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5. Embargoed Countries and Entities (Part 746)

Export Control Program Description and Licensing Policy

The United States maintains comprehensive economic embargoes against Cuba, Iran, Iraq, Libya, North Korea and Sudan. (These are six of the seven countries designated by the Secretary of State as state sponsors of international terrorism.) The United States also maintains arms embargoes on Liberia, Rwanda, Somalia and the Federal Republic of Yugoslavia (Serbia and Montenegro) and an arms and other commodity embargo on UNITA (in Angola).

On July 14, 1998, the United States imposed an arms embargo on the Federal Republic of Yugoslavia (Serbia and Montenegro) in reaction to the use of excessive force by Serbian police forces against civilians in Kosovo and the acts of violence by the Kosovar Albanian extremists and in compliance with United States obligations under United Nations Security Council Resolution 1160. Supplementing the arms ban maintained by the Department of State, the Department of Commerce maintains new license requirements and a policy of denial on the export on arms-related items and "crowd control" items that could be used in support of terrorist activities or to repress civilian populations. "Crowd Control" items consist of all items already controlled for crime control reasons plus three new U.N.-based controls on water cannons (ECCN 0A989), bomb detection equipment (ECCN 2A993)and explosives (ECCN 1C998).

The Department of Commerce and the Department of the Treasury jointly administer the trade embargoes against Cuba and North Korea, under the Trading With the Enemy Act of 1917, the Cuban Democracy Act of 1992, and other statutes. Commerce licenses U.S. exports and reexports to both countries; Treasury licenses travel by U.S. persons to Cuba and North Korea, and financial transactions by U.S. persons with those countries.

The Department of the Treasury administers the embargoes against Iran, Iraq, Libya, Sudan and UNITA in Angola under the International Emergency Economic Powers Act (IEEPA) and, in some cases, the United Nations Participation Act. Commerce maintains comprehensive restrictions against Iran, Iraq, Libya and Sudan, and exercises licensing responsibility for exports and reexports to Sudan and reexports to Libya. Treasury has licensing responsibility for exports of arms-related and other specific commodities to UNITA in Angola; Commerce licenses such items to non-UNITA entities in Angola. Commerce maintains comprehensive export and reexport controls against Libya and exercises licensing responsibility for reexports to Libya, which are discussed in Chapter 6 of this report.

The United States maintains an embargo, administered by the Department of Commerce (Bureau of Export Administration) and the Department of State (Office of Defense Trade Controls) under the United Nations Participation Act and other authorities, on the sale or

supply to Rwanda by United States persons or from the United States (including the use of U.S.- registered vessels or aircraft) of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, regardless of origin. (See 15 CFR 746.8 and 22 CFR 126.1(c).)

The United Nations Security Council imposed an arms embargo on Rwanda on May 17, 1994. In 1995, the Security Council suspended the application of the embargo to the Government of Rwanda through specified points of entry and later terminated, effective September 1, 1996, the application of restrictions on sales or supplies to the Government of Rwanda. The sale or supply of such arms and related materiel to non-governmental forces for use in Rwanda remains prohibited.

In 1992, the United Nations imposed an embargo "on all deliveries of weapons and military equipment" to Liberia   The Department of State implements this embargo under the authority of the Arms Export Control Act. (See Department of State regulations, 22 CFR 126.1(c).)

In 1992 the United Nations Security Council imposed an embargo on all deliveries of weapons and military equipment to Somalia. The Department of State implements this embargo under the Arms Export Control Act. (See Department of State regulations, 22 CFR 126.1(c).) These arms embargoes are not further discussed in this report.

The Department of Commerce and other agencies formed an interagency group to consider export requests made in conjunction with the visit to Cuba of Pope John Paul II in January of 1998. The United States considered such license requests on a case-by-case basis, consistent with existing regulations and the humanitarian needs of the Cuban people. Exceptions to the Presidential ban on direct flights from the United States to Cuba were also considered on a case-by-case basis if in conjunction with the Pope's visit.

