

## 2. Crime Control/Human Rights (Parts 742.7)<sup>1 2</sup>

### 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 Commerce Department 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:** Commerce requires a license to export specially designed implements of torture and thumbscrews, subsets of the crime control category, to any destination.

**B. Crime Control Items:** In general, Commerce will favorably 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 the association of the United States with such violations.

**Implements of Torture:** Commerce will generally deny all license applications for any such items.

**C.** 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 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.

**D.** Commerce 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.** 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.** Signed into law on October 27, 1998, the International Religious Freedom Act of 1998 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 the government of which engages in a consistent pattern of gross violations of internationally recognized human rights, pursuant to a determination under the Foreign Assistance Act.

**G.** On December 31, 1998, Commerce notified Congress, via a Foreign Policy Report, on the implementation of 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. Commerce anticipates publication of the interim rule in the *Federal Register* in the first quarter of 1999.

Under these provisions, new foreign policy controls will be 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 already requires a license for export of all these items to all OAS member countries with the exception of 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 will approve license applications for the export of firearms to OAS member countries if the application is supported by an Import Certificate. Commerce will deny applications that involve end-uses linked to drug trafficking, terrorism, international organized crime, and mercenary and other criminal activities.

#### **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. There is, however, little evidence that the United States manufactures "specially designed" implements of torture.

**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 human rights convictions. Other countries have ignored these controls.

4. **Economic Impact on United States Industry.** In Fiscal Year 1998, Commerce approved 1,697 export license applications, worth \$204,502,377, for crime control items to all destinations. Table 1, below, lists the total number and value (by ECCN) of export licenses that Commerce issued for crime control items during FY 1998.

**Table 1. CRIME CONTROL APPLICATIONS APPROVED (FY 1998)**

<b>ECCN</b>	<b>Items Controlled</b>	<b>Applications Approved</b>	<b>\$ Value</b>
<b>0A982</b>	<b>Saps, handcuffs, police helmets &amp; shields</b>	<b>220</b>	<b>\$7,205,834</b>
<b>0A983</b>	<b>Specially designed instruments of torture</b>	<b>0</b>	<b>\$0</b>

<b>ECCN</b>	<b>Items Controlled</b>	<b>Applications Approved</b>	<b>\$ Value</b>
<b>0A984 (0A84)</b>	<b>Shotguns and shotgun shells</b>	<b>651</b>	<b>\$35,044,717</b>
<b>0A985</b>	<b>Optical sighting devices, stun guns, &amp; shock batons</b>	<b>416</b>	<b>\$21,530,503</b>
<b>0E984</b>	<b>Technology for “development” or “production” of shotguns</b>	<b>0</b>	<b>\$0</b>
<b>1A984</b>	<b>Chemical agents (including tear gas); fingerprint powders, dyes, &amp; inks</b>	<b>152</b>	<b>\$5,492,916</b>
<b>3A980</b>	<b>Voice print identification &amp; analysis equipment</b>	<b>2</b>	<b>\$1,500,000</b>
<b>3A981</b>	<b>Polygraphs, fingerprint analyzers, cameras, &amp; equipment</b>	<b>163</b>	<b>\$113,593,433</b>
<b>3D980</b>	<b>Software specially designed for the “development,” “production,” or “use” of items in 3A980 or 3A981</b>	<b>44</b>	<b>\$1,922,243</b>
<b>3E980</b>	<b>Technology for the “development,” “production,” or “use” of items in 3A980 or 3A981</b>	<b>8</b>	<b>\$925,001</b>
<b>4A003</b>	<b>Computers for computerized fingerprint equipment</b>	<b>2</b>	<b>\$1,251,591</b>
<b>4A980</b>	<b>Computers for computerized fingerprint equipment</b>	<b>8</b>	<b>\$11,222,532</b>

