

**RECORD OF COMMENTS: EFFECTS OF FOREIGN POLICY-BASED
EXPORT CONTROLS
(DUE ON NOVEMBER 16, 2005)**

PUBLISHED IN THE FEDERAL REGISTER

15 CFR, CHAPTER VII

PUBLISHED ON OCTOBER 13, 2005

COMMENT #	SOURCE	SIGNER(S) OF LETTER	DATE	NUMBER OF PAGES
1.	Airbus North America Holdings, Inc.	Kenneth G. Lyons, Trade Controls Director	10/17/05	1
2.	Global Textile Partner Greenville, Inc.	David Cross	11/7/05	1
3.	National Electrical Manufacturers Association	John Meakem, Manager, International Trade	11/10/05	1
4.	Sun Microsystems	Hans Luemers, Senior Director, International Trade Services	11/11/05 (received 11/14/05)	4

Proposed Rules

Federal Register

Vol. 70, No. 197

Thursday, October 13, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1219

[No. FV-03-702]

Hass Avocado Promotion, Research, and Information Order: Definition of "Substantial Activity"

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a proposed rule published in the **Federal Register** March 18, 2003, which would have terminated the definition of "substantial activity" under the Hass Avocado Promotion, Research, and Information Order (Order). The proposed action was expected to increase the number of importers eligible to serve on the Hass Avocado Board (Board). Based on comments received and other available information, termination of the definition would not be appropriate at this time.

DATES: This proposed rule is withdrawn as of October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535-S, Washington, DC 20250-0244, telephone (202) 720-9915, fax (202) 205-2800, e-mail: Marlene.Betts@usda.gov.

SUPPLEMENTARY INFORMATION: The Hass Avocado Promotion, Research, and Consumer Information Order (Order) is issued under the Hass Avocado Promotion, Research, and Information Act of 2000 (Act) [7 U.S.C. 7801-7813].

In determining who is eligible to serve as an importer member of the Board, the Act provides for a substantial activity test. In order to implement this provision, the Order needed to provide criteria to enable the Department to measure substantial activity. The Department determined that basing a

person's eligibility on the person's business activity and which industry function (producing or importing) predominates was a reasonable measure that gave a clear and understandable benchmark (67 FR 7290). In order to serve as an importer member on the Board, an importer is defined as a person who is involved in, as a substantial activity, the importation of Hass avocados for sale or marketing in the United States. Section 1219.30(d) of the Order states that a substantial activity means that the volume of a person's Hass avocado imports must exceed the volume of the person's production or handling of domestic Hass avocados.

This document withdraws the proposed rule published in the **Federal Register** March 18, 2003 [68 FR 12881], which would have terminated the definition of substantial activity under the Order. The proposed action was expected to increase the number of importers eligible to serve on the Hass Avocado Board (Board). Nine comments were received in a timely manner by the comment deadline. Seven commenters were importers of Hass avocados. Two commenters were Hass avocado industry organizations, one being the Hass Avocado Board. Seven of the nine commenters opposed changing the definition in the Order, while two were in support of the proposed rule change.

Opposing commenters raised a number of issues including whether other factors limited the number of nominees in the earlier selection process rather than the definition of substantial activity. The commenters stated that the size and pool of the eligible importers (200) was more than adequate to fill the vacancies on the Board. Concern was expressed as to the relationship of producers and importers on the Board.

The supporting commenters were of the view that the substantial activity requirement unnecessarily limited the potential pool of nominees for service on the Board and denied some of the most significant and most qualified individuals in the avocado industry to serve on the Board.

Since the initial nomination process in 2002, there have been significant changes in the industry. For example, the number of states and the months of the year that the Mexican Hass avocado industry can bring avocados in the

United States has changed, which can effect importer eligibility on the Board.

Currently, the Department is in the process of appointing 2 importer members to the Board, this would fill all 4 importer positions on the Board. However, nominations were not forthcoming from the industry for the alternate importer positions.

Further, the Department believes that it would be appropriate to publish an advance notice of rulemaking so that the industry can provide comments and other pertinent information prior to the Department publishing any further rulemaking on this issue. An advance notice of rulemaking will be published in the **Federal Register** separately from this document.

Based on comments received and other available information, termination of the definition would not be appropriate at this time. Therefore, the proposed rule regarding the termination of the definition of substantial activity published in the **Federal Register** March 18, 2003 [68 FR 12881] is hereby withdrawn.

List of Subjects in 7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer Information, Hass avocados, Hass avocado promotion, Marketing agreements, reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7801-7813.

