing the Center for Information on Strategic Technology (CISTEC) in April 1989 and in introducing US-style compliance programs to Japanese companies.⁴⁰ In addition, article 48 of the FEFTCL (controls on the export of goods) for the first time since 1949 included a security provision in 1987, which symbolized the end of the economic interpretation of export controls as far as the FEFTCL was concerned.

Thus, the basic premise of COCOM (i.e., the supremacy of US economic power) had been eroded seriously, which produced an array of changes in many areas by the end of the 1980s. In this sense COCOM restrictions would have become nugatory even without the disintegration of the USSR. It was, however, the dissolution of the USSR in December 1991 that gave the final blow to COCOM.

The first reaction to the collapse of the USSR within the Bush administration was, nonetheless, cautious. The US government was leery of dissolving COCOM quickly. The COCOM Cooperation Forum, initiated by Secretary of State James Baker, held its first meeting in November 1992 with COCOM and the former Soviet bloc countries.⁴¹ The Forum was an amalgam of East-West controls and proliferation

controls: Decontrols of COCOM restrictions had to be commensurate with the former Communist countries' effective implementation of export controls and their cooperation in the nonproliferation of weapons of mass destruction.

As the Bush administration still retained the Cold War perception, a drastic departure from the old policies had to wait until the inauguration of President Bill Clinton. Clinton pledged to enhance US economic competitiveness and "tailor. . . export controls to the realities of a post Cold War world."⁴² A report by the Trade Promotion Coordinating Committee (TPCC) of September 1993 embodied this new approach. After a six-month collaboration among the 19 federal agencies, the NSC, and the newly established National Economic Council, the report recommended an unprecedented increase in the control level of computers, from 12.5 Mtops to 500 Mtops, and supercomputers, from 195 Mtops to 2, 000 Mtops.⁴³ At the COCOM meeting of October, the United States proposed the epoch-making forty-fold decontrols in computers, which was, however, "too much for COCOM to digest".⁴⁴

The unilateral decontrols by the United States and the COCOM decision in November 1993 to dissolve by the end of March 1994 symbolize the disarray of international relations after the Cold War. By the time of the dissolution of COCOM, a new global organization on proliferation controls was to be established. COCOM was abolished as originally scheduled. However, the new regime has not yet been established as of November 1995. In the days of COCOM, a dual structure of export controls—COCOM and the MDAA network—made the East-West controls viable. Today the MDAA network of the Cold War days still remains, but the lack of a new and solid military framework will render a new export control organization, even if it is established, weak and less viable than COCOM.

Besides the collapse of the USSR, the revolution in information technology has also undermined export controls. Telecommunication technology and computers have accelerated the globalization of national economies. This has brought unprecedented difficulties in export controls and national security, as illustrated by the increasing importance of cryptography. Encryption controls are becoming more and more important in the realm of export controls. Encryption is necessary to safeguard digital telecommunications.⁴⁵ But if private companies freely generate encryption, it will certainly undermine national security. One

way to address this problem is to create an export license requirement for each encryption. This, however, will be a nuisance to industries and make them lose competitiveness in the world. Calls for relaxation of encryption controls are strong in the United States.

Thus, in February 1994, the Clinton administration introduced the Escrowed Encryption Standard (EES) as the Federal Information Processing Standard. In the case of the Data Encryption Standard (DES) which has been in use so far, users can generate their own encryption keys. However, in the case of EES, the National Institute of Standards and Technology as well as the Treasury Department were designated as keyholders.⁴⁶ EES makes law enforcement access to encrypted communications easier. Yet, its negative effects will beset individuals or multinational corporations, as only the US government can decrypt the telecommunications of interest. Conflict between national security and the globalization of the economy in a networked society is evident here.⁴⁷

Encryption controls concern the world of advanced technologies, but in the area of low technologies, export controls are also facing problems. Nonproliferation of weapons of mass destruction requires export controls of many low-technology items; therefore, items become too many for restriction. To grapple with such difficulties, in 1991 the US government introduced the "know" controls, where an exporter has to obtain a license from the US government if he or she "knows" the item or technologies will be used for the proliferation of chemical or biological weapons or missiles. The US government will also request an export license if the US government "informs" an exporter of such a danger.⁴⁸

In the "know" controls, restrictions depend on exporters' judgment. But, is not such intelligence a function of the government? As it is reported that the Japanese government will introduce the "know" controls in Japan in 1996,⁴⁹ similar questions will plague Japanese industries. After all, in the "know" controls, end-use check by the exporter becomes essential, so that the responsibility for export controls shifts considerably from the government to the exporter or reexporters. What the "know" controls illustrate is also the declining role of the nation-state in export controls.⁵⁰

V

Fifty years after the end of World War II, world-wide export con-

trols are now in a state of chaos. The demise of the USSR, the relative decline of US economic power, the economic development of non-COCOM countries, multinational corporations, and the arrival of a networked society—all these factors have seriously affected global export controls. The first three stem from the changing relations between states, but the last two illuminate the changing nature of the nation-state.

