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CHAPTER 5

Embargoes and Sanctioned Countries and Entities (Part 746)

Export Control Program Description and Licensing Policy

The United States maintains comprehensive economic embargoes against Cuba, Iran, Iraq, Libya, and Sudan (five of the seven countries designated by the Secretary of State as state sponsors of international terrorism). The comprehensive controls maintained by the Department of Commerce on Cuba, Iran, Libya, and Sudan are discussed in detail in Chapter 4. Controls on Iraq[1] implementing the United Nations embargo are administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC).

The United States maintains arms embargoes on the Taliban-controlled areas of Afghanistan, Liberia, Rwanda, and the Federal Republic of Yugoslavia. In addition, an embargo is maintained on arms and other specific commodities for the National Union for the Total Independence of Angola (UNITA) in Angola consistent with U.N. mandated arms bans. The Departments of State and Commerce have authority to implement such embargoes under their respective export control authorities. The State Department controls defense articles and services under the International Traffic in Arms Regulations (ITAR). The Commerce Department controls certain shotguns and a range of arms-related items under the Export Administration Regulations (EAR). When a U.N. Resolution mandates a ban on "arms" and "related materiel," the ban applies to items controlled under both State and Commerce regulatory authority. Arms-related materiel is generally considered to be commodities and technology that the Commerce Department controls for regional stability and crime control reasons, as well as items subject to the EAR that are on the International Munitions List. However, in some instances, the Commerce Department has controlled additional items in light of particular U.N. Resolutions. For instance, the Commerce Department imposed controls on a few additional items to Rwanda, the Federal Republic of Yugoslavia, and Liberia. As concerns UNITA and the Taliban, the Commerce Department controls on arms-related materiel to all of Angola and Afghanistan continue in effect and support the ban that the Department of the Treasury maintains on arms and other specific items to UNITA and the full trade ban that OFAC maintains on the Taliban and Taliban-controlled territory in Afghanistan.

In April 2001, the United States removed comprehensive trade sanctions imposed in 1999 against Serbia because of the ethnic conflict in Kosovo. The Bureau of Export Administration (BXA) also removed special export sanctions imposed in 1998 against India and Pakistan because of their detonation of nuclear devices. In addition, BXA implemented the requirements of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (Title IX of Public Law 106-387) for exports of agricultural commodities to Cuba.

BXA will publish an amendment to the EAR that expands the scope of explosive detection systems controlled under Export Control Classification number (ECCN) 2A993, and create new license requirements for the export and reexport of related software and technology. The new licensing requirements will be contained in ECCNs 2D993 and 2E993. In the past, the U.S. Government required a license for the export and reexport of this equipment only to the designated terrorist-supporting countries. With this amendment, BXA imposes specific controls on the Federal Republic of Yugoslavia. BXA designed the amendment to enhance the security and safety of airline travel worldwide, and for physical structures including government buildings, by restricting the export and reexport of U.S.-origin explosive detection systems and related software and technology. Chapter 3 provides details of the new proposed regulation.

This chapter is divided into two sections: Part I addresses trade embargoes not covered in Chapter 4 and sanctions imposed pursuant to statute, and Part II addresses embargoes on arms related items implemented by BXA.

Part I: Trade Embargoes and Sanctions

India and Pakistan

On September 22, 2001, President George W. Bush waived the application of certain sanctions placed on India and Pakistan, including those sanctions implemented by regulations issued on November 19, 1998 (63 FR 64322). BXA published a rule on October 1, 2001 that implemented the waiver of these sanctions by removing the policy of denial for exports and reexports of items controlled for Nuclear Proliferation and Missile Technology reasons to India and Pakistan and restoring the use of License Exceptions for these items for entities not listed on BXA's Entity List. In addition, the rule removed certain supplementary measures taken in connection with the sanctions by removing a large number of Indian and Pakistani entities from the Entity List.

Serbia

From May 4, 1999 to March 1, 2001, BXA maintained comprehensive sanctions on exports to Serbia. On March 1, 2001, BXA published a rule generally restoring Serbia to the export control status it had prior to May 4, 1999. Under this rule, many items may now be exported and reexported to Serbia without a license. However, certain restrictions are maintained on persons designated pursuant to Executive Order 13088, as amended by Executive Order 13192 of January 17, 2001. United States persons may not export or reexport any item subject to the EAR to any such designated person, including Slobodan Milosevic, certain family members and close associates, and persons under open indictment by the International Criminal Tribunal for the former Yugoslavia.

Food and Medicine Exports

On July 12, 2001, BXA and OFAC published regulations implementing certain provisions of the TSRA. BXA implemented the requirements of the Act for exports of agricultural commodities to Cuba. BXA created License Exception “Agricultural Commodities” (AGR) to permit exports of agricultural commodities that are classified EAR99 and not specifically identified on the CCL. In order to utilize AGR, the exporter must first submit to BXA a notification of the proposed export. If no agency objects to the transaction, then BXA notifies the exporter that AGR may be used. Except for shipments of commercial samples or donations, all other exports under AGR must be made pursuant to a written contract. Export sales must take place within one year of the signing of the contract.

