

FOREIGN POLICY EXPORT CONTROLS

Introduction

Export controls maintained for foreign policy purposes require annual extension according to the provisions of Section 6 of the Export Administration Act of 1979, as amended (the Act). Section 6(f) of the Act requires the Secretary of Commerce, through authority delegated by the President, to submit a report to Congress to extend the controls. Sections 6(b) and 6(f) of the Act require the report to include certain considerations¹ and determinations² on the criteria established in that section. This report complies with all the requirements set out in the Act for extending, amending, or imposing foreign policy controls.

The Department of Commerce is acting under the authority conferred by Executive Order No. 12924 of August 19, 1994, and continued by notices of August 15, 1995, August 14, 1996, August 13, 1997, August 13, 1998, and August 10, 1999. Therein, the President, by reason of the expiration of the Act, invoked his authority, including authority under the International Emergency Economic Powers Act, to continue in effect the system of controls that had been maintained under the Act. Under a policy of conforming actions under the Executive Order to those under the Act, the Department of Commerce, insofar as appropriate, is following the provisions of Section 6 of the Act with regard to extending foreign policy controls.

With this report, the United States is extending all foreign policy controls in effect on December 31, 1999. The Department of Commerce is taking this action at the recommendation of the Secretary of State. As further provided by the Act, foreign policy controls remain in effect for replacement parts and for parts contained in goods subject to such controls. The controls administered in accordance with procedures established pursuant to Section 309(c) of the Nuclear Nonproliferation Act of 1978 likewise remain in effect.

Each chapter that follows describes a particular category of foreign policy controls and delineates modifications that have taken place over the past year. Most of the statistical data presented in the report is based on Fiscal Year 1999 export licensing statistics, unless otherwise noted. Commerce generates this data from the computer automated system it uses to process and track export license activity. Due to the tabulating procedures used by the system in accounting for occasional license applications that list more than one country or destination, the system has certain limitations as a means of gathering data. In addition, Commerce based the data in the report on values contained in export licenses it issued. Such values may not represent the values of actual shipments made against those licenses, because in some cases an exporter may ship only a portion of the value of an approved license.

Highlights of 1999

Embargoed Countries and Entities:

On January 8, 1999, Commerce published regulations implementing a comprehensive export and reexport ban to designated foreign terrorist organizations (FTOs) and specially designated terrorists (SDTs), wherever they are located. This rule amended the end-user and end-use control policy in part 744 of the Export Administration Regulations (EAR) by imposing new foreign policy controls on exports and certain reexports to the SDTs and FTOs listed in the Appendices to 31 CFR Chapter V, published by the Department of the Treasury, Office of Foreign Assets Control (OFAC). Under these changes, BXA requires a license for all exports and reexports by a U.S. person of any item subject to the EAR to a SDT or FTO and requires a license for all reexports of items subject to the EAR that are on the CCL by non-U.S. persons to SDTs and FTOs; failure to obtain the required license from OFAC constitutes a violation of the EAR.

On April 30, 1999, the President issued Executive Order No.13121 imposing a comprehensive economic embargo on the Federal Republic of Yugoslavia (FRY, which consisted of Serbia--including Kosovo--and Montenegro) in reaction to the Serbian Government's use of excessive force against civilians in Kosovo. This embargo was implemented by the Department of the Treasury; Montenegro was excluded from the new FRY sanctions by a Department of the Treasury general license of August 17, 1999. A Department of the Treasury general license gave Commerce licensing responsibility for most export and reexports subject to the EAR to Serbia. The Department of Commerce also maintains new license requirements and a policy of denial for the export of all non-humanitarian items to Serbia. The United States exempted Kosovo from the sanctions by a Department of the Treasury general license and a Commerce regulatory change on November 5, 1999.

On August 2, 1999, the Department of the Treasury published amendments to the Iranian, Libyan and Sudanese sanctions regulations generally exempting the sale of agricultural commodities and products, medicine, and medical equipment from these unilateral sanctions regimes, subject to a case-by-case review. This regulatory change implemented the President's policy announcement of April 28, 1999. Although the Department of the Treasury exercises licensing authority for exports and reexports to Iran and Sudan, the change will potentially affect the Department of Commerce's licensing practices in regard to reexports to Libya.