More recently, the President on March 20, 1998 announced that the United States would take a number of steps to expand the flow of humanitarian assistance to the people of Cuba, and to help strengthen independent civil society and religious freedom in that country. Commerce implemented measures by resuming licensing of aircraft for direct humanitarian flights to Cuba, and streamlining procedures for the sale of medicines and medical equipment to Cuba.

The resumption of direct humanitarian cargo flights enables assistance to reach the Cuban people more expeditiously at a reduced cost. The United States requires a license for all aircraft bound on such flights that do not qualify under Export Administration Regulation (EAR) License Exception AVS. Commerce reviews license applications involving flights for humanitarian reasons on a case-by-case basis. The United States has also streamlined its procedures for exporting medicines and medical equipment to Cuba, either for sale or

donation and reduced license processing time. Commerce is taking steps to facilitate compliance with the on-site verification and monitoring requirement for medical sales and certain donations to Cuba. On-site monitors in Cuba can include, but are not limited to, representatives of the license applicant, religious or charitable groups, western diplomats and international nongovernmental organizations.

The following paragraphs outline existing licensing policies for Cuba and North Korea:

A. **The Department of Commerce requires a license for export to Cuba and North Korea of virtually all commodities, technology and software, except:**

- **technology generally available to the public and informational materials;**
- **some types of personal baggage, crew baggage, vessels and certain aircraft on temporary sojourn, ship stores (except as prohibited by the CDA to Cuba) and plane stores under certain circumstances;**
- **certain foreign-origin items in transit through the United States;**
- **shipments for U.S. Government personnel and agencies;**
- **gift parcels not exceeding $400 for North Korea of commodities such as food, clothing (non-military), medicines, and other items normally given as gifts by an individual; and**
- **gift parcels for Cuba are limited to food, clothing (non-military), vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, certain radio equipment, and batteries for such equipment. The value of the gift parcels may not exceed $200 per month, excluding the value of any food in the package. There are no limits on the frequency or dollar value on food contained in gift parcels to Cuba.**

(NOTE: The Department of the Treasury licenses cash donations from U.S. citizens for humanitarian assistance, channeled through U.N. agencies, the International Federation of the Red Cross (IFRC) and U.S. non-governmental organizations; and humanitarian related commodities obtained from sources in third countries and donated to North Korea through the above organizations.)

B. **The Department of Commerce generally denies export license applications for exports to Cuba and North Korea; however, Commerce will consider applications for the following on a case-by-case basis:**

- **exports to meet basic human needs;**
- **exports to Cuba from foreign countries of non-strategic foreign-made products containing 20 percent or less United States-origin parts, components or materials, provided the exporter is not a United States-owned or**

controlled subsidiary in a third country;

- **exports to Cuba of telecommunications equipment, to the extent permitted as part of a telecommunications project approved by the Federal Communications Commission, necessary to deliver a signal to an international telecommunications gateway in Cuba;**
- **exports to support projects under the U.S.-North Korea Agreed Framework of 1994 (including Korean Energy Development Organization initiatives).**
- **Certain exports to Cuba intended to provide support for the Cuban people.**

C. The Department of Commerce reviews applications for exports of donated and commercially-supplied medicine or medical items to Cuba on a case-by-case basis. The United States will not restrict exports of these items, except in the following cases:

- **to the extent Section 5(m) of the Export Administration Act of 1979 or Section 203(b)(2) of the IEEPA would permit such restrictions;**
- **in a case in which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;**
- **in a case in which there is a reasonable likelihood that the item to be exported will be reexported; or**
- **in a case in which the item to be exported could be used in the production of any biotechnological product; and**
- **in a case where the U.S. Government determines that it would be unable to verify, by on-site inspection and other appropriate means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people. This exception does not apply to donations of medicine for humanitarian purposes to a nongovernmental organization in Cuba.**

The following paragraphs outline the licensing policy for Rwanda:

A. The Department of Commerce requires a license for foreign policy purposes for export to Rwanda of all arms and related materiel of all types, regardless of origin, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for these items. This requirement applies to the export by any person from U.S. territory or by any U.S. person in any foreign country or other location to Rwanda. Commerce also requires a license for the use of any U.S. aircraft or vessel to supply or transport any such items to Rwanda.

B. The Department of Commerce generally denies applications for export or reexport to Rwanda of crime control and detection commodities.

1. Commerce generally denies applications for export or reexport to Rwanda of any item with an Export Control Classification Number (ECCN) ending in "18."[1]

2. Commerce generally denies the export of other listed items.[2]

The licensing policies for the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY) are as follows:

A. The Department of Commerce requires a license for the export of arms-related items and certain other items on the CCL that could be used for terrorist activities or to repress the civilian population to FRY. Items requiring licenses include shotguns, ammunition, military vehicles, equipment for the production of military explosives, bulletproof vests, night vision equipment, crime and crowd control equipment, and items that may be used to arm and train individuals for terrorist activities. Many of these items are already subject to license application requirements under the EAR for export to FRY. However, this action imposes export license requirements on additional items, including water cannons bomb detection equipment and explosives.

B. The Department of Commerce reviews all license applications to export the items listed above to FRY under a policy of denial.

Analysis of Control as Required by Section 6(f) of The Act

The United States has administered the embargoes on exports to Cuba and North Korea under the Act and other statutes, in a manner consistent with Treasury sanctions adopted under the Trading with the Enemy Act, as amended. The latter authority continues in effect by virtue of Sections 101(b) and (c), and 207, of Public Law 95-223, which the President has extended annually, pursuant to national interest determinations.

A. The Purpose of the Control

Originally, the United States imposed embargoes on each of these countries for foreign policy purposes, among other reasons. Although the original circumstances that prompted the United States to impose controls have changed, these controls continue. These embargoes demonstrate the unwillingness of the United States to maintain normal trade with these countries until they take steps to change their policies to conform to recognized international standards.

Cuba. This embargo was imposed several decades ago when Cuban actions seriously threatened the stability of the Western Hemisphere, and the Cuban Government had expropriated property from U.S. citizens without compensation. Because of Cuba's support for insurgent groups that have engaged in terrorism, the Secretary of State designated it as a state sponsor of terrorism under Section 6(j) of the Act in March 1982.

North Korea. North Korea continues to maintain an offensive military capability and to suppress human rights. The planting of a bomb aboard a South Korean airliner by North

Korean agents in November 1987 prompted the Secretary of State to designate North Korea as a state sponsor of international terrorism, under Section 6(j) of the Act, in January 1988. This designation has not been revoked.

Rwanda. The controls remain in place to prevent any U.S. contribution to potential conflict in that country and to conform to United Nations-mandated sanctions.

The Federal Republic of Yugoslavia (Serbia and Montenegro): The controls remain in place to prevent U.S. contribution to potential conflict and the repression of the civilian population in that country and to conform with United Nations-mandated sanctions.

B. Considerations and/or Determinations of the Secretary of Commerce:

1. Probability of Achieving Intended Foreign Policy Purpose. The embargoes have denied these nations the substantial benefits of normal trade relations with the United States. The controls continue to put pressure on the governments of these countries to modify their policies, since the United States will not lift these embargoes without a general improvement in relations. For Rwanda and the Federal Republic of Yugoslavia, the applicable controls may serve to reduce the potential for conflict.

2. Compatibility with Foreign Policy Objectives. The controls complement U.S. foreign policy in other aspects of U.S. relations with these countries. They encourage the governments to modify their policies, thereby improving their relations with the United States. For Rwanda and the Federal Republic of Yugoslavia, these controls are consistent with U.S. foreign policy goals of promoting peace and stability and preventing human rights abuses.

3. Reaction of Other Countries. Although most countries recognize the right of the United States to determine its own foreign policy and security concerns, many countries, particularly Canada, Mexico and the members of the European Union, opposed the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms-Burton), which they perceive as an extraterritorial application of U.S law. Most countries respect U.S. unilateral controls toward North Korea in light of the unresolved situation on the Korean peninsula and the aggressive nature of North Korean support for international terrorism and the proliferation of weapons of mass destruction. The U.S. arms embargoes on Rwanda and the Federal Republic of Yugoslavia are consistent with the objectives of the United Nations; the United States has received no significant objections to these controls.

4. Economic Impact on United States Industry.

Cuba. The United States requires a license for the export and reexport of virtually all U.S.-origin commodities, technology, and software to Cuba. From FY 1994 through FY 1998 (see totals in Table 1), Commerce approved 482 licenses (valued at more than $2.8 billion)

for exports to Cuba, averaging roughly 96 license approvals (valued at nearly $570.8 million) per annum. In FY 1998, Commerce approved 128 license applications (122 exports and 6 reexports) worth over $544 million, a significant increase over FY 1997 when 87 export licenses, valued at $493.4 million, were approved. Much of this increase consisted of export licenses that were issued in connection with the Pope's visit to Cuba. Commerce denied four export license applications (valued at $29.2 million) in FY 1998 and returned sixteen license applications (worth $29.4 million) without action.

Table 1: Export License Applications Approved for Cuba (FY 1994-1998)

Fiscal Year	Number of Applications	Total Value in U.S. Dollars
1994	73	$618,991,550
1995	111	$604,004,985
1996	83	$592,738,313
1997	87	$493,414,819
1998	128	$544,659,988
TOTAL (1994-98)	482	$2,853,809,655

Virtually all of the export licenses that Commerce approved for Cuba in FY 1998 (i.e., 120 out of 128 licenses) fell into one of five major categories listed in Table 2: (i) medicines and medical supplies, instruments, and equipment, (ii) other humanitarian aid, (iii) gift parcels, (iv) aircraft on temporary sojourn in Cuba, and (v) items for promoting independent activities to strengthen civil society in Cuba. Altogether, Commerce approved 90 licenses (valued at more than $421 million) for shipments to Cuba of some form of humanitarian aid in the form of food and other staples, medicine and medical supplies, and consolidated shipments of gift parcels. In addition,
FY 1998 saw Commerce approve a much higher number of licenses (i.e., 26 licenses, valued at over $122 million) for aircraft on temporary sojourn to Cuba than in the previous year (i.e., 1 license, valued at $10.6 million). Much of this increase can be attributed to activities connected with the Pope's visit to Cuba. The President's announcement, on March 20, 1998, that lifted the 1996 ban on certain direct humanitarian flights to Cuba also contributed to this increase.

Table 2: Types of Export License Applications Approved for Cuba (FY 1998)

Type of Export	Number of Licenses	Dollar Value
Medicines and medical supplies, instruments, & equipment	**49**	**$106,691,916**
Gift parcels	**33**	**$280,905,911**
Other humanitarian aid	**8**	**$33,752,436**
Aircraft on temporary sojourn to Cuba	**26**	**$122,821,000**
Items for promoting independent activities to strengthen civil society in Cuba	**4**	**$161,304**
Other items	**10**	**$327,421**
FY 1998 TOTALS	**128 ***	**$544,659,988**

NOTE: The total number of export licenses that Commerce approved for Cuba in FY 1998 is shown as 128 in Table 2, instead of 130. This is because two licenses are counted under more than one export category in Table 2 (i.e., one medical license and one humanitarian license also included aircraft on temporary sojourn to Cuba; thus, each license is also counted under the aircraft category in Table 2).

Since the implementation on May 13, 1998, of a policy of expedited review of applications for medical sales, the United States has approved six such applications during the fiscal year, at a total value of $1.9 million. This is in contrast to the 15 licenses for medical sales in the five year period from October 1992 to May 13, 1998. Although the United States has allowed commercial medical sales to Cuba under the Cuban Democracy Act, the interests of U.S. industry in this opportunity were heightened by the onset of the new policy. Commerce has also been successful in reducing the license processing times by 32%.

In general, the U.S. economic sectors affected most by the trade embargo are, telecommunications, electrical power generation, pharmaceutical companies, tourism, mining (to a lesser extent) and producers of agricultural products and other exports that benefit from the cost advantages of U.S.-Cuba proximity (e.g., perishable agricultural products).

North Korea. **The political ideology of national self-reliance and independence has resulted in an international trade share (exports plus imports) of only 10 percent of the**

GDP, well below the figure of 50 to 55 percent observed in neighboring South Korea. Traditionally, North Korea has conducted foreign trade mainly to obtain essential imports, not for economic gains in employment or income.[3] North Korea's total imports average about $1-2 billion per year.

The total number of export license applications that Commerce has approved for North Korea increased significantly after the signing of the U.S.-North Korean Agreed Framework in October of 1994, however these licenses were predominately for food and other humanitarian items. In FY 1998, Commerce approved 43 licenses (totaling $129.1 million) for exports to North Korea, only slightly less than the number for FY 1997. Commerce rejected two applications (totaling $4.9 million) in FY 1998 and returned fifteen applications (valued at $1.6 billion) without action.

Table 3: Export License Applications Approved for North Korea (FY 1994-98)

Fiscal Year	Number of Applications	Total Value in U.S. Dollars
1994	6	$66,443
1995	31	$1,566,759,537
1996	39	$209,134,369
1997	47	$393,281,396
1998	43	$129,113,580
TOTAL (1994-1998)	166	$2,298,355,325

U.S. export sanctions have generally had a minimal effect on the volume of U.S. exports to North Korea. In the absence of the U.S. embargo, some U.S. industries (vehicles, machinery, chemicals) could have potential export sales of up to $50 million per year, inferring from North Korea's current trade with European suppliers. Following the signing of the October 21, 1994, U.S.-North Korean Agreed Framework, some opportunities for limited economic activity by some U.S. companies might have occurred. Under the Agreed Framework, North Korea agreed to freeze and eventually dismantle its existing graphite-moderated nuclear program. In return, the Korea Energy Development Organization (KEDO) will provide North Korea with two light water reactors (LWRs) developed from U.S. technology and supplied by foreign sources. In addition, KEDO agreed to provide 500,000 metric tons of heavy fuel oil to North Korea annually until the first LWR plant goes on line. Further implementation of the provisions of the Agreed Framework could also broaden North Korea's economic contacts with the international community in general.

However, in 1997 and 1998, provocative North Korean military activity, including border incursions, reduced prospects for these activities. The United States has liberalized restrictions on travel to North Korea. The United States will grant special licenses in connection with the light water reactor project, ranging from technology and equipment for the reactors to the sale and transportation of oil.

In a limited effort to tap world markets to satisfy critical economic needs, North Korea established the Rajin-Sonbong Free Trade Zone to promote trade with other countries. However, the trade zone has too little infrastructure and remains in a high-security area, limiting its effectiveness. At present, the United States does not recognize this zone. However, if the trade zone is at all successful, U.S. firms could be at a disadvantage vis-à-vis other nations due to U.S. economic sanctions.

Rwanda. The arms embargo has had very little impact on U.S. industry since its inception.

The Federal Republic of Yugoslavia. The new foreign policy controls that the United States imposed on exports to the Federal Republic of Yugoslavia (FRY) have had very little impact on U.S. industry, at least in terms of the total volume of U.S. exports to FRY. Most of the items subject to the new denial policy already required a validated license for export to the FRY. The fact that Commerce has not approved any licenses to export these items to FRY for at least the past four years (i.e., FY 1994 through FY 1998) illustrates how little impact the new foreign policy controls are likely to have on most U.S. industries. In fact, Commerce has approved only one export license to FRY since FY 1994. The lone approval occurred in FY 1998 and involved a transfer of technical data to a Yugoslav national employed in the United States (transactions of this sort are referred to as "deemed exports"). Commerce did not reject any export license applications for FRY during FY 1998, nor did it return any without action.

5. Enforcement of Control. Controls on exports to embargoed countries -- covering virtually all U.S.-origin goods, including consumer items that would not ordinarily attract enforcement attention -- raise a number of challenges. These include the need to concentrate limited resources on priority areas, developing new strategies to limit reexport violations, strengthening the cooperative relationship with other law enforcement agencies in the U.S. and overseas, and maintaining a consistent outreach effort to help limit U.S. business vulnerability. Overall, the embargoes are generally understood and supported by the U.S. public; we can count on voluntary cooperation from most U.S. exporters.

