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CHAPTER 2

Crime Control/Human Rights (Part 742.7)¹

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.

The United States requires a license to export most 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 (NATO). In September 2000, BXA published an interim rule in the *Federal Register* that changed the license requirements for some crime control items including restraint type devices (such as handcuffs and shackles) and discharge type arms (such as stun guns and shock batons) to include all destinations except Canada. This rule also created unique Export Commodity Control Number (ECCN) classifications for saps, police helmets and shields, fingerprint inks and dyes, and technology for restraint type items. The rule also modified U.S. licensing policy to include the consideration of civil disorder in a given country or region in licensing decisions.

Licensing Policy

Crime Control/Implements of Torture

In general, no crime control items may be exported to a country in which the government engages in a consistent pattern of gross violations of internationally recognized human rights. For other countries, the U.S. Government will consider applications for crime control items favorably, on a case-by-case basis, unless there is civil disorder in the country or region concerned, or there is evidence that the government may have violated human rights and that the judicious use of export controls would be helpful in minimizing regional instability, deterring the development of a consistent pattern of such violations, or in demonstrating the U.S. opposition to such violations.

The United States requires a license to export specially designed implements of torture and thumbscrews, which are subsets of the crime control category, to any destination, with a policy of denial for all applications.

China

Following the military assault on demonstrators by the People's Republic of China (PRC) in Tiananmen Square in Beijing in June 1989, the United States imposed constraints on the export to the PRC of certain items on the Commerce Control List (CCL). Section 902(a)(4) of the Foreign Relations Authorization Act for FY 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 China has made progress on political reform or that it is in the national interest of the United States to terminate the suspension.

Indonesia

The United States, subject to narrow exceptions, denies applications to export U.S. Munitions List commodities and certain crime control items 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).

Rwanda

In conformity with U.N. Resolution 918 and the United Nations Participation Act, the United States maintains an embargo on the sale or supply of arms and related materiel to non-government entities in Rwanda. Therefore, applications to export items controlled for crime control and detection reasons on the CCL to such entities are subject to a general policy of denial.

Federal Republic of Yugoslavia (FRY-Serbia and Montenegro)

The U.N. Security Council has recently terminated the arms embargo on the FRY (Serbia and Montenegro). The Department of Commerce will shortly take action to remove the additional controls, including the denial policy on arms-related items, that have applied to the FRY since 1998.

Liberia

BXA will soon publish a rule that amends the EAR to prohibit the sale, supply, or export from the United States or the sale, export, or reexport by U.S. persons of arms-related items, including technical assistance and training, to Liberia. This BXA regulatory action is consistent with U.N. Resolution 1343 of March 7, 2001, and is being taken in coordination with Department of State controls on defense articles and services to Liberia under the International Traffic in Arms Regulation (ITAR).

Organization of American States Member Countries

On April 13, 1999, BXA published an interim rule implementing the provisions of the Organization of American States (OAS) Model Regulations for the Control of the International Movement of Firearms. BXA designed these regulations to harmonize import and export controls over the legal international movement of firearms among OAS member countries and to establish procedures to prevent the illegal trafficking of firearms among these countries.

Under these provisions, the United States imposed new foreign policy controls on exports of certain firearms, including shotguns and parts, buckshot, shotgun shells and parts, and optical sighting devices for firearms to all OAS member countries. The United States previously required a license for the export of these items to all OAS member countries with the exception of Canada. The United States now requires a license to export these items to all OAS member countries, including Canada. In support of the OAS Model Regulations, the United States imposed an Import Certificate (IC) requirement on the export to all OAS member countries of those items affected by the regulations. In general, the Department of Commerce approves license applications for the export of firearms to OAS member countries if the application is supported by an IC. BXA denies applications that involve end-uses linked to drug trafficking, terrorism, international organized crime, mercenary, and other criminal activities.

Other Licensing Considerations

The Department of State annually compiles the *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 information presented in this report is a significant element in licensing recommendations made by the Department of State. In accordance with the Foreign Assistance Act, there is a denial policy for license applications to export crime control items to any country whose government engages in a consistent pattern of gross violations of human rights.