On September 13, 1999, Commerce published a notice in the *Federal Register* implementing a modification of the restrictions on the temporary export of foreign-registered aircraft to Libya. This action was in response to the United Nations' suspension of sanctions against Libya, and permits foreign-registered aircraft subject to the EAR that meet the eligibility requirements of License Exception AVS to fly to and from Libya without requiring a license from Commerce.

On September 16, 1999, Commerce published a regulation clarifying that the United States will review applications to export or reexport to Syria aircraft parts and components necessary to maintain the safety of civil aviation and the safe operation of commercial passenger aircraft.

Computers:

On July 1, 1999, the President announced a revision of export controls on high-performance computers (HPCs) and semiconductors. The revised controls maintain the four country groups announced in 1995, but amend the countries in, and controls levels for, three of those groups. The President also committed the Administration to review HPC export control policy after six months in order to ensure a realistic export control regime for this rapidly changing technology. Following this announcement, on July 23, 1999, the President notified Congress of his decision to establish a new control level for the notification procedure for computer exports to Tier III countries, pursuant to the National Defense Authorization Act for Fiscal Year 1998.

Commerce published the regulation implementing the President's announcement on August 3, 1999. The regulation moved Brazil, the Czech Republic, Hungary, and Poland from Country Tier II to Tier I. The August regulation also raised the control level for Tier II countries from 10,000 to 20,000 millions of theoretical operations per second (MTOPS) with the expectation that the threshold will be raised again in six months to the 32,000-36,000 MTOPS range. It maintained the distinction between civilian and military end users in Tier III countries. License levels for Tier III civilian end users were immediately raised from 7,000 to 12,300 MTOPS. License levels for Tier III military end users were retained at 2,000 MTOPS until the conclusion of the six month congressional review mandated by the NDAA, at which time it will be raised to 6,500 MTOPS. Exports of any computer to proliferation-related end-uses and end-users will still require a license. The controls and denial policy for exports of HPCs to Tier IV countries remain unchanged.

Crime Control:

On April 13, 1999, Commerce published an interim rule in the *Federal Register* implementing provisions similar to those of the Organization of American States (OAS) Model Regulations for the Control of the International Movement of Firearms. These regulations are designed to harmonize import and export controls over the legal international movement of firearms and to establish procedures to prevent the illegal trafficking of firearms within OAS member countries. Under these provisions, the United States imposed new foreign policy controls on all OAS member countries, including Canada, for the export of certain firearms, including shotguns and parts, buckshot shotgun shells and parts, shotgun shells and parts, and optical sighting devices for firearms. In support of the OAS Model Regulations, the United States imposed a Import Certificate requirement on the export to all OAS member countries of those items affected by the regulations.

Chemical Controls:

On May 18, 1999, Commerce published an interim rule in the *Federal Register* amending the Export Administration Regulations (EAR) to implement the export control and reporting provisions of the Chemical Weapons Convention (CWC). The CWC bans the development, production, stockpiling, and retention of chemical weapons, and provides for an extensive verification regime for legitimate activities involving certain toxic chemicals. The CWC Annex groups specified chemicals, which include both toxic chemicals and chemical precursors, into three schedules based on the level of toxicity and on other properties that enable their use in chemical weapons. Toxic chemicals and precursors on Schedule 1 pose the highest risk to the purpose of the Convention and have few commercial applications. Toxic chemicals and precursors on Schedule 2 pose a significant risk to the purpose of the Convention and have certain commercial applications. Toxic chemicals and precursors on Schedule 3 pose a risk to the purpose of the Convention and have wide commercial applications. Chemical warfare agents deemed to have direct military application are controlled by the State Department under the International Traffic in Arms Regulations.

Commerce Control List:

Commerce published a final rule in the *Federal Register* on July 23, 1999, revising a number of national security controlled entries on the Commerce Control List (CCL) to conform with changes in The Wassenaar Arrangement List of Dual-Use Goods and Technologies. The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability. Specifically, the rule made changes to certain entries in categories 1, 2, 3, 4, 5, 6, 7, and 9 of the CCL. All items for which national security (NS) controls were removed as a result of The Wassenaar Arrangement List review will continue to be controlled for antiterrorism (AT) reasons. Commerce continues its comprehensive review of the CCL to account for items controlled by the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Group. The review is based largely on the comments received and ongoing efforts to harmonize the CCL with the European Union's control list.