Controls on exports under the Cuban Democracy Act (CDA) of non-U.S.-origin goods from foreign subsidiaries of U.S. firms present enforcement difficulties. Foreign governments have gone beyond indifference and have shown little inclination to cooperate with, and indeed open hostility to, U.S. controls and efforts to enforce them. The Department does have the authority to deny export privileges of firms and individuals overseas who violate U.S. controls. Although a denial order can prove very effective, use of that enforcement tool against a violator of CDA-based controls may provoke strong reaction from the home country of the firm or individual who is the object of the order.

C. Consultation with Industry

Prior to implementing a streamlined license review policy on medical sales to Cuba, announced May 13, 1998, Commerce consulted with industry representatives from the pharmaceutical and medical sectors. While industry representatives showed little interest in the ability to expand exports to Cuba (given that countries' straitened financial circumstances) humanitarian organizations identified certain concerns with the licensing process. Commerce put up a special page on the BXA (Bureau of Export Administration) website explaining the process and giving guidance to industry.

On October 13, 1998, the Department of Commerce, via the *Federal Register*, solicited comments from industry on the effectiveness of export policy. In general, the comments indicated that Industry does not feel that unilateral sanctions are effective. A more detailed review of the comments is available in Appendix I.

D. Consultation with Other Countries

The U.S. has consulted closely with a number of countries to resolve problems on the Korean peninsula, and in general, there is considerable support for U.S. policy vis-a-vis North Korea. The Administration has also worked hard to resolve disputes that arise from implementation of the Libertad Act with other countries. Friction between the United States and the European Union (EU) over policy toward Cuba has diminished substantially with adoption by the Europeans of a binding policy that links expanded ties to Cuba to improvements in human rights conditions and advances toward democracy by President Fidel Castro's communist government. The United States viewed the announcement that EU members would evaluate future relations with Cuba according to the ratification and observance of international human rights conventions as an affirmation of the international community's commitment to fostering human rights and democracy in Cuba.

E. Alternative Means

The United States has imposed comprehensive embargoes in an effort to make the strongest possible statement against a particular country's policies. Restrictions on exports can supplement other actions that the United States has taken to change the behavior of the target countries. Other actions that the United States has taken include the severing of diplomatic relations, banning imports into the United States, seeking United Nations denunciations and curtailing or discouraging bilateral educational, scientific, or cultural exchanges.

F. Foreign Availability

Since Cuba and North Korea are also designated terrorism-supporting countries, as well as embargoed destinations, the foreign availability provision does not apply to items determined by the Secretary of State to require control under Section 6(j) of the Act.[4] Cognizant of the value of such controls in emphasizing the U.S. position toward countries supporting international terrorism, Congress specifically excluded them from foreign availability assessments otherwise required by the Act. For Rwanda and the Federal Republic of Yugoslavia, the U.S. human rights policies and concerns about the situation in those countries outweigh foreign availability considerations.

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ENDNOTES

1. *Items on the Commerce Control List with Export Control Classification Numbers (ECCNs) ending in "18" are those items on the International Munitions List that the Department of State previously controlled on the U.S. Munitions List, but now fall under the licensing jurisdiction of the Department of Commerce.*

2. *Section 746.8(b)(1)(ii) of the Export Administration Regulations lists these items as those on the Commerce Control List with the following ECCNs: 1A988; 2B985; 5A980; 6A002.a1, .a2, .a3 and c; 6A002.a.1, a.2, a.3 and c; 6A003.b3 and b.4; 6D102; 6E001; 6E002; 9A115; 9A991.a; 0A984; 0A986; and 0A988.*

3. *Hohn, Y.T. Kuark, " A Comparative Study of Foreign Trade in North and South Korea," University of Denver, March 1992, p. 21.*

4. *Provisions pertaining to foreign availability do not apply to export controls in effect before July 12, 1985, under sections 6(i) (International Obligations), 6(j) (Countries Supporting International Terrorism), and 6(n) (Crime Control Instruments). See the Export Administration Amendments Act of 1985, Public Law No. 99-64, section 108(g)(2), 99 Stat. 120, 134-35. Moreover, sections 6(i), 6(j), and 6(n) require that controls be implemented under certain conditions without consideration of foreign availability.*