

12. Commercial Communications Satellites and Hot Section Technology (Section 742.14)

Export Control Program Description and Licensing Policy

On October 21, 1996, Commerce published a rule in the *Federal Register* accepting jurisdiction on certain commercial communications satellites and certain hot section technology for the development and production of commercial aircraft engines 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, in the belief that these controls are necessary to further significantly the foreign policy of the United States. [In the CCL the acronym "SI" (Significant Items) designates foreign policy controls on these items.] These commodities are also controlled by the Wassenaar Arrangement whose members include most of the other producers of these commodities. Commerce controls these on the CCL under Export Control Classification Numbers (ECCNs) 9A004 and 9E003.a.1 through a.12 and .f).

On September 29, 1997, Commerce amended the 1996 transfer of licensing jurisdiction of commercial communications satellites. The amendment revises ECCN 9A004 to transfer satellite fuel, ground support equipment, test equipment, payload adapter/interface hardware and replacement parts for the preceding items from State to Commerce jurisdiction when they are 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), the State Department plans to publish its corresponding amendment to the International Traffic in Arms Regulations (ITAR) that will remove these items from the USML when they are included in a commercial communications satellite licensed by the Commerce Department. This provision allows exporters to obtain a single license for satellite launches. The Department of State continues to control satellite launch technology.

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. The United States 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

The purpose of the 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 equipment 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 its 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 that might 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 on United States Industry. 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 made U.S. manufacturers more competitive in the world market. In FY 1997, the Bureau of Export Administration (BXA) approved 22 licenses, authorizing the export of 71 commercial communications satellites with a total value of \$3,954,233,970. BXA has not issued any licenses for the export of hot section technology resulting from the change in jurisdiction.
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. Under the State Department's authority, the items covered by this action were under strict control. Manufacturers and dealers are familiar with U.S. controls on this product and technology. The strategic importance of these items is clear. 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 consulted with various elements within industry on the proposed change in controls. 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 on a global basis and to ensure that transfers of such items are carried out responsibly and in furtherance of international 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 specifically encouraged efforts to limit the flow of satellites and hot section technology to areas contrary to U.S. security and foreign policy concerns.

F. Foreign Availability

Although other countries produce commercial communications satellites and hot section technology, the United States is the world's leader. This fact alone would make a unilateral control effective; however, this is not a unilateral control because 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.

In addition, it is important to note that while the Export Administration Act contains provisions on foreign availability, items controlled for foreign policy reasons are excluded from mandatory foreign availability decontrol provisions of the Act.