For the Japanese, proliferation controls and the end of the economic interpretation of export controls at last narrowed the gap between rhetoric and reality. Since the end of World War II, the Japanese have supported nonproliferation of weapons of mass destruction and export controls of advanced conventional weapons.⁵¹ Because nonproliferation is compatible with the Japanese constitution, the Japanese government is publicly taking the initiative in enforcing it.⁵² The more states become aware of the importance of solving conflicts nonmilitarily, the further Japan will be able to pursue nonproliferation. World-wide export restrictions of weapons of mass destruction as well as those of advanced conventional weapons will also progress despite all the difficulties discussed above.

What will the world be like after the demise of the USSR? We have not had a clear image of the future yet. Traditional power relations between states are still important and might generate serious instability in the post Cold War era. Yet what recent export controls suggest is that government control of national economies, which had been strengthened by the early 1940s, is now being undermined both in Japan and the United States, and that the function of the nation-state is clearly changing.

NOTES

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¹ See Mark A. Stoler, "U. S. World War II Diplomacy," *Diplomatic History* 18.3 (1994): 375–403.

² Chalmers Johnson and Robert S. Ozaki point out the resemblance between the prewar and postwar systems of trade controls. Chalmers Johnson, *MITI and the Japanese Miracle: The Growth of Industrial Policy, 1925–1975* (Stanford: Stanford Univ. Press, 1982) 133–136, 188; Robert Ozaki, *The Control of Imports and Foreign Capital in Japan* (New York: Praeger, 1972) 4.

³ For publications on trade controls before the end of the war, see for example

Yoshihiko Taniguchi, *Bōeki tōsei no kenkyū* [Studies on Trade Controls], 3 vols. (Tokyo: Yūhikaku, 1940).

⁴ The crisis in the Middle East in 1990 and the export of militarily sensitive items to Iraq led the US administration to launch a new initiative for proliferation controls on chemical and biological weapons and missiles. In December 1990, President Bush signed the Enhanced Proliferation Control Initiative, a package of six measures including the “know” controls which are discussed later in this paper. See *Export Control News* (hereafter cited as *ECN*) 4.12 (1990): 4–7.

⁵ “Treaty of Peace and Amity between Japan and the United States signed at Kanagawa, 31 March 1854,” *The Consolidated Treaty Series 1853–1854*, vol. 111 (New York: Oceana, 1969) 377–385; “Treaty of Amity and Commerce between Japan and the United States, signed at Yedo, 29 July 1858,” *The Consolidated Treaty Series 1858*, vol. 119, 253–280.

For a survey of Japanese trade since the end of the Edo period, see *Nihon bōeki seiran* [Foreign Trade of Japan: A Statistical Survey] (Tokyo: Tōyō Keizai Shimpōsha, 1975); Arthur E. Tiedemann, “Japan’s Economic Foreign Policies, 1868–1893,” *Japan’s Foreign Policy 1868–1941: A Research Guide*, ed. James W. Morley (New York: Columbia Univ. Press, 1974) 118–152.

⁶ Kazuo Yamaguchi, *Shōkō seisakushi* [History of Commercial and Industrial Policy], vol. 5 (Tokyo: Shōkō Seisakushi Kankōkai, 1965) 3–117.

⁷ Okurashō shōwa zaiseishi henshūshitsu, ed. *Shōwa zaiseishi* [Financial History of the Shōwa Era], vol. 13 (Tokyo: Tōyō Keizai Shimpōsha, 1963) 114.

⁸ Chihiro Hosoya, ed. *Taiheiyō ajia ken no kokusai keizai funsōshi 1923–1945* [History of International Economic Disputes in the Asia-Pacific Region] (Tokyo: Tokyo Daigaku Shuppankai, 1983); Akira Suzuki, “Nihon senji keizai to Amerika” [The Japanese War Economy and the United States, 1937–1941], *Kokusai seiji* [International Relations] 97 (1991): 103–118; Osamu Ishii, “1930 nendai zenhan ni okeru nihon no yushutsu kōsei to keizai gaikō” [Japan’s Trade Expansion and Economic Diplomacy, 1930–1936], *Leviathan* 11 (1992): 7–26; Michiko Ikeda, *Tainichi keizai fusa* [Economic Sanctions against Japan] (Tokyo: Nihon Keizai Shimbunsha, 1992).