Dated: October 7, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05-20530 Filed 10-12-05; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 050923247-5247-01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign

policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 14, 2005.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Include "FPBEC" in the subject line of the message. Alternatively, comments may be e-mailed to Sheila Quarterman at squarter@bis.doc.gov. Also include "FPBEC" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-4252. Copies of the current Annual Foreign Policy Report to the Congress are available at <http://www.bis.doc.gov/PoliciesAndRegulations/05ForPolControls/index.htm> and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

SUPPLEMENTARY INFORMATION:

Foreign policy based controls in the Export Administration Regulations (EAR) are implemented pursuant to section 6 of the Export Administration Act of 1979, as amended. The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR, including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items, activities and persons, including: high performance computers (§ 742.12); certain general purpose microprocessors for "military end-uses" and "military end-users" (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§§ 742.15 and 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition,

Explosives, and Other Related Materials (§ 742.17); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of certain rocket systems and unmanned air vehicles (§§ 742.5 and 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 742.2 and 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 742.20, 746.2, 746.3, and 746.7); certain entities in Russia (§ 744.10); individual terrorists and terrorist organizations (§§ 744.12, 744.13 and 744.14); certain persons designated by Executive Order 13315 ("Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members") (§ 744.18); and certain sanctioned entities (§ 744.20). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non-Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 FR 45273, August 5, 2005), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2005, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure maximum public participation in the review process,

comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.*, those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by

examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-0637 for assistance.

Dated: October 6, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05-20477 Filed 10-12-05; 8:45 am]

BILLING CODE 3510-33-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 51

[OAR-2005-0148; FRL-7982-9]

Advance Notice To Solicit Comments, Data and Information for Determining the Emissions Reductions Achieved in Ozone Nonattainment and Maintenance Areas From the Implementation of Rules Limiting the VOC Content of AIM Coatings; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of the comment period.

SUMMARY: EPA is extending the comment period for an advanced notice of proposed rulemaking (ANPR) published on August 31, 2005 (70 FR 51694). In the August 31, 2005 ANPR, EPA solicited comments, data and information for determining how to calculate the reductions in volatile organic compounds (VOC) emissions achieved in ozone nonattainment and maintenance areas from the implementation of rules which limit the VOC content of architectural coatings (commonly referred to as architectural industrial maintenance, or AIM, coatings). In addition to submitting comments, data and information, interested parties may also request to meet with EPA to present their recommended approaches and rationales. Pursuant to requests of the Ozone Transport Commission and the California Air Resources Board, EPA is extending the comment period through December 16, 2005.

DATES: Comments, data, and information must be submitted on or before December 16, 2005. Requests to meet with EPA should be made on or before November 28, 2005.

ADDRESSES: Submit your written comments, data and information, identified by Docket ID No. OAR-2005-0148, by one of the following methods:
Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: Send electronic mail (e-mail) to EPA Docket Center at a-and-r-docket@epa.gov.

Fax: Send faxes to the EPA Docket Center at (202) 566-1741.

Mail: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attn: Docket ID No. OAR-2005-0148, *Advance Notice for Information on Determining the Emissions Reductions Achieved from Limiting the VOC Content of Architectural Coating*. Please include a total of two copies.

Hand Delivery or Courier: EPA Docket Center (Air and Radiation Docket), U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for delivery of boxed information.

Instructions: Direct your comments to Docket ID No. OAR-2005-0148. The EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute.

From: "Lyons, Ken" <ken.lyons@airbus.com>
To: "Sheila Quarterman (E-mail)" <squarter@bis.doc.gov>
Date: 10/17/2005 11:58:09 AM
Subject: Public Comment on Foreign Policy-Based Export Controls

Sheila,

Reference: Sec. 744.7 (b)(2) third line..."the commodities described in paragraph (e)"... Shouldn't this be paragraph (3) vice (e)?

Regards,
Kenneth G. Lyons
Trade Controls Director
Airbus North America Holdings, Inc.

Phone: +1 (703) 834-3513
Mobile: +1 (703) 926-6232
Fax: +1 (703) 834-3434
Mail to: ken.lyons@airbus.com <mailto:ken.lyons@airbus.com>
Internet: www.airbusnorthamerica.com <http://www.airbusnorthamerica.com>

Address:
198 Van Buren Street
Suite 300
Herndon, VA 20170

This e-mail is intended only for the above addressee. It may contain privileged information. If you are not the addressee you must not copy, distribute, disclose or use any of the information in it. If you have received it in error please delete it and immediately notify the sender. Security Notice: all e-mail, sent to or from this address, may be accessed by someone other than the recipient, for system management and security reasons. This access is controlled under Regulation of Investigatory Powers Act 2000, Lawful Business Practises.

