

September 25, 1992

**Cable from Brazilian Foreign Ministry to Embassy in
Washington, 'Brazil-USA. COCOM. Strategic trade.
Mission from USA. Report.'**

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Summary:

On September 14th-15th 1992, The Brazilian government received the US technical mission on strategic trade. Among the issues discussed during the meeting, the most important was Brazil's export control legislation for sensitive goods and technologies, which was still to be voted on by the Brazilian Congress at the time.

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Reference my cables 1527, 1854 and your cable 1665. The technical mission from the United States on export controls came to Brasilia, as scheduled, on the 14th and 15th September 1992 and followed the agenda described below. It was composed of William Skok, from the Office of COCOM Affairs of the Department of State (Coordinator), Richard Galbraith (Customs), Rodney Joseph (Department of Commerce) and Byron Evans (ACDA). The Brazilian side was coordinated by Minister José Maurício Bustani (SGAE) and benefitted from the presence of the Heads of DCIA, SINEX and DMAE, as well as representatives from the Ministry of the Navy, Army, Economy and the Air Force, EMFA and the Secretariats of Strategic Affairs and Science and Technology.

2. Activities started by a panel on dual use export controls with an exchange of information on the American system and the measures (already taken or in study) by the Brazilian side. On the American side, the instructive and detailed presentations by the representatives of Customs, Commerce and ACDA did not add much news to what was already known by the participants from MRE and certainly by this Embassy. Nevertheless, they were very useful to clarify for some members of the Special Inter-ministerial Commission on the control of related sensitive goods and services, the complexity of the task of controlling exports and the future need to devote additional human and financial resources to it, to the extent of the Brazilian possibilities.

3. The Brazilian side described the work of that Commission and provided a general overview of the Brazilian export control system. In this connection, it was explained that the system to be established with the approval of draft bill 2530/92 shall be an expansion of the current law. The main difference will be the scope of the system chiefly with regard to dual use goods. With regard to goods controlled through the Australia Group and MTCR, it was explained that the current system might include, without major difficulties, those that are not yet subject of regulation. We have stressed, in this connection that in spite of delays that may occur in the Congress in the course of examination of draft bill 2530/92, the existing Brazilian legislation (PNEMEN, R-295, CNEN) might permit quick compatibility with the plurilateral control regimes. The greater difficulty would lie precisely at COCOM, especially on the dual use items of the Industrial List, (a copy of which up to now it was not possible for us to obtain; we only know of its contents through the control lists of the United States, France and other countries.

4. Next a panel on the COCOM was held, starting with William Skok's presentation. According to the representative of DOS, the COCOM is currently under restructuring that aims, among other objectives, at the establishment of cooperation mechanisms with Eastern European countries that decided to evolve towards a market economy and democracy. In this connection, after putting in place a system of export controls "comparable in practice" with COCOM, "common standard level", Hungary was stricken out of outlaw countries; Poland, the Czech Republic and Slovakia earned a "presumption of approval" on almost all controlled items; and in the coming November a Cooperation Forum on Export Controls will be established with the task of providing assistance to Eastern European States and former Soviet republics. Skok added that despite such evolution, COCOM would probably still remove other countries from the list of outlaws on the occasion of its next revision.

5. Despite a Japanese proposal to the contrary, the Forum will not include China or any non-democratic State. The purpose of this Forum, that of COCOM, itself, as well as the relationship between the Committee and the non-proliferation regimes (MTCR, NSG, Australia Group), are still matter for discussion among the members of the Committee. It is possible that the Form might become the embryo of a new multilateral non-proliferation organization and that several COCOM principles and norms that are being seen as less operational in the new world scenario - such as the rule of unanimity, the existence of a list of outlaws and the fact that the "cooperation countries" are not able to participate in decisions about the course of the organization - may be revised.

6. The list of full "cooperating countries", that is, those with access to the General License GCT (General COCOM Trade) includes Austria, Finland, Ireland, New Zealand, Hong Kong and Sweden. South Korea and Singapore are at an evolution stage, that is, enjoying some but not all facilities. Besides those, five other countries have been "targeted" by consensual decision of the members, as targets of cooperation with COCOM: Argentina, Brazil, Malaysia, Taiwan and Thailand.

7. Rodney Joseph, from the DOC, added that this "vision" of this picture was that the COCOM mechanisms will evolve toward setting a "license-free zone" within which trade of sensitive goods and services would be free, and whose member States would adopt common methods and procedures with regard to bon, members. This zone, in my view, would encompass not only current members, "cooperating" and "targeted" States but all the "major trading States" including the former Socialist countries.

8. Asked about countries that would be excluded from the mechanisms resulting from the evolution of COCOM, and specifically whether they would become a generic North-South barrier, Skok answered negatively. In his opinion there would be a very limited number of States that, according to a general consensus from the international community, would be factors of regional instability and to whom it would be necessary to deny access to strategic technologies (the only State mentioned by name was Iraq). Asked about whether, in that case, it would be convenient to multilateralize the controls, by placing them under the aegis of the Security Council, Skok responded that for many countries that trade in high technology the world does not matter and that a wider expansion of the participation could complicate the decision-making process.

9. In the next morning a more detailed discussion of draft bill 2.530 was held. The Brazilian side answered questions that the United States had formulated in April on the occasion of the visit of the mission headed by Ambassador Bartholomew. I am transmitting by fax the contents of the questions and answers.

10. The American side also showed interest in discussing the language of the letters whose exchange they had proposed in April to replace the memorandum of understanding originally suggested. We again said that we did not that the moment was appropriate to enter into the details of the matter but were ready to exchange ideas on some of the more general points. The first question to be elucidated, especially for the benefit of the other members of the Brazilian delegation, was the need for some kind of document in order to make possible the extension of the benefits of section 5(k) of the American legislation. Once again the answer was affirmative and Skok explained that all beneficiaries would be subject to a similar procedure.

11. We next advanced some of our concerns about the matter. We mentioned first the question of the list of outlaw countries and our need to agree to it, even if we would not participate in its elaboration. On this issue we sought to understand the behavior of countries like Finland and Austria, which by constitutional mandate must remain neutral. Skok said that these countries also agree with the outlaw list but that he could not describe the exact procedures. He stated, however, that in the exchange of existing letters the list is not spelled out also in order not to defy internal legal provisions of those countries.

12. We again mentioned the question of "post shipment checks" and sought greater clarification about the procedures adopted. Answering queries from the Brazilian side, Skok confirmed that such inspections are an integral part of the general norms of COCOM. While acknowledging that they are mentioned in the guide elaborated by COCOM, we mentioned that in our experience only the United States request the

carrying out of such inspections. The explanations from the American side were not uniform. The representative of Customs said the basic aim is to confirm that the controlled item is in the company that acquired it. He added that the majority of the inspections can be carried out by members of the American embassies, including customs attachés. When the Brazilian side recalled that the procedures might vary according to the sensitivity of the product acquired, the representative of ACDA agreed and said that the inspections could also find out how the acquired good is being used.

13. The Brazilian side pointed out that since COCOM was an arrangement aimed at controlling East-West strategic trade, it could be understood that its controls recommend inspection in order to verify if the acquired good is still in the possession of the declared recipient. However, the requirement of verification of how the good is being used in a non-outlaw country does not seem to make sense. In this connection, we again asked whether that procedure is a COCOM requirement or stemming from the American legislation. The American side recognized the possibility that it could be a condition from its legislation but recalled that it had been elaborated on the basis of the COCOM system.

14. The representative of the DOC recalled then the request from by the government of the United States to send verification missions to Brazil. He explained that this was not a case of "post shipment check", but a mission that would review the procedures adopted by Brazilian companies that receive "distribution license". He reiterated that such missions are carried out in the whole world and aim at facilitating the renewal of the authorization of "distribution licenses". He handed out an information leaflet about the matter, which is under examination. In keeping with the climate of full frankness that characterized the dialogue, the Brazilian representative mentioned that, although it was not an official position of the Brazilian government, that the inspections raised the issue of extraterritoriality since they could always be interpreted as the verification of compliance with American legislation on the part of Brazilian firms in Brazil. It became clear that this question is one of the points that still require further discussion. In the case of the DOC missions, it is possible to find a solution if they are understood as an integral part of a valid contract.

15. At the close, the utility of the implementation of the mission and the continuation of the conversations on strategic trade became evident to both sides. The American representatives expressed several times their satisfaction with the results of the mission and the importance they attach to the maintenance of regular contact with Brazil in this area. They suggested, in conclusion, the dispatch of another mission, probably from the USA to Brazil, this time to deal with non-proliferation regimes (MTCR, NSG, Australia Group).

EXTERIORES