Exports and reexports of medicines and medical devices to Cuba are not eligible for AGR, because TSRA did not override the specific licensing requirements for medicines and medical devices as set forth in the Cuban Democracy Act of 1992 (Public Law 102-484), but are eligible for existing BXA license application procedures.

TSRA required the use of a new definition of “agricultural commodity,” incorporating by reference the definition of agricultural commodity in section 102 of the Agriculture Trade Act of 1978 (7 U.S.C. 5602), which includes both food and non-food products. Section 775 of Public Law 106-387 also provides that, for purposes of administering the TSRA, the term agricultural commodity also includes fertilizer and organic fertilizer. Based on concern about possible terrorist use of certain fertilizers, BXA submitted a foreign policy report to the Congress, providing notice that, after consulting the Secretary of State and consistent with the provisions of the Export Administration Act (EAA), as amended, it intended to impose new foreign policy controls on dry fertilizers and fertilizer blends containing more than 15 percent by weight ammonium nitrate. These items are now classified as ECCN 1C997 and require a license for anti-terrorism reasons. The foreign policy report was sent to Congress on June 15, 2001.

Controls on exports of items to Cuba, other than agricultural and medical items, are discussed in Chapter 4. OFAC regulates exports of agricultural commodities, medicines, and medical devices to Iran, Libya, and Sudan pursuant to the TSRA. OFAC controls on agricultural and medical items to

Iran, Libya, and Sudan are not discussed in this report.

Licensing Agencies for Embargoes and Sanctioned Countries and Entities

BXA has export control authority for dual-use items subject to its jurisdiction to all countries, including countries subject to comprehensive trade embargoes administered by OFAC. The Commerce and Treasury Departments often consult and exchange information on specific issues and cases within their concurrent export control authority. Duplicate licensing requirements are generally avoided by allocating most export licensing responsibilities for specific countries to one agency. For example, for cases in which BXA has licensing responsibility, it will note potential applicability of Treasury restrictions on U.S. person activities. In cases in which the Treasury Department has export licensing responsibility, the Treasury Department will, on occasion, request commodity classifications and other technical advice from BXA.

In instances in which two licenses are required (e.g., exports/reexports to Sudan, Taliban controlled areas of Afghanistan, UNITA in Angola), BXA encourages applicants to first seek Treasury Department authorization since the U.S. policy is one of denial for embargoed items.

Part II: United Nations Arms Embargoes

The Department of Commerce and the Department of State are responsible for implementing the embargo on arms, arms-related items, and certain other commodities under their respective export control jurisdiction.

Federal Republic of Yugoslavia (FRY)

The United States has maintained an embargo on the FRY pursuant to U.N. Resolution 1160 of March 3, 1998, which directed member countries to impose an embargo on the sale of arms and related materials to the FRY. In keeping with this Resolution, BXA published a final rule on July 14, 1998, implementing the embargo on arms and arms-related items to the FRY.

The U.N. Security Council recently terminated the arms embargo on the FRY (Serbia and Montenegro). The Department 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.

Rwanda

The U.N. Security Council imposed an arms embargo on Rwanda on May 17, 1994. In 1995, the Security Council suspended the application of the arms embargo to the Government of Rwanda if items were shipped through specified points of entry, and later terminated (effective September 1, 1996) the application of restrictions on sales or supplies to the government of Rwanda. The sale or supply of such arms and related materiel to non-governmental forces in Rwanda remains prohibited.

BXA controls the sale or supply to non-governmental forces in Rwanda by U.S. persons or from the United States, including the use of U.S.- registered vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts for the aforementioned, regardless of origin. For details on the Department of State controls on Rwanda see 22 CFR 126.1(c).

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 action is consistent with U.N. Resolution 1343 of March 7, 2001, and is taken in coordination with the Department of State, which controls defense articles and services to Liberia under the ITAR.

Licensing Requirements and Licensing Policy for Rwanda and Liberia

The United States requires a license for foreign policy purposes for export to Rwanda or Liberia of all arms and related materiel of all types, regardless of origin, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts for these items. This requirement applies to the export by any person from U.S. territory or by any U.S. person in any foreign country or other location to Rwanda or Liberia. The United States also requires a license for the use of any U.S. aircraft or vessel to supply or transport any such items to Rwanda or Liberia.

The United States has a general policy of denial for export or reexport of controlled items to Rwanda or Liberia.

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

Rwanda, Liberia, and Persons Named Pursuant to Executive Order 13088, as amended by Executive Order 13192

A. The Purpose of the Control

The restrictions on all items subject to the EAR to persons designated pursuant to Executive Order 13088, as amended by Executive Order 13192 (associates of Slobodan Milosevic and indictees of the International Criminal Tribunal for the Former Yugoslavia) are maintained to support the implementation and enforcement of sanctions on these destinations and entities. The controls on arms-related items to Rwanda and Liberia remain in place to prevent any U.S. contribution to potential conflict in these countries and to conform to United Nations-mandated sanctions.

