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## **CHAPTER 3**

### **Regional Stability (Section 742.6)**

#### **Export Control Program Description and Licensing Policy**

The President directed the transfer of certain military-related goods and technology to the Commerce Control List (CCL) from the Department of State's United States Munitions List (USML) in 1993. The United States controls many of these items for regional stability (RS) purposes. This control traditionally covers items specially designed or modified for military purposes and certain dual-use commodities that can be used to manufacture military equipment.

This report notifies Congress that BXA intends to publish an amendment to the Export Administration Regulations (EAR) that expands the scope of explosive detection equipment controlled under Export Commodity Control Number (ECCN) 2A993 and creates new license requirements for the export and reexport of related software and technology. Items controlled under ECCNs 2D993 and 2E993 will delineate these controls. In the past, the United States Government required a license for the export and reexport of this equipment only to designated terrorist-supporting states. With this amendment, BXA will impose broader licensing requirements on all destinations, including Canada, for regional stability reasons. The amendment is designed to enhance the security and safety of airline travel and physical structures including government buildings.

#### **Licensing Policy**

The United States requires a license for foreign policy purposes to export military items (e.g. certain vehicles and trainer aircraft) and certain commodities used to manufacture military equipment to all destinations except member nations of the North Atlantic Treaty Organization (NATO), Australia, Japan, and New Zealand. The United States will generally consider applications for such licenses favorably, on a case-by-case basis, unless the export would significantly damage regional stability.

Other items formerly on the USML that have been transferred to the CCL include certain image-intensifier tubes, infrared focal plane arrays, certain navigation systems software and technology for inertial navigation systems, gyroscopes, and accelerometers. The United States requires a license to all

destinations except Canada for these items. All license applications for these items are reviewed on a case-by-case basis to determine whether the export could contribute, directly or indirectly, to a country's military capabilities in a manner that would destabilize or alter a region's military balance contrary to U.S. foreign policy interests.

The United States will require a license for the export and reexport of explosive detection equipment and related software and technologies to all destinations. License applications for the export or reexport of such items to most destinations will be reviewed on a case-by-case basis.

### **Analysis of Control as Required by Section 6(f) of the Act**

#### **A. The Purpose of the Control**

This control provides a mechanism for the United States to monitor the export of these items in order to restrict their use in instances that would adversely affect regional stability or the military balance within a region and to protect the national security of the United States. The purpose of the extension of controls on explosive detection equipment is to enhance the security and safety of airline travel worldwide and physical structures including government buildings.

#### **B. Considerations and/or Determinations of the Secretary of Commerce**

- 1. *Probability of Achieving the Intended Foreign Policy Purpose.*** These regional stability controls, including new controls on explosive detection equipment, contribute to U.S. national security and foreign policy objectives by enabling the United States to restrict the use or availability of certain U.S.-origin sensitive goods and technologies that would adversely affect regional stability or the military balance in certain areas.
- 2. *Compatibility with Foreign Policy Objectives.*** These regional stability controls, including new controls on explosive detection equipment, are consistent with U.S. foreign policy goals to promote peace and stability and prevent U.S. exports that might contribute to weapons production, military capabilities, or terrorist acts.
- 3. *Reaction of Other Countries.*** A number of other countries limit exports of items and technologies with military applications to areas of concern, recognizing that such equipment could adversely affect regional stability and military balances. For example, the United States and other member countries of the Wassenaar Arrangement each has its own national controls on the export of certain night vision devices. All members of the Missile Technology Control Regime (MTCR) maintain controls on software and technology related to missile guidance and control devices. Other countries

may object to new unilateral RS controls; however, the United States' allies and partners support U.S. efforts against terrorism and appreciate the need to keep certain equipment and technologies out of terrorist hands.

**4. *Economic Impact on United States Industry.*** Items controlled for regional stability generally require a validated license for export to all destinations except NATO countries, Australia, Japan, and New Zealand. Certain regional stability items, including those controlled for missile technology reasons, however, require a validated license to all destinations *except* Canada. Explosive detection equipment and related software and technology will require a license to all destinations, including Canada.

In FY 2001, BXA approved 1,406 license applications for regional stability items with a total value of \$217.4 million. Thirteen applications for these items were denied, with a total value of \$1,277,905. In addition, BXA returned without action (RWA'd) 109 applications for regional stability items, having a total value of \$6,230,409. Most of the returned license applications were RWA'd because of commodity jurisdiction issues and insufficient end-user or end-use information. Eighty-nine of the 109 returned cases were for the export of imaging cameras in ECCN 6A003.

BXA expects that the amendment to the EAR creating stricter controls on the export and reexport of explosive detection equipment and related software and technology will substantially increase the number of license applications for these items. BXA anticipates that the expansion of these controls to include a greater range of detection products to all destinations will have an impact on industry. Although the potential economic impact is unclear, security risks necessitate the control. BXA will work with industry to minimize any adverse economic effect that may result from this new control.

The table below lists the total number and value by ECCN of export licenses that BXA issued for regional stability items during FY 2001.

