

2. Crime Control/Human Rights (Parts 742.7)^{1 2}

Export Control Program Description and Licensing Policy

The United States controls exports of crime control items, as required by Section 6(n) of the Act, to reflect its concerns about the human rights situation in various parts of the world.

A. Crime Control Items: The United States requires a license to export crime control and detection instruments, equipment, related technology, and software to any destination, except Australia, Japan, New Zealand, and members of the North Atlantic Treaty Organization.

Implements of Torture: The U.S. also requires a license to export specially designed implements of torture and thumbscrews, subsets of the crime control category, to any destination.

B. Licensing Policy: In general, Commerce will consider applications for licenses on a case-by-case basis, unless evidence exists that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would help to deter the development of a consistent pattern of violations or would distance the United States from such violations.

Implements of Torture: The U.S. will deny all license applications for any such items.

C. China: Following the military assault on demonstrators by the People's Republic of China (PRC) in Tiananmen Square in June 1989, the United States imposed constraints on the export of certain items on the Commerce Control List (CCL). Section 902(a)(4) of the Foreign Relations Authorization Act for Fiscal Year 1990-1991, Public Law 101-246, suspends the issuance of licenses under Section 6(n) of the Act for the export of any crime control or detection instruments or equipment to the PRC. The President may terminate the suspension by reporting to Congress that the PRC has made progress on political reform or that it is in the national interest of the United States to terminate the suspension.

D. Indonesia: The United States denies applications for licenses for those small and light arms and crowd control items under its jurisdiction to Indonesia, consistent with Section 582 of the Foreign Operations, Export Financing and Related Programs 1995 Appropriations and 1994 Supplemental Appropriations Act (Public Law 103-306), and Administration policy.

E. Human Rights: The Department of State annually compiles a volume of *Country Reports on Human Rights Practices*. The Department of State prepares this report in accordance with Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended, for submission

to Congress. The factual situation presented in this report is a significant element in licensing recommendations made by the Department of State involving any given country.

F. Yugoslavia: In July 1998, Commerce published a regulation implementing controls on the export and reexport of crowd-control items, including water cannons, explosives and many crime control items, to Yugoslavia (Serbia and Montenegro). Applications for export or reexport of these items to Serbia or Montenegro are reviewed with a presumption of denial.

G. Religious Freedom: Signed into law on October 27, 1998, the International Religious Freedom Act of 1998 (“IRFA”) provides for the imposition of one or more diplomatic or economic sanctions against countries that have engaged in violations of the religious freedom of their people. The Act also provides for the imposition of one or more economic sanctions against countries the President determines have engaged in or tolerated particularly severe violations of religious freedom. For such countries, the Act provides that the Commerce Department, with State Department concurrence, shall include on the Commerce Control List for reasons of crime control or detection and require export licenses for items that are being used or are intended for use directly to carry out particularly severe violations of religious freedom. A general policy of denial for such items will apply to license applications to export to any country whose government engages in a consistent pattern of gross violations of internationally recognized human rights, pursuant to a determination under the Foreign Assistance Act.

On November 3, 1999, the United States published a notice in the *Federal Register* pursuant to Section 408(a) of the IRFA stating that the Secretary of State had designated Burma, China, Iran, Iraq, and Sudan as “countries of particular concern” for having engaged in or tolerated particularly severe violations of religious freedom. The Department of Commerce is implementing the IRFA sanctions that apply to exports and reexports of items subject to its jurisdiction to these destinations.

H. Organization of American States: On April 13, 1999, Commerce published an interim rule in the *Federal Register* implementing the provisions 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 among OAS member countries.

Under these provisions, new foreign policy controls were imposed on all OAS member countries 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. The United States previously required a license for the export of all these items to all OAS member countries with the exception of Canada; now the United States will require a license to export these items to all OAS member countries, including Canada. 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. In general, Commerce approves license

applications for the export of firearms to OAS member countries if the application is supported by an Import Certificate. Commerce denies applications that involve end-uses linked to drug trafficking, terrorism, international organized crime, and mercenary and other criminal activities.

