

Export Control Program Description and Licensing Policy

On October 21, 1996, the Department of Commerce published a rule in the *Federal Register* accepting licensing jurisdiction on certain commercial communications satellites and certain hot section technology transferred from the U.S. Munitions List (USML) to the Commerce Control List (CCL). The Secretary of Commerce imposed new foreign policy controls on these items with the concurrence of the Secretary of State. Under the Wassenaar Arrangement, member countries control these commodities as dual-use items. Commerce controls these items on the CCL under Export Control Classification Numbers (ECCNs) 9A004 and 9E003.a.1 through a.12 and .f).

On September 29, 1997, Commerce published a regulatory amendment concerning commercial communications satellites to accept satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware and replacement parts for commercial communications satellites when included with a specific commercial communications satellite. Following the completion of notification procedures under Section 38(f) of the Arms Export and Control Act (AECA), on April 9, 1998, the State Department published its corresponding amendment to the International Traffic in Arms Regulations (ITAR). This provision allowed exporters to obtain a single license for satellite launches. The Department of State continues to control satellite and launch technology.

In the 1998 National Defense Authorization Act, Congress mandated that all commercial communications satellites, including both those transferred by Presidential decision in 1992 and those transferred by Presidential decision in 1996, be returned to the U.S. Munitions List by March 15, 1999. Commerce and State are drafting regulations to implement the transfer of jurisdiction.

A. The United States requires a license for exports and reexports to all destinations, except Canada, for the above listed items. These items are controlled for national security and foreign policy reasons.

B. Commerce reviews all license applications for the above items, on a case-by-case basis, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests.

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

A. The Purpose of the Control

This control is to protect U.S. national security and foreign policy interests and to demonstrate U.S. resolve to promote peace and stability. The United States is maintaining such controls because of potential uses for the items in a manner contrary to U.S. security or foreign policy interests.

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

1. **Probability of Achieving the Intended Foreign Policy Purpose.** The Secretary of Commerce has determined that the control is likely to achieve the intended purpose of denying the export of commercial communication satellites and hot section technology when the export would be contrary to U.S. national security or foreign policy interests.

2. **Compatibility with Foreign Policy Objectives.** The Secretary has also determined that the controls are compatible with the foreign policy objectives of the United States. The control is consistent with U.S. foreign policy goals to promote peace and stability and to prevent U.S. exports when they would contribute to inappropriate military capabilities abroad.

3. **Reaction of Other Countries.** The Secretary has determined that the reaction of other countries to this control is not likely to render the control ineffective in achieving its intended foreign policy purpose or to be counterproductive to U.S. foreign policy interests. Other allied countries currently control commercial communications satellites and hot section technology for commercial jet engines as dual-use commodities. These countries also recognize the desirability of restricting goods that could compromise shared security and foreign policy interests.

4. **Economic Impact.** The Secretary has determined that the transfer of commercial communication satellites and commercial hot section technology from the USML to the CCL has benefitted industry positively in the context of multilateral agreements and in making U.S. manufacturers more competitive in the world market. In FY 1998, the Commerce approved 29 licenses for commercial communication satellites, classified under ECCN 9A004, worth \$2.8 trillion, denied no licenses and returned without action 4 licenses worth \$349 million. Commerce approved 13 licenses for commercial hot section technology, classified under 9E003.a.1 through a.12 and .f, worth \$6.00, denied one license and returned no licenses without action.

5. **Enforcement of Control.** The Secretary has determined that the United States has the ability to enforce these controls effectively. The United States expects no unusual problems in enforcing the controls. Manufacturers and dealers are familiar with U.S. controls on these products and technology. Finally, since these items are also under multilateral control, we can expect cooperation from foreign enforcement agencies in preventing violations and punishing violators.

C. Consultation with Industry

Commerce is working with its Transportation Technical Advisory Committee to review the parameters on these (although no major changes are envisioned to controls for this item). Industry comments, in large measure, favored transfer of the items to Commerce.

D. Consultation with Other Countries

The United States has taken the lead in international efforts to stem the proliferation of sensitive items, urging other supplier nations to adopt and apply export controls comparable to those of the United States. The major industrial partners of the United States maintain export controls on this equipment and technology and control them as dual-use commodities. Pursuant to their agreement to establish a new regime for the control of conventional arms and sensitive dual-use goods and technologies, the 33 participants in the Wassenaar Arrangement have agreed to control these items to ensure that transfer of such items do not contribute to the development or enhancement of military capabilities that could pose a threat to international or regional peace and security.

E. Alternative Means

The United States has undertaken a wide range of diplomatic means, both bilateral and multilateral, to encourage the proper control over these items. The United States has encouraged efforts to prevent the unauthorized use or diversion to activities contrary to U.S. security and foreign policy concerns.

F. Foreign Availability

Although the United States is the world's leader, other countries produce commercial communications satellites and hot section technology. Most producers of commercial communications satellites and hot section technology are members of the Wassenaar Arrangement and are controlling these items as dual-use items (albeit with widely divergent licensing policies).

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