Export Control Program Description and Licensing Policy

This part defines the export controls maintained for a particular foreign policy purpose that are imposed or extended for the year 2000. The licensing requirements and policy applicable to a particular control are described in this section.

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

This part outlines the considerations or determinations, as required by Section 6(f)(2) of the Act, on the purpose of the control, criteria, alternative means, consultation efforts, and foreign availability. For each control program, the Department's conclusions are based on the following required criteria:

A. The Purpose of the Control

This section provides the foreign policy purpose and rationale for each particular control.

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

1. Probability of Achieving the Intended Foreign Policy Purpose. This section considers or determines whether such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology subject to control, and whether the foreign policy purpose cannot be achieved through negotiations or other alternative means.

2. Compatibility with Foreign Policy Objectives. This section considers or determines whether the controls are compatible with foreign policy objectives of the United States and with overall U.S. policy toward the country or the proscribed end-use subject to the controls.

3. Reaction of Other Countries. This section considers or determines whether the reaction of other countries to the extension of such export controls by the United States is likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to other U.S. foreign policy interests.

4. Economic Impact on United States Industry. This section considers or determines the effect of the controls on the export performance of the United States, its competitive position in the international economy, the international reputation of the United States as a reliable supplier of goods and technology, or the economic well-being of individual U.S. companies and their employees and communities exceeds the benefit to U.S. foreign policy objectives.³

5. Enforcement of Control. This section considers or determines the ability of the United States to enforce the controls. Some enforcement problems are common to all foreign policy controls.⁴ Others are associated with only one or a few controls. Each individual control has been assessed to determine if it has presented, or is expected to present, an uncharacteristic enforcement problem.

C. Consultation with Industry

This section discusses the results of consultations with industry leading up to the extension or imposition of controls. It also includes comments provided to Commerce by the Technical Advisory Committees (TACs); such comments are to be attributed to the TACs unless otherwise indicated.

D. Consultation with Other Countries

This section reflects consultations on the controls with countries that cooperate with the United States on multilateral controls, as well as with other countries as appropriate.

E. Alternative Means

This section specifies the nature and results of any alternative means attempted to accomplish the foreign policy purpose, or the reasons for extending the controls without attempting any such alternative means.

F. Foreign Availability

This section considers the availability from other countries of goods or technology comparable to those subject to the proposed export control. It also describes the nature and results of the efforts made pursuant to Section 6(h) of the Act to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology. In accordance with the Act, foreign availability considerations do not apply to export controls in effect prior to June 12, 1985, to controls maintained for human rights and anti-terrorism reasons, or to controls in support of the international obligations of the United States.

General Comments from Industry

On November 30, 1999, 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.

ENDNOTES

1. *Section 6(b)(2) requires the Department to consider the criteria set forth in Section 6(b)(1) when extending controls in effect prior to July 12, 1985. In addition, the report must include the elements set forth in Sections 6(f)(2)(A) (purpose of the controls); 6(f)(2)(C) (consultation with industry and other countries); 6(f)(2)(D) (alternative means attempted); and 6(f)(2)(E) (foreign availability).*
2. *Section 6(b)(1) requires the Department to make determinations regarding the criteria set forth therein when extending controls in effect after July 12, 1985. The report must also contain the additional information required in Section 6(f)(2)(A), (C)-(E) (as set forth in endnote 1, *supra*.)*
3. *Limitations exist when assessing the economic impact of certain controls because of the unavailability of data or because of the prevalence of other factors, e.g., currency values,*

foreign economic activity, or foreign political regimes, which may restrict imports of U.S. products more stringently than the United States restricts exports.

4. *When controls are implemented without the imposition of corresponding restrictions by other countries, it is difficult to guard against reexports from third countries to the target country, to secure third country cooperation in enforcement efforts, and to detect violations abroad and initiate proper enforcement action. The relative ease or difficulty of identifying the movement of controlled goods or technical data is also a factor. Controls on items that are small, inexpensive, easy to transport or conceal, or that have many producers and end-users, are harder to enforce.*