I. Optical Sighting Devices: The interim rule published on April 13 also placed optical sighting devices for firearms, including Commerce-controlled shotguns, under a new CCL entry, ECCN 0A987. These items were removed from ECCN 0A985, which controls only discharge arms. This revision will enable more accurate statistical accounting of both groups of commodities.

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

A. The Purpose of the Control

Crime Control Items. These controls seek to ensure that U.S.-origin police equipment is not exported to countries whose governments do not respect internationally recognized human rights. Denial of export license applications to such countries helps to prevent the United States from being associated with other countries' human rights violations and sends a clear signal about U.S. human rights concerns to the governments of the countries of concern.

Implements of Torture. The purpose of this largely symbolic control is to ensure that no items of this nature are exported from the United States. No applications for export of "specially designed" implements of torture have been received, and, if received, none would be approved.

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

1. Probability of Achieving the Intended Foreign Policy Purpose. Because of the lack of complementary controls on the part of other producer nations, these controls have limited effectiveness in altering foreign government conduct when the item is available outside the United States. Nevertheless, the control does restrict human rights violators' access to U.S.-origin goods and provides important symbolic evidence of U.S. support for the principles of human rights.

2. Compatibility with Foreign Policy Objectives. This control program is fully consistent with U.S. policy in support of internationally recognized human rights, as expressed by successive Administrations and by the Congress.

3. Reaction of Other Countries. These controls are unique, serve a distinct foreign policy purpose, and arise out of deeply held convictions. Other countries do not have equivalent legislation, although many have export restrictions on lethal products going to areas of civil unrest.

4. Economic Impact on United States Industry. In Fiscal Year 1999, the United

States approved 2,040 export license applications, worth \$119,287,116, for crime control items to all destinations. Table 1, below, lists the total number and value (by ECCN) of export licenses that the United States issued for crime control items during Fiscal Year 1999.

Table 1. CRIME CONTROL APPLICATIONS APPROVED (Fiscal Year 1999)

ECCN	Items Controlled	Applications Approved	\$ Value
0A982	Saps, handcuffs, police helmets and shields	216	\$6,217,619
0A984	Shotguns and shotgun shells	835	\$35,948,006
0A985 *	Discharge type arms (e.g., stun guns, shock batons)	348	\$27,222,747
0A987	Optical sighting devices for firearms	186	\$12,339,769
1A984	Chemical agents (including tear gas), fingerprint powders, dyes and inks	158	\$6,613,286
3A980	Voice print identification and analysis equipment	1	\$55,000
3A981	Polygraphs, fingerprint analyzers, cameras and equipment	124	\$9,090,624
3D980	Software specially designed for the "development," "production," or "use" of items in 3A980 or 3A981	49	\$1,196,192
3E980	Technology for the "development," "production," or "use" of items in 3A980 or 3A981	3	\$2
4A980	Computers for computerized fingerprint equipment	22	\$6,412,561

ECCN	Items Controlled	Applications Approved	\$ Value
4D001	Software specially designed for the “development,” “production,” or “use” of computers in 4A003 for computerized fingerprint equipment	1	\$45,337
4D980	Software specially designed for the “development,” “production,” or “use” of items in 4A980	37	\$4,932,502
4E980	Technology for the “development,” “production,” or “use” of items in 4A980	5	\$27,751
6A002.c *	Police-model infrared viewers	55	\$9,185,720
TOTAL		2,040	\$119,287,116

* **NOTES:** 1. ECCN 0A985 also contained optical sighting devices for firearms until April 13, 1999, when these items were transferred to a new ECCN (i.e., ECCN 0A987) as part of the implementation of the new OAS (Organization of American States) Model Regulations on firearms and ammunition.

2. Police-model infrared viewers, controlled by Export Control Classification Number (ECCN)

6A002.c, are almost technically indistinguishable, in many instances, from other direct view imaging equipment listed in ECCN 6A002. Therefore, the ECCN 6A002 data listed in Table 1 include all licenses issued for exports of direct view imaging equipment to countries for which a license is required for crime control reasons, irrespective of the technical characteristics of the equipment.