#### **Regional Stability Applications Approved (Fiscal Year 2001)**

ECCN	Description	Number of Applications	Dollar Value
<b>9A018</b>	Military trainer aircraft and vehicles designed or modified for military use	249	\$139,341,827

<b>ECCN</b>	<b>Description</b>	<b>Number of Applications</b>	<b>Dollar Value</b>
<b>6A002</b>	Optical detectors and direct view imaging equipment incorporating image intensifier tubes or focal plane arrays	47	\$9,591,364
<b>6A003</b>	Imaging cameras incorporating image intensifiers or focal plane arrays	1101	\$68,295,020
<b>6E001*</b>	Technology for the development of equipment, materials, or software controlled by 6A, 6B, 6C, or 6D	5	\$7
<b>6E002*</b>	Technology for the production of equipment or materials controlled by 6A, 6B, or 6C	4	\$5
<b>7D001</b>	Software for the development or production of equipment in 7A or 7B	0	\$0
<b>7E001</b>	Technology for the development of items in 7A, 7B, or 7D	3	\$0
<b>7E002</b>	Technology for the production of items in 7A or 7B	2	\$200,100
<b>7E101</b>	Technology for the use of items in 7A, 7B, or 7D	4	\$0
<b>1B018.a</b>	Equipment for the production of military explosives and solid propellants	0	\$0
<b>2B018</b>	Equipment on the International Munitions List	0	\$0
<b>TOTAL</b>		<b>829</b>	<b>\$217,428,323</b>

**NOTE:** The number of sub-categories under each ECCN that are not controlled for regional stability reasons is insignificant and is not reflected in this data.

\*All cases but one under these ECCNs were for foreign nationals employed in U.S. facilities.

5. **Enforcement of Control.** Image intensifier tubes, infrared focal plane arrays, certain navigation systems software and technology for inertial navigation systems, gyroscopes, and accelerometers and other items controlled for regional stability purposes are almost all subject to multilateral controls for either national security or missile technology reasons. The multilateral nature of these controls aids in enforcement. The imposition of unilateral controls for explosive detection equipment is intended to enhance the security of airline travel worldwide and the safety of physical structures including government buildings. The license requirement should assist in the enforcement of explosive detection equipment exports by providing a mechanism for determining who exports these systems and to which destinations. BXA can effectively enforce these controls by focusing on preventive enforcement, using regular outreach efforts to keep businesses informed of concerns, and gathering leads on activities of concern. Given the enhanced anti-terrorism efforts of the U.S. Government, it is expected that industry will support enforcement efforts.

### **C. Consultation with Industry**

BXA consulted with industry during the 1993 transfer of certain USML items from Department of State to Department of Commerce jurisdiction. In the past year, issues regarding the jurisdiction for night vision equipment have resurfaced. BXA hosted several interagency meetings with industry during 2001 to discuss night vision product uses and capabilities and to attempt to define a distinction between commercial equipment and munitions items to clarify the licensing jurisdiction for these items. Industry input received during this process continued to support the transfer of more of these items to Commerce control. In December 2000, the inability of the agencies to resolve the night vision jurisdictional issue resulted in an escalation of the issue to the National Security Council. To date, the National Security Council has not made a final determination.

On November 7, 2001, the Department of Commerce, via the *Federal Register* and BXA's webpage, solicited comments from industry on the effectiveness of foreign policy-based export controls. Overall comments are available in Appendix I.

The Sensors and Instrumentation Technical Advisory Committee (SITAC) requested that Category 6 commodities related to commercial night vision and thermal imaging equipment (specifically 6A002, 6A003, 6E001, and 6E002) be moved from Regional Stability (RS) Column 1 to RS Column 2. Although RS Column 1 includes all countries except Canada, the imposition of RS Column 2 controls would allow such items to be exported to Canada, most European Union members, Japan, and several others countries without a license. Due to foreign competition in the United Kingdom, France, and Japan, SITAC stated that "the negative effect on U.S. companies far exceeds the perceived benefit to the foreign policy objective." SITAC cited the importance of thermal imaging for firefighting, law enforcement, and security organizations worldwide. SITAC also stated that the U.S. effort to build a

large international coalition to combat terrorism is undermined when the United States restricts access of key technology to allies. SITAC further stated that treating all regions with the exception of Canada as being potentially unstable “dilutes the focus on regions where stability may truly be in question.”

At the December 2001 meeting, BXA informed the Regulations and Procedures Technical Advisory Committee (RPTAC) of BXA’s intention to expand the scope of explosive detection equipment. RPTAC comments will be taken into consideration as the proposed regulation undergoes government review.

#### **D. Consultation with Other Countries**

The Wassenaar Arrangement controls certain items that the United States also controls for RS purposes. Wassenaar member states have agreed to incorporate the Wassenaar Dual-Use Control List into their own national export controls to prevent exports that could contribute to destabilizing buildups of conventional arms. In addition, members of the MTCR incorporate the MTCR control list into their own national control lists. BXA intends to brief allies and major trading partners on the imposition of unilateral controls for explosive detection equipment and does not anticipate significant objections to the new controls.

#### **E. Alternative Means**

The United States has undertaken a wide range of actions to support and encourage regional stability and has specifically encouraged efforts to limit the flow of arms and militarily useful goods and other special equipment to regions of conflict and tension. Nonetheless, U.S. regional stability controls remain an important element in U.S. efforts to limit regional conflicts.

#### **F. Foreign Availability**

Military vehicles and other military-type equipment that are controlled for regional stability purposes may be obtained from numerous foreign sources. Nearly all of the commodities and related software and technology controlled for regional stability purposes are also subject to multilateral controls for either national security or missile technology reasons under multilateral regimes. Manufacturers of imaging cameras controlled in ECCN 6A003 have voiced complaints to BXA that there is considerable foreign availability of these items in Europe and Japan. Although there are multilateral controls on these items, members of the European Community do not control them among themselves, while U.S. companies require export licenses for exports to all destinations except Canada. U.S. industry believes that this disparity hinders them in this market. There also are foreign manufacturers of explosive detection equipment – although none produce items with the same technical capabilities as the U.S.

products. BXA is not aware of foreign competitors that, at this time, produce the highest level of Federal Aviation Administration-certified explosive detection equipment.