From: "CROSS David" <David.Cross@globaltextilepartner.com>
To: <squarter@bis.doc.gov>
Date: 11/7/2005 6:42:28 PM
Subject: FPBEC

Attn: Shelia Quarterman

Our company works in area of normal industrial machinery. Specifically we sell accessories for weaving cloth under harmonized code number 8448-42. On these products there is competition from Europe, Japan, and many newly industrialized countries like India and China. Foreign policy controls (*embargoed countries*) just stop us from selling while the competitors freely sell to those markets. This type embargo is analogous to GM deciding not to sell cars in South Carolina because they didn't like the policy of the state government. People would buy from other makers that have cars readily available. GM hurts themselves but has no real leverage to change anything. In time, no one wants a GM car because they are not used buying them so even if the embargo is later lifted the market will be reduced and take a long time to recover.

The effect of a US embargo on countries for normally available products, hurts USA companies and the people they could employ. It has little effect on the embargoed countries since they can freely buy the goods from other countries. It does build a *brand preference* and perception of reliable supply for our competitors. In a global economy we need to compete. Unilateral embargos from the USA just hurt USA companies.

Sincerely,

David Cross
GTP Greenville, Inc.
1801 Rutherford Road
Greenville, SC 29609
Tel: +1 864 609-2318
Fax: +1 864 292-5846
Mobile: +1 864 238-7253

**** DISCLAIMER **** The contents of this e-mail are intended for the named addressee only. It contains information which may be confidential and which may also be privileged. Unless you are the named addressee (or authorised to receive for the addressee) you may not copy or use it, or disclose it to anyone else. If you received it in error please notify us immediately and then destroy it. Further, we make every effort to keep our network free from viruses. However, you do need to verify that this email and any attachments are free of viruses as we can take no responsibility for any computer virus which might be transferred by way of this e-mail.



November 10, 2005

Ms. Sheila Quarterman, Regulatory Policy Division
Bureau of Industry and Security, Room 2705
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Re: FPBEC

Submitted by e-mail to: squarter@bis.doc.gov

Dear Ms. Quarterman:

The National Electrical Manufacturers Association (NEMA) is pleased to respond to your *Federal Register* request for public comment on foreign policy-based export controls. Generally speaking, our membership would like to stress that the U.S. Government should give greater consideration to the implications of its export control and sanctions policies on the competitiveness of U.S. companies, particularly with regards to leveling the international playing field. Multilateral avenues should be explored, and existing policies should be reviewed to determine whether their effectiveness justifies the costs to U.S. jobs and industries. Finally, a more deliberative and disciplined framework for the weighing and imposition of economic sanctions by Congress and the Executive Branch should be established.

NEMA is the largest trade association representing the interests of U.S. electrical equipment manufacturers, whose worldwide annual sales exceed \$120 billion. The 400 member companies of NEMA manufacture products used in the generation, transmission, distribution, control, and use of electricity. These products are used in utility, industrial, commercial, institutional and residential installations. The Association's Medical Products Division represents manufacturers of medical diagnostic imaging equipment including MRI, CT, x-ray, ultrasound and nuclear products. (The Association's product scope is attached.)

Thank you for this opportunity to provide our remarks.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Meakem', written in a cursive style.

John Meakem
Manager, International Trade

National Electrical
Manufacturers Association
www.nema.org

November 11, 2005

Ms. Sheila Quarterman
Regulatory Policy Division,
Bureau of Industry and Security
Department of Commerce, Room 2705
14 St. and Pennsylvania Ave. NW
Washington, DC 02030

Re: Effects of Foreign-Policy-Based Export Controls (Docket 050923247-5247-01),
Federal Register, Oct. 13, 2005, Volume 70, 59678

Dear Ms. Quarterman,

Sun Microsystems, the world's leader in networked systems, again welcomes the opportunity to comment on foreign policy-based export controls administered by the Bureau of Industry and Security. Sun recognizes the necessity of such controls, but wishes to point out weaknesses in their general application, as well as particular issues with direct impact on Sun's ability to conduct global business operations.

As a general matter, export controls, including those imposed for foreign policy purposes, should meet three criteria:

- **Controls should support a defined objective.** Export controls should not be considered ends in themselves, but should be imposed with defined objectives. Only if the objective is defined can success be measured.
- **Controls should work.** If the objective of controls is to deprive the target country of a technology or commodity, issues like foreign availability and controllability must be regularly evaluated.
- **Controls must be consistent, predictable and flexible.** The specific execution of controls must be framed in a way to avoid unnecessary damage and to assist businesses in implementing them.

Foreign policy-based controls in particular have been historically weak in the application of these principles, and require diligence to ensure that their execution meets intended objectives and that their impacts do not change over time in unintended ways.

Sun would like to point out two areas where we believe that foreign policy-based controls have produced unnecessary competitive damage to U.S. companies without an identifiable policy advantage.

“Catch-all” Controls Associated with the Enhanced Strategic Controls Initiative

Sun has long felt that the comprehensive end-use controls component of nonproliferation controls found in Part 744 are overly broad, do not advance the the original intent of the Initiative, and produce disproportionate costs and compliance exposure for U.S. companies.

“Catch-all” controls are a very course and imprecise export control tool, and should not be used. As the range of items subject to EAR jurisdiction is extremely broad, catch-all controls by definition apply to items that have no substantive relevance to the proscribed proliferation (or other activity). Moreover, because such items may be produced in mass-market qualities, or are widely available in global markets, catch-all provisions administered by U.S. companies may have no impact whatsoever in depriving particular entities of the non-listed items to which they apply.

While a standard of “material contribution” may apply in theory to catch-all controls in the proliferation area, this does not mitigate their damaging effects. Substantial effort must be expended to detect and stop potential transactions involving items of no strategic value among tens of thousands of overseas transactions. As the standard of material contribution is extremely subjective, it is risky to make a materiality judgment without Government participation, and in practice to do so requires extended analytical effort, time and cost.

Catch-all controls such as the EPCI requirements have two very real negative consequences. The first is that they are costly and divert compliance resources from elements of company control programs that do have a real strategic impact. Companies must assume that catch-all controls will be stringently enforced for even the most insignificant transactions, and must build their systems accordingly.

Second, as screening requirements springing from catch-all controls apply to items that are obviously irrelevant, they lessen respect for U.S. Export controls in general among overseas customers, business partners, and employees.

We strongly urge that the “catch-all” dimension of EPCI controls be reviewed with a view to narrowing their scope to identifiable and achievable objectives. While end-use controls will continue to be an important export control tool, they can only be effective if they are focused on specific geographic areas with well defined and narrow technological scope.

Sun also strongly opposes the extension of catch-all type controls to other end-uses, such as recently been suggested for military applications.

“Anti-Terrorism” (AT) Controls

The range of items currently subject to AT controls exhibit no clear export control objective, and is at best grossly out of date. In the information technology area, control parameters have not been adjusted in over a decade and are now for the most part technologically irrelevant. However, they continue to be used as an alternative technological break point for selected foreign policy controls, and have been suggested as a control limit for new proposals such as the “military” catch-all currently under discussion.

In many high-technology areas subject to controls based on performance or technological characteristics, controls must be periodically reviewed to account for normal and predictable technological advance. AT controls are no exception to this rule. To cite computer controls as an example, the current AT limit in 4A994 is set at a Composite Theoretical Performance of 6, while the Wassenaar limit (embodied in 4A003) has been at 190,000 for some years, and is soon expected to be based on a completely new metric and control approach.

In these circumstances, the practical effect of not adjusting controls to accommodate technological advance has been to shift to impact of controls from a focus on depriving target countries of specific technologies, to a selective economic embargo. Moreover, the selective nature of the embargo discriminates against those industries that are unlucky enough to be caught by out-of-date controls.

In the computer case, most companies no longer sell products below the 6 MTOPS cut-off, and have not for some time. As a result such companies are subject to controls on all of their products, while companies in other industries can conduct substantial business simply because they have not been subject to technology-based controls in the past.

We strongly urge that AT controls be reviewed in order to more closely conceptualize and define their objectives (e.g. are they intended to inflict economic damage on terrorist supporting countries/governments, or are they intended to prevent particular items from being used by terrorists). This process is necessary in order to determine exactly where the appropriate levels must be set, particularly as most products caught by these controls are available from alternative sources in global markets.

In the computer area, we urge that the AT level be increased substantially to exclude mass-market computer products, and that it be converted to the new metric currently under discussion in Wassenaar.

Sun recognizes the important role of foreign policy-based controls, and is grateful for this opportunity to comment.

Sincerely,

Hans Luemers,
Senior Director,
International Trade Services,
Sun Microsystems