The International Religious Freedom Act of 1998 (IRFA) calls for the President to take diplomatic or other appropriate action with respect to any country that engages in or tolerates violations of religious freedom. The Act also provides for the imposition of economic measures or commensurate actions when a country has engaged in systematic, ongoing, egregious violations of religious freedom accompanied by flagrant denials of the rights to life, liberty, or the security of persons, such as torture, enforced and arbitrary disappearances, or arbitrary prolonged detention. For such countries, IRFA provides that the Department of Commerce, with Department of State concurrence, shall include on the CCL for reasons of crime control or detection, and require export licenses for, items that are being used or are intended for use directly and in significant measure to carry out particularly severe violations of religious freedom. On November 3, 1999, the Department of State 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 engaging in, or tolerating, particularly severe violations of religious freedom. The Department of Commerce has not added additional items to the CCL pursuant to IRFA, but it reviews license applications for crime control items to these destinations in accordance with the IRFA sanctions.

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

A. The Purpose of the Control

These controls seek to ensure that U.S.-origin crime control equipment is not exported to countries whose governments fail to respect internationally recognized human rights, or where civil disorder is prevalent. Denial of export license applications to such countries helps to prevent the furtherance of human rights violations and clearly signals U.S. concerns about human rights in these countries. The regulatory change of September 2000 allows for closer monitoring of exports of certain items controlled for crime control purposes that could be misused to commit human rights violations.

Controls on implements of torture similarly help to ensure that items of this nature are not exported from the United States. BXA has neither received applications for export of “specially designed” implements of torture nor would it have approved the export of such items.

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

1. *Probability of Achieving the Intended Foreign Policy Purpose.* The lack of complementary controls by other producer nations limits the effectiveness of these controls in preventing human rights violations. Nevertheless, they do restrict human-rights violators’ access to U.S.-origin goods and provide important symbolic evidence of U.S. support for the principles of human rights. The imposition of more stringent licensing requirements for crime control items will enable the United States to monitor more closely items that could be used in human rights violations.

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. The expansion of controls in September 2000 is intended to further deter the development of a consistent pattern of human rights abuses and distance the United States from such violations.

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 regulations, but many have restrictions on exports of lethal products to areas of civil unrest.

4. Economic Impact on United States Industry. In FY 2001, BXA approved 1,962 export license applications worth approximately \$146 million for crime control items to all destinations. Table 1 lists the total number and value (by ECCN) of export licenses that the United States issued for crime control items during FY 2001.

Table 1: CRIME CONTROL APPLICATIONS APPROVED (FY 2001)

ECCN	Items Controlled	Applications Approved	\$ Value
0A978	Saps	0	\$0
0A979	Police helmets and shields	70	\$2,207,003
0A982	Thumbcuffs, leg irons, shackles, handcuffs	181	\$7,072,342
0A983	Specially designed implements of torture	0	\$0
0A984	Shotguns and buckshot shotgun shells	692	\$33,008,074
0A985	Discharge type arms (stun guns, shock batons, etc.)	206	\$23,826,293
0A987	Optical sighting devices	425	\$29,001,097
0E982	Technology for items under 0A982/0A985	0	\$0
0E984	Technology for items under 0A984	0	\$0
1A984	Chemical agents including tear gas containing 1% or less of CS or CN	14	\$301,296

ECCN	Items Controlled	Applications Approved	\$ Value
1A985	Fingerprinting powders, dyes and inks	138	\$5,808,465
3A980	Voice print identification and analysis equipment	1	\$250,000
3A981	Polygraphs, fingerprint analyzers, cameras and equipment	155	\$32,925,525
3D980	Software for items under 3A980 and 3A981	27	\$1,261,908
3E980	Technology for items under 3A980 and 3A981	2	\$701,400
4A003*	Digital computers for computerized fingerprint equipment only	0	\$0
4A980	Computers for fingerprint equipment	15	\$7,127,012
4D001*	Software for items under 4A003 only	0	\$0
4D980	Software for items under 4A980	33	\$2,413,430
4E001*	Technology for items under 4A003 and 4D001 only	0	\$0
4E980	Technology for items under 4A980	3	\$3
6A002c*	Police-model infrared viewers only	0	\$0
6E001*	Technology for development of items under 6A002c only	0	\$0

ECCN	Items Controlled	Applications Approved	\$ Value
6E002*	Technology for production of items under 6A002c only	0	\$0
9A980	Mobile crime science laboratories	0	\$0
TOTAL		1,962	\$145,903,848

NOTES: (1) To give the reader the broadest perspective of the items covered, Table 1 lists all crime control ECCNs including those for which no license applications were submitted. (2) Those ECCNs marked with an asterisk (*) cover more than just crime control items, but the corresponding statistics represent only the crime control items within the ECCN.