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

1. Probability of Achieving Intended Foreign Policy Purpose. The restrictions have denied these entities and nations certain trade relations with the United States. The controls continue to put pressure on these entities and the governments of these countries to modify their policies since the United States will not lift these embargoes without a general improvement in relations. In addition, the applicable controls may serve to reduce the potential for conflict.

2. Compatibility with Foreign Policy Objectives. The controls complement U.S. foreign policy in other aspects of U.S. relations with these entities and countries. They encourage these entities and the governments of these countries to modify their policies with the goal of improving relations with the United States. These controls are consistent with U.S. foreign policy goals of promoting peace and stability, preventing weapons proliferation, and human rights abuses.

3. Reaction of Other Countries. The arms embargoes on Rwanda and Liberia are consistent with the objectives of the United Nations; the United States has received no significant objections to these controls. The sanctions on entities associated with Slobodan Milosevic and indictees of the International Criminal Tribunal for the Former Yugoslavia have multinational support.

4. Economic Impact on United States Industry. The arms embargoes have had little impact on U.S. industry since inception. U.S. exports to Rwanda were $18.9 million in 2000, of which $14 million was comprised of agricultural and forest products. Electronic products accounted for an additional $2.5 million, followed by transportation equipment with $1 million. BXA received no license applications for Rwanda during FY 2001. The economic impact of restrictions on associates of Slobodan Milosevic and indictees of the International Criminal Tribunal for the Former Yugoslavia should have little, if any, economic impact.

BXA received one license application for Liberia in FY 2001. This application was for the export of handcuffs valued at $2,187 and was rejected for foreign policy reasons. U.S. exports to Liberia were $42.4 million in 2000, comprised mostly of articles of iron and steel (20 percent), cereals (20 percent), and charity donations (15 percent). Liberia's total imports were $170 million in 2000; sources of imports were South Korea (30 percent), Italy (24 percent), and Japan (15 percent). Leading imports were fuels, chemicals, machinery, and transportation equipment.

5. ***Enforcement of Control.*** Controls on exports to embargoed and sanctioned countries, covering virtually all U.S.-origin goods, including consumer items that would not ordinarily attract enforcement attention, raise a number of challenges. These include the need to concentrate limited resources on priority areas, developing new strategies to limit reexport violations, strengthening the cooperative relationship with other law enforcement agencies in the United States and overseas, and maintaining a consistent outreach effort to help limit U.S. business vulnerability. Overall, the embargoes are generally understood and supported by the U.S. public. Voluntary cooperation from most U.S. exporters is expected.

C. Consultation with Industry

BXA published a notice in the *Federal Register* on November 7, 2001, requesting public comments on its foreign policy-based export controls. A notice was also published on the BXA Web page. No comments were received specific to the controls described in this chapter.
A more detailed review of comments received is available in Appendix I.

D. Consultation with Other Countries

Most countries support international efforts to stabilize Rwanda and Liberia and to prevent further ethnic conflict and regional instability. The United States works closely with allies to support the new government in Serbia and stabilize the situation in the Balkans. The restrictions imposed on Milosevic associates and indictees of the International Tribunal for the Former Yugoslavia are intended to prevent the destabilization of the new government in Serbia and the diversion of resources.

E. Alternative Means

The United States imposes embargoes and sanctions in an effort to make the strongest possible statement against a particular country's policies. Restrictions on exports can supplement other actions that the United States takes to change the behavior of the target countries, including severing diplomatic relations, banning imports into the United States, seeking U.N. denunciations, and curtailing or discouraging bilateral educational, scientific or cultural exchanges. United States complement diplomatic measures and continue to be used to influence the behavior of these countries.

F. Foreign Availability

The foreign availability of items controlled under Section 6(a) has been considered by BXA. In general, numerous foreign sources of commodities similar to those subject to these controls are known, especially for items controlled by the United States.

ENDNOTES

1. *To reinforce Department of Treasury-administered controls, the Department of Commerce has made it a violation of the Export Administration Regulations to export or reexport to Iran or Iraq any item that is subject to Treasury's regulations and also*

subject to the EAR without Treasury authorization. It should also be noted that the Department of Commerce has also taken action to prevent diversion from third countries to Iraq. Specifically, Commerce issued General Order No. 3 in December 2000 to require a license to export or reexport items on the Commerce Control List to Shaykh Hamad Bin Ali Bin Jaber Al-thani, a citizen of Qatar, to the Gulf Falcon Group. Ltd., an entity located in Doha, Qatar, or to related entities located in Sharjah, United Arab Emirates. The Shaykh donated a U.S.-origin aircraft to Iraq in November 2000 in violation of U.N. sanctions. The license requirement allows the U.S. Government to review proposed exports and reexports to the Shaykh and to the listed entities on a case-by-case basis to determine whether there is a risk of diversion contrary to U.S. or international law.