⁹ Okurashō 718–719.

¹⁰ Okurashō 706–718.

¹¹ Okurashō 728–745.

¹² Okurashō 725–726.

¹³ Kazuo Yamaguchi, *Shōkō seisakushi*, vol. 6 (Tokyo: Shōkō Seisakushi Kankōkai, 1971) 174–190.

¹⁴ Yamaguchi, vol. 6, 231–241; Takafusa Nakamura, “Junsenji kara senjikeizai taisei eno ikō” [Major Changes in the Economic System: Transition from ‘Semi-War-time’ to ‘Wartime’], *Kindai nihon kenkyū* [Journal of Modern Japanese Studies] 9 (1987): 1–24. Chalmers Johnson regards the Temporary Measures Law of 1937 as “the clearest precedent” of the FEFTCL. See Johnson 136. As Ozaki points out, prewar foreign exchange and foreign trade were controlled by separate laws, while after the war the FEFTCL combined both functions.

¹⁵ Akira Hara, “Daitōa kyōeiken no keizaiteki jittai” [The Economic Structure of “The Greater East Asia Co-Prosperity Sphere”], *Tochiseido shigaku* [The Journal of Agrarian History] 18.3 (1976): 1–28; Masanao Itō, “Taigai keizai kankei” [Foreign Economic Relations], *1930 nendai no nihon keizai* [The Japanese Economy in the 1930s] (Tokyo: Tokyo Daigaku Shuppankai, 1982) 23–101; Jerome Cohen, *Japan’s Economy in War and Reconstruction* (Minneapolis: Univ. of Minnesota Press, 1949) 12–16; Michael Barnhart, *Japan Prepares for Total War: The Search for Economic*

Security, 1919-1941 (Ithaca: Cornell Univ. Press, 1987).

¹⁶ Japanese imports from the United States consisted of 34% of total Japanese imports in 1937-1939; 36% in 1940; 20% in 1941; 14% in 1942; 5% in 1943; and only 1% in 1944. See Okurashō 415, 574.

¹⁷ T. A. Bisson, *Japan's War Economy* (New York: Macmillan, 1945) 212-222.

¹⁸ In April of the same year the Foreign Exchange Control Law also underwent a thorough revision.

¹⁹ The areas occupied after the outbreak of the Pacific war were under the direct control by the military.

²⁰ Okurashō 571.

²¹ Synergy of racism and the Japanese "victim syndrome" foster Asianism in Japan. Many Japanese regard the United States as a country of European descendants or as a multiracial society which is located on the other side of the Pacific Ocean. Therefore, they feel that the United States is different from Japan.

This is, however, misleading. For example, the tendency to represent the United States and Japan by Washington and Tokyo gives the illusion that the United States is remote from Japan. Yet since the late 19th century, territorial relations between the two countries have undergone a revolutionary change from countries separated by the Pacific Ocean to very close neighbors. After the Spanish-American War of 1898 until World War II, they faced each other from the Philippines and Taiwan, while today from the Mariana Islands and Minami Iōjima or Okinotorishima.

Such territorial proximity, the existence of seven million Asian descendants in the United States, and the prospect of thriving Asian economy give the United States today a rationale for its engagement with Asian countries. (see for instance, Joseph Nye, Jr., "The U.S.-Japan Alliance: The Essential Partnership," Speech at the Foreign Correspondents' Club of Japan, Sep. 4, 1995; Nye, Jr., "The Case for Deep Engagement" *Foreign Affairs* 74.5 (1995): 90-102. As history shows, many of the elements of continuity that predate the Pacific War—the large volume of trade with the United States, territorial proximity, immigration, and racism—can be a double-edged sword.

²² For example, Takafusa Nakamura, *Nihon keizai: sono seichō to kōzō* (Tokyo: Tokyo Daigaku Shuppankai, 1978). The second edition of its English version is titled as *The Postwar Japanese Economy: Its Development and Structure, 1937-1994* (Tokyo: Univ. of Tokyo Press, 1995). See also, Kindai nihon kenkyūkai, *Senji keizai* [*The Wartime Economy*], *Kindai nihon kenkyū*, vol. 9; Akira Hara, "Mondai teiki" [Research Topics], *1930 nendai no nihon keizai* 3-22.

²³ Yukio Noguchi, *1940 nen taisei: saraba senji keizai* [The System of the 1940s: Goodbye to the War Economy] (Tokyo: Tōyō Keizai Shimpōsha, 1995).

"Continuities" have attracted scholars in the United States, also. See, for example, John Dower, "The Useful War: Postwar Legacies of Japan's Wartime Political Economy," *Showa: The Japan of Hirohito*, ed. Carol Gluck and S. R. Granbard (New York: Norton, 1992) 49-70.; Chalmers Johnson, *MITI*.

²⁴ The Supreme Commander for the Allied Powers, *History of the Nonmilitary Activities of the Occupation of Japan 1945 through December 1950*, vol. 17, Commerce Pt. A, RG331, Records of the Supreme Commander for the Allied Powers (hereafter cited as SCAP), National Archives, Washington, D. C., 58-61.

²⁵ SCAP 65-66.

²⁶ NSC 13/2, Oct. 7, 1948, *The Foreign Relations of the United States* (hereafter cited as *FRUS*), 1948, 6:858-862.

²⁷ From SCAP to Dept. of the Army, March 21, 1952, SCAP, Box 5800; Circular, No. 845, 400. 949/4-852, Decimal File, Box 1791. RG59 General Records of the Dept.

of State, National Archives.

²⁸ JCS 1561, Appendix "A", Draft Memorandum for the Secretaries of War and the Navy, Jan. 18, 1946, in JCS 1561/4, CCS 091.31 (9-28-45), sec. 1. RG218, Records of the U. S. Joint Chiefs of Staff, National Archives.

²⁹ *FRUS*, 1948, 4:511-512.

³⁰ NSC 41, Feb. 28, 1949, *FRUS*, 1949, 9:820-834.

³¹ The Potsdam Declaration, permitted from the very beginning the eventual integration of Japanese foreign trade into the world economy. In that sense there was no "reverse course" in Japanese foreign trade during the occupation.

What changed was US policy for postwar Japanese economic reconstruction. As the reparation program by Edwin Pauley showed, at first the United States tried to make Japan live on the textile and other light industries. In 1947, however, such an early punitive plan to hinder postwar Japanese economic reconstruction began to fade away. A strong Japanese economic revival, which could be viable enough to resist communism, became the main scheme of US policy.

³² Reel E'0015, p. 270. The 12th declassification of Japanese primary sources of the Ministry of Foreign Affairs in 1994.

³³ In the case of the eight European aid recipients, the October 5 draft agreement with the United States contained an article on export controls, which stated that "the two governments recognize their mutual interest consistent with mutual security and recovery objectives, in effective controls over the export of war-potential material, equipment and, in so far as practicable, technical data; and that the two governments will consult with a view to taking measures for the accomplishment of these ends."

Because of the European opposition, the United States in the end agreed to delete the article, but instead requested their written assurances of their cooperation on export controls either in "some form of secret minutes or letter."

The other MDAA's which have articles concerning export controls are as follows:

Korea, article 7, 1952; Ecuador, Peru, Cuba, Colombia, Uruguay, and Chile, article 8, 1952; Brazil, article 9, 1952; the Dominican Republic, article 8, 1953; Ethiopia, article 7, 1953; Spain, article 6, 1953; Japan, annex (D), 1954; Nicaragua and Honduras, article 8, 1954; Pakistan, article 6, 1954; Guatemala, article 7, 1955; and Haiti, article 8, 1955.

³⁴ "Mutual Defense Assistance Agreement between the United States of America and Japan", March 8, 1954, *United States Treaties and Other International Agreements*, vol. 5, pt. 1 (Washington, D. C. : GPO) 660-680.

³⁵ "Sugimoto saibanchō no hanketsu riyū," [Grounds for Judge Sugimoto's Verdict], *Asahi Shimbun* [*The Asahi Shimbun*], July 9, 1969; "Nikkōten mondai de iken-sho," ["Opposing Views on the Case of the Japan Industrial Fair"], *Asahi Shimbun*, Feb. 15, 1969.

³⁶ In export control laws, four categories were created: national security, foreign policy, short supply, and anti-boycott. The first three were included in the ECA of 1949, and the fourth was added when the ECA was revised in 1962. National security controls always meant US export controls to Communist countries. Others such as non-proliferation of atomic bombs, human rights, and anti-terrorism belonged to foreign policy controls. In the 1950s, foreign policy controls were less significant, but since the 1970s their role has become greater, which means the United States has had to pay more attention to areas other than the Communist countries.

In 1969 the Export Administration Act (EAA) superseded the ECA of 1949. A new EAA went into effect in 1979 and expired in 1990 after its revision in 1988. As of November 1995, a new legislation has not yet been enacted.

³⁷ On the Toshiba case, see for example Beverly Crawford, "Changing Export Controls in an Interdependent World: Lessons from the Toshiba Case for the 1990s." *Export Controls in Transition: Perspectives, Problems, and Prospects*, ed. Gary K. Bertsch and Steven Elliot-Gower (Durham: Duke Univ. Press, 1992); Gordon B. Smith, "Controlling East-West Trade in Japan" *Controlling East-West Trade and Technology Transfer*, ed. Gary K. Bertsch (Durham: Duke Univ. Press, 1988); William C. Triplett, II, "Crimes Against the Alliance: The Toshiba-Kongsberg Export Violations," *Policy Review* 44 (Spring 1988): 8-13.

For recent works on COCOM, see Michael Mastanduno, *Economic Containment: CoCom and the Politics of East-West Trade* (Ithaca: Cornell Univ. Press, 1992); Yoko Kato, *Amerika no sekai senryaku to kokomu [COCOM and CHINCOM: Changing U.S. Global Strategies and Japanese Trade Controls, 1945-1992]* (Tokyo: Yushindo, 1992); Tor Egil Forland, "'Selling Firearms to the Indians': Eisenhower's Export Control Policy, 1953-54," *Diplomatic History* 15.2 (1991): 221-244; Robert M. Spaulding, Jr., "Eisenhower and Export Control Policy, 1953-1955," *Diplomatic History* 17.2 (1993): 223-249; Qing Simei, "The Eisenhower Administration and changes in Western Embargo Policy against China, 1945-1958," *The Great Powers in East Asia 1953-1960* (New York: Columbia Univ. Press, 1990); Sayuri Shimizu, "Clarence Randall and the Control of Sino-Japanese Trade," *The Journal of American and Canadian Studies* 7 (Spring 1991): 47-73; Motoyuki Takamatsu, "The Eisenhower Administration's Response to the China Differential, 1955-57," *International Relations* 105 (1994): 60-79.

³⁸ *Congressional Record*, H5035, June 16, 1987; S8397, June 19, 1987; H7303, August 7, 1987; S16305, Nov. 13, 1987.

³⁹ "Tatakarete fukai kizu" ["Deep Scars Being Beaten by the United States"], *Asahi Shimbun*, March 22, 1987, evening ed.

⁴⁰ In 1994 the Center for Information on Strategic Technology was renamed the Center for Information on Security Trade Control. The latter is also called CISTEC.

⁴¹ "Paris Meeting Inaugurates Cooperation Forum," *ECN* 6.11 (1992): 3.

⁴² *ECN* 7.9 (1993): 2.

⁴³ Trade Promotion Coordinating Committee, *Toward a National Export Strategy*, Report to the United States Congress, Sep. 30, 1993.

⁴⁴ "COCOM Struggles with US Proposal, Future," *ECN* 7.10 (1993): 4-5.

⁴⁵ For encryption controls, see Office of Technology Assessment (hereafter cited as OTA), *Information Security and Privacy in Network Environments* (Washington, D.C.: GPO, 1994).

⁴⁶ OTA 117-119.

⁴⁷ In Japan where computerization is slower than in the United States, encryption controls have attracted less attention. CISTEC set up a caucus on encryption controls in 1994, and MITI is also taking the initiative in encryption programs. Publications on the subject have begun to increase.

⁴⁸ *ECN* 4.12 (1990): 6. In August 1991, section 771.2 of the Export Control Administration Regulations introduced the "know" controls. See *ECN* 5.8 (1991): 13.

⁴⁹ "Kigyō yushutsu kanri fukuzatsu ni" [Increasing Complexities of Industrial Export Controls], *Nihon Keizai Shimbun*, [*The Nihon Keizai Shimbun*] Aug. 5, 1995, 5.

⁵⁰ Also undermining the effectiveness of export controls is the rise of multinational corporations. In a multinational corporation, even if one country enforces strict export controls, the corporation can export goods or technologies from a country with lenient export controls. On the other hand, if extra territorial controls are enforced, serious friction will arise among countries. Thus, unilateral controls by one government are

difficult. Harmonization of export control procedures becomes mandatory.

⁵¹ Akiyoshi Sakuragawa, "Nihon no buki kinyu seisaku" [The Three Principles on Arms Exports of Japan], *Kokusai seiji* 108 (1995): 84–100.

⁵² See, for example, Jun-ichi Ozawa, "Government Policy Studies on Export Control," Paper presented at the workshop, Univ. of Georgia, March 1995.