In Fiscal Year 1999, the United States denied 32 applications for crime control items, worth \$6,660,632. The bulk of the denials (27 applications valued at \$6,602,960) were comprised of applications for the following: (i) handcuffs, police helmets and shields (ECCN 0A982); (ii) shotguns (ECCN 0A984); (iii) stun guns, shock batons, and optical sighting devices for firearms³; and (iv) fingerprinting powders, dyes, and inks (ECCN 1A984). The denied applications were destined for 15 separate countries, including by China (11 -- with 6 for Hong Kong), Indonesia (4), Macedonia (3), and Nigeria and Uganda (2 each). One crime control application was denied for each of the following countries: Azerbaijan; Bulgaria; Cyprus; Georgia; Pakistan; Sierra Leone; Slovenia; Syria; Thailand; and Vietnam.

Table 2. CRIME CONTROL APPLICATIONS DENIED (Fiscal Year 1999)

ECCN	Description	Applications Denied	\$ Value
0A982	Handcuffs, police helmets and shields	6	\$1,250,561
0A984	Shotguns and shotgun shells	5	\$140,740
0A985 *	Discharge type arms (e.g., stun guns, shock batons)	11	\$5,012,632
0A987	Optical sighting devices for firearms	2	\$702
1A984	Fingerprint inks, dyes, and powders	6	\$199,027
3A981	Fingerprint analyzers; polygraphs	3	\$56,970
TOTAL		32 *	\$6,660,632

* **NOTES:** 1. ECCN 0A985 also contained optical sighting devices for firearms until April 13, 1999, when these items were transferred to a new ECCN (i.e., ECCN 0A987) as part of the implementation of the new OAS (Organization of American States) Model Regulations on firearms and ammunition.
 2. The total number of crime control applications denied by the United States in Fiscal Year 1999 reads "32" (instead of "33") in the above Table, because one application contained items from two separate ECCNs (i.e., ECCNs 0A982 and 1A984).

In addition, the United States returned without action 193 applications for crime control items (with a total value of \$19,270,993) during Fiscal Year 1999: 69 applications were for items controlled by ECCN 0A984 (valued at \$11,220,503), 34 were for items controlled by ECCN 0A987 (valued at \$2,461,267), 30 were for items controlled by ECCN 0A982 (valued at \$3,734,981), 19 were for items controlled by ECCN 1A984 (valued at \$65,071), and 18 were for items controlled by ECCN 0A985 (valued at \$787,184). Altogether, these ECCNs accounted for 170 (88.1 percent) of all crime control applications that were returned without action during Fiscal Year 1999 and \$18,269,006 (94.8 percent) of the total dollar value (i.e., \$19,270,993) of these applications.

In Fiscal Year 1999, the United States approved 1,532 export license applications, worth \$87,782,525, for items affected by the new OAS-driven foreign policy controls on firearms and ammunition. These totals represent a sharp increase from Fiscal Year 1998, when the United

States approved 986 applications (valued at \$54,429,813) for these items. While the total number of applications approved to non-OAS destinations experienced only a small increase (from 482 in Fiscal Year 1998 to 487 in Fiscal Year 1999), the total number of OAS license approvals more than doubled (from 504 in Fiscal Year 1998 to 1,045 in Fiscal Year 1999). More than half of this increase (i.e., 52.5 percent) consists of license application approvals for exports of firearms and ammunition to Canada, which did not require a validated license before the publication of the firearms regulation on April 13, 1999. While the total value of non-OAS approvals increased by 48.4 percent over Fiscal Year 1998, the total value of OAS applications actually would have remained near Fiscal Year 1998 levels if the total for Canada were not included. License applications approved to all OAS destinations in Fiscal Year 1999 totaled \$48,993,826 (compared to \$28,293,480 in Fiscal Year 1998) and Fiscal Year 1999 approvals for Canada, alone, totaled more than \$21 million. The table below lists the total number and value (by ECCN) of export licenses that Commerce issued for firearms and ammunition affected by the new foreign policy controls.