<b>ECCN</b>	<b>Items Controlled</b>	<b>Applications Approved</b>	<b>\$ Value</b>
<b>4D001</b>	<b>Software specially designed for the “development,” “production,” or “use” of computers in 4A003 for computerized fingerprint equipment</b>	<b>1</b>	<b>\$135,142</b>
<b>4D980</b>	<b>Software specially designed for the “development,” “production,” or “use” of items in 4A980</b>	<b>5</b>	<b>\$4,623,610</b>
<b>4E001</b>	<b>Technology for the “development,” “production,” or “use” of computers in 4A003 for computerized fingerprint equipment</b>	<b>0</b>	<b>\$0</b>
<b>4E980</b>	<b>Technology for the “development,” “production,” or “use” of items in 4A980</b>	<b>1</b>	<b>\$32,500</b>
<b>6A002.c<sup>3</sup></b>	<b>Police-model infrared viewers</b>	<b>23</b>	<b>\$246,862</b>
<b>6E001</b>	<b>Technology for the “development” of police-model infrared viewers in 6A002.c</b>	<b>0</b>	<b>\$0</b>
<b>6E002</b>	<b>Technology for the “production” of police-model infrared viewers in 6A002.c</b>	<b>0</b>	<b>\$0</b>
<b>9A980</b>	<b>Nonmilitary mobile crime science laboratories and parts &amp; accessories</b>	<b>1</b>	<b>\$95,493</b>

ECCN	Items Controlled	Applications Approved	\$ Value
<b>TOTAL</b>		<b>1,697</b>	<b>\$204,502,377</b>

In FY 1998, Commerce denied 32 applications for crime control items, worth \$4,102,995. The bulk of the denials (i.e., 30 applications valued at \$4,088,690) comprised 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 firearms (ECCN 0A985), (iv) polygraphs and fingerprint analyzers (ECCN 3A981), (v) fingerprinting powders, dyes and inks (ECCN 1A984), (vi) software for fingerprint analyzers (ECCN 3D980), and (vii) nonmilitary mobile crime science labs (ECCN 9A980). The denied applications were destined for fifteen separate countries, led by China (8), Georgia and Paraguay (3 each), and Macedonia and Vietnam (2 each). One crime control application was denied for each of the following countries: Algeria, Belarus, Brazil, Cambodia, Ghana, Nigeria, Serbia, Singapore, Togo, and Ukraine.

**Table 2. CRIME CONTROL APPLICATIONS DENIED (FY 1998)**

ECCN	Description	Applications Denied	\$ Value
<b>0A982</b>	<b>Handcuffs, police helmets &amp; shields</b>	<b>2</b>	<b>\$456,840</b>
<b>0A984</b>	<b>Shotguns and shotgun shells</b>	<b>8</b>	<b>\$1,440,565</b>
<b>0A985</b>	<b>Optical sighting devices, stun guns, &amp; shock batons</b>	<b>8</b>	<b>\$669,191</b>
<b>1A984</b>	<b>Fingerprint inks, dyes, &amp; powders</b>	<b>4</b>	<b>\$208,104</b>
<b>3A981</b>	<b>Fingerprint analyzers; polygraphs</b>	<b>4</b>	<b>\$737,990</b>
<b>3D980</b>	<b>Lie detection software</b>	<b>2</b>	<b>\$381,000</b>

ECCN	Description	Applications Denied	\$ Value
6A002.c	Direct view imaging equipment, including police-model infrared viewers	2	\$14,305
9A980	Nonmilitary mobile crime science laboratories	2	\$195,000
<b>TOTAL</b>		<b>32</b>	<b>\$4,102,995</b>

In addition, Commerce returned 80 applications for crime control items (having a total value of \$4,397,588) without action during FY 1998: nineteen applications were for items controlled by ECCN 0A984 (valued at \$215,275), eighteen were for items controlled by ECCN 0A985 (valued at \$1,338,290), sixteen were for items controlled by ECCN 1A984 (valued at \$1,725,335), and eleven were for items controlled by ECCN 3A981 (valued at \$645,835). Altogether, these ECCNs accounted for 64 (80 percent) of all crime control applications that were returned without action during FY 1998 and \$3,924,735 (89.25 percent) of the total dollar value (i.e., \$4,397,588) of these applications. Nearly half of the crime control applications that were returned without action (i.e., 37 applications, valued at \$1,577,489) did not require a license for export to the destination named on the application (i.e., the export was categorized as NLR). Commerce returned another twelve applications (valued at \$1,097,933) without action after determining that the items listed on the applications were subject to the licensing jurisdiction of the U.S. Department of State under the International Traffic in Arms Regulations (ITAR).

5. Enforcement of Control. Crime control items and implements of torture are easily recognizable and present few 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 visits as a means of regulating exports.

### C. Consultation with Industry

On October 13, 1998, 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.<sup>4</sup> Congress has recognized the usefulness of these controls in supporting United States policy on human rights issues, foreign availability notwithstanding.**

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#### ***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. 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.*
- 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.*