In FY 2001, BXA denied 42 applications for crime control items worth \$2.6 million. The largest number of denials involved optical sighting devices for firearms (14 cases), with applications for discharge type arms being the second most often denied (9 cases). Table 2 lists only those crime control ECCNs for which applications were denied.

Table 2: CRIME CONTROL APPLICATIONS DENIED (FY 2001)

ECCN	Description	Applications Denied	\$ Value
0A982	Thumbcuffs, leg irons, shackles	4	\$267,137
0A984	Shotguns and shotgun shells	7	\$886,945
0A985	Discharge type arms (e.g., stun guns, shock batons)	9	\$1,126,300
0A987	Optical sighting devices for firearms	14	\$291,190
1A985	Fingerprinting powders, dyes, and inks	4	\$13,010
3A981	Fingerprint analyzers, polygraphs	3	\$56,992

ECCN	Description	Applications Denied	\$ Value
4D980	Software for computers controlled under 4A980	1	\$5
TOTAL		42	\$2,641,579

In FY 2001, BXA approved 959 export license applications worth \$58,496,082 for items affected by the foreign policy controls on firearms and ammunition instituted in 1999, in support of the OAS Model Regulations. This compares to 1,210 approvals valued at \$69,669,241 in FY 2000, which in turn was a decline from FY 1999 levels. These totals are comparable to those from FY 1998, when BXA approved 986 applications, valued at \$54,429,813, for these items. Canada accounts for more applications than any other country, with over 400 applications in FY 2001. The OAS controls are limited to the following three ECCNs covering arms and accessories: 0A984, 0A986, and 0A987. The table below lists the number and value of export licenses that BXA issued for firearms, ammunition, sights, and related items affected by these foreign policy controls in FY 2001.

TABLE 3: APPLICATIONS FOR FIREARMS, AMMUNITION, AND SIGHTS TO OAS COUNTRIES APPROVED IN FY 2001

ECCN	Items Controlled	Applications Approved	\$ Value
0A984	Shotguns and buckshot shotgun shells	548	\$29,352,197
0A986	Other shotgun shells	226	\$19,403,003
0A987	Optical sighting devices for firearms	185	\$9,740,882
TOTAL		959	\$58,496,082

5. *Enforcement of Control.* Crime control items and implements of torture are easily recognizable and do not present special enforcement problems related to detecting violations or verifying use.

However, enforcement cooperation with other countries generally is difficult in cases involving unilaterally controlled items, such as these, and often depends on the type and quantity of goods in question. In addition, enforcement of controls on reexports is challenging and rests in large part on the willingness of the recipient to abide by the terms of the export license. The U.S. Government conducts post-shipment verifications to verify that the listed end-user has received the exports and to confirm that the importer is using the controlled items consistent with the license conditions.

C. Consultation with Industry

On November 7, 2001, the Department of Commerce, via the *Federal Register* and BXA's Web page, solicited comments from industry on the effectiveness of foreign policy-based export controls. A more detailed review of the comments is available in Appendix I.

The International Biometric Industry Association (IBIA) advocated the removal of biometric products (including fingerprint and voice identification applications) from the CCL and recommended that BXA apply such restrictions only when these products are exported to terrorist-supporting countries. The IBIA cited the importance of biometric products in ensuring the protection of electronic commerce and stated that the current export controls place the United States at a disadvantage to foreign competitors.

The Department of Commerce has consulted with exporters of crime control items and with human rights groups concerned about the misuse of such items in various parts of the world. The U.S. Government made certain changes in the licensing policy and covered commodities in response to the concerns of human rights groups.

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 certain 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.² Congress has recognized the usefulness of these controls in supporting United States policy on human rights issues, foreign availability notwithstanding.

ENDNOTES

1. *Citations following each of the foreign policy control programs refer to those sections of the Export Administration Regulations (EAR), 15 CFR Parts 730-774, that describe the control program.*
2. *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.*