TABLE 3: APPLICATIONS FOR FIREARMS, AMMUNITION, AND SIGHTS APPROVED IN FISCAL YEAR 1999

ECCN	Items Controlled	Applications Approved	\$ Value
0A984	Shotguns and buckshot shotgun shells	835	\$35,948,006
0A985 *	Optical sighting devices for firearms	269	\$24,109,680
0A986	Other shotgun shells	242	\$15,385,070
0A987	Optical sighting devices for firearms	186	\$12,339,769
TOTAL		1,532	\$87,782,525

* **NOTE:** The totals for ECCN 0A985 noted in the above table include only optical sighting devices for firearms, which were controlled by this ECCN until they were transferred to new ECCN 0A987 on April 13, 1999, as part of the implementation of the new U.S. foreign policy-based export controls on firearms and ammunition.

The United States denied 14 license applications (valued at \$441,724) for firearms, ammunition, and optical sighting devices in Fiscal Year 1999. These levels are not significantly different from Fiscal Year 1998, when Commerce denied 12 license applications (valued at \$1,453,416) for

these items. No license applications for these items were denied for exports to OAS destinations in Fiscal Year 1999.

In Fiscal Year 1999, Commerce returned without action four times as many applications for firearms, ammunition, and optical sighting devices as it did in Fiscal Year 1998 (152 applications in Fiscal Year 1999 as compared with 38 applications in Fiscal Year 1998). Nearly 81 percent of the applications that were returned without action in Fiscal Year 1999 (i.e., 123 applications) were for exports to OAS destinations, compared to only 7.8 percent in Fiscal Year 1998 (i.e., 3 applications). Canada, with 46 applications (valued at \$15,111,028), accounted for just under 40 percent of all applications for OAS destinations that were returned without action in Fiscal Year 1999. The total value of all applications for these items that were returned without action in Fiscal Year 1999 (\$20,917,146) was more than 12 times the total for Fiscal Year 1998 (\$1,648,099) -- OAS destinations accounted for 92.4 percent (\$19.3 million) of the Fiscal Year 1999 total, compared with only 1.3 percent (\$21,760) in Fiscal Year 1998.

5. Enforcement of Control. Crime control items and implements of torture are easily recognizable and do not present enforcement problems related to detecting violations or verifying use. However, enforcement cooperation with other countries generally is difficult in cases involving unilaterally controlled items and often depends on the type and quantity of goods in question. In addition, enforcement control over re-exports is challenging and rests in large part on the willingness of the recipient to abide by the terms of export. The U.S. government conducts post shipment verifications as a means of verifying that exports are received by the listed end-users and to confirm that controlled items are being used consistent with the licensed conditions.

C. Consultation with 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.

D. Consultation with Other Countries

Most other supplier countries have not placed similar export controls on crime control and detection equipment. The United Kingdom and Canada maintain controls on crime control commodities that are similar to U.S. controls.

E. Alternative Means

Section 6(n) of the Act requires export controls on crime control and detection equipment. Alternative means do not satisfy this statutory requirement. The United States does, however,

use diplomatic demarches, sanctions, and other means to convey its concerns about the human rights situation in various countries.

F. Foreign Availability

The foreign availability provision does not apply to Section 6(n) of the Act.⁴ Congress has recognized the usefulness of these controls in supporting United States policy on human rights issues, foreign availability notwithstanding.

ENDNOTES

1. *Certain goods, technology, and software described in this report, whether or not subject to foreign policy controls, may also require a license for export to certain destinations for national security purposes in accordance with Section 5 of the Act.*
2. *Citations following each of the foreign policy control programs refer to those sections of the Export Administration Regulations (EAR), 15 CFR Parts 730-774, which describe the control program.*
3. *ECCN 0A985 -- optical sighting devices for firearms were transferred to ECCN 0A987 on April 13, 1999.*
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.*