

Public Comments on Foreign Policy

65 FR 215

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Proposed Rules

Federal Register

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Monday, November 6, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE-RM/STD-98-440]

R IN 1904-AA77

Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the *Federal Register* of October 5, 2000, regarding Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards. This correction revises the cost increase of a typical air conditioner, clarifies the conclusions on the emerging technology analysis, clarifies terminology in the discussion of niche products and corrects the docket number.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe, (202) 586-0854, e-mail: michael.e.mccabe@ee.doe.gov, or Edward Levy, Esq., (202) 586-9507, e-mail: edward.levy@hq.doe.gov.

Correction

In proposed rule document 00-25336, appearing on page 59590, in the issue of Thursday, October 5, 2000, the following corrections should be made:

(1) The Docket Line should appear as set forth above.

(2) On page 59590 in the first column of the **ADDRESSES** section, the first sentence is corrected to the following:

Please submit written comments, oral statements, and requests to speak at the public hearing to: Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer

Products: Central Air Conditioners and Heat Pumps, Docket No. EE-RM/STD/STD-98-440, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

(3) On page 59591 in the second column, in the third paragraph, the second sentence is corrected to the following:

For example, while the initial cost of a typical central air conditioner would increase by \$213 to \$274 or about 10-12%, the higher efficiency equipment would save enough over its life to pay for the increase in the price of the equipment plus an extra \$45.

(4) On page 59599, the second column, in the third paragraph, the first sentence is corrected to the following:

The emerging technology analysis based on reverse engineering information seems to confirm that, of the technologies considered, only variable capacity compressors and variable speed fan motors have the potential to be cost effective options for providing additional efficiency compared to today's established technologies.

(5) On page 59610, the third column, in the last paragraph, the first sentence is corrected to the following:

The Department encourages comments regarding whether the proposed standards concerning small-duct high-velocity, vertically-packaged wall-mounted equipment, and through-the-wall equipment provide a significant advantage to those products versus competing products, whether they are sufficient to preserve the unique features of those products, and whether improvements in the definitions are needed to prevent loopholes.

Issued in Washington, DC, on October 31, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 00-28370 Filed 11-3-00; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Chapter VII

[Docket No. 001013285-0285-01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 30, 2000.

ADDRESSES: Written comments (three copies) should be sent to Kirsten Mortimer, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Bureau of Export Administration, Telephone: (202) 482-5400. Copies of the current Annual Foreign Policy Report to the Congress are available at our website: <http://www.bxa.doc.gov> and copies may also be requested by calling the Office of Strategic Trade and Foreign Policy Controls.

SUPPLEMENTARY INFORMATION:

The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to: high performance computers (§ 742.12); significant items (SI); hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4); activities of U.S. persons in transactions related to missile technology or

chemical or biological weapons proliferation in named countries (§ 744.6); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 746.2, 746.3, 746.5, and 746.7); and, Libya (§§ 744.8 and 746.4). Attention is also given in this context to the controls on nuclear-related commodities and technology (§ 744.2 and § 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), August 10, 1999 (64 FR 44101), August 13, 1999 and August 3, 2000 (65 FR 48347, August 8, 2000). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2000, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in industry information relating to the following:

1. Information on the effect of foreign policy controls on sales of U.S. products to third countries (i.e., those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy controls.

2. Information on controls maintained by U.S. trade partners (i.e., to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations)?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations.

4. Suggestions for revisions to foreign policy controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy controls on overall trade, either for individual firms or for individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy controls on trade.

9. Information on the use of foreign policy controls on targeted countries, entities, or individuals.

BXA is also interested in comments relating generally to the extension or revision of existing foreign policy controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's website (which can be reached through <http://www.bxa.doc.gov>). If requesters cannot access BXA's website, please call the number above for assistance.

Daniel O. Hill,
Acting Assistant Secretary for Export Administration.
[FR Doc. 00-28440 Filed 11-3-00; 8:45 am]
BILLING CODE 3510-33-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1026

Standards of Conduct for Outside Attorneys Practicing Before the Consumer Product Safety Commission; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission is proposing to amend its regulations to add a new part addressing the behavior of attorneys on matters before the Commission. The behavior of attorneys who represent clients in

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November 17, 2000

Joan M. Maloney-Roberts, Division Director
Foreign Policy Controls Division
Bureau of Export Administration
US Department of Commerce
14th and Constitution Ave., NW, Room 2620
Washington, DC 20230

Subject: Request for Comment on Foreign Policy Controls

Dear Ms. Maloney-Roberts:

The Sensors and Instrumentation Technical Advisory Committee (SITAC) is appreciative of Deputy Secretary Majak's interest in our comments regarding foreign policy-based export controls in light of the upcoming decision regarding extension of those controls.

Beginning in September 2000, the SITAC is undertaking to **review** the topic of Regional Stability (RS) controls applied to commodities in Category 6 of the CCL. In subcommittee, we have reviewed the entire CCL for application of RS controls and we continue to study this subject as it relates to our particular area of interest. Our comments in response to Deputy Secretary Majak's letter are specific to RS controls applied to commodities in categories **6A002, 6A003, 6E001** and **6E002**, all related to commercial night vision and thermal imaging equipment.

It has been brought to our attention that these controls have their origin in a 1992 memo of understanding (MOU) between the departments of Commerce, State and Defense. The SITAC has requested access to this presently classified MOU but this access may not be available until our next scheduled meeting on December 5, 2000. It is highly likely that the SITAC will submit further comment and recommendation on this topic in the next few months.

For reference, the SITAC accepts the following purpose statement for RS controls excerpted from **BXA's** 1999 report on this subject.

*"This control provides a mechanism for the United States to monitor the **export** of these *items* in order **to** restrict *their* use in instances that **would** *adverse/y* affect regional stability or the military balance within a region."*

1. **Will the controls achieve the intended foreign policy purpose?** RS controls support this purpose only in the very narrow sense. It is important to note that Category 6 is subject to RS Column 1 controls, i.e. exports are controlled to all countries except Canada. The controls **do** provide a means for the US to monitor use of US-origin products but, instead of focusing on those areas that are truly RS concerns, they restrict exports to all countries. These RS controls, coupled with a two-year commodity jurisdiction battle inside the US **government, have aided the** development of foreign sources for **uncooled** infrared imaging technology and image

intensification products. The ability to control availability of these technologies worldwide via unilateral US controls or multi-lateral controls through the Wassenaar Arrangement diminishes daily.

- 2. **Are the controls compatible with the foreign policy objectives of the US and with overall policy of the US toward the country subject to the controls?** While the SITAC is not expert in overall US policy toward countries subject to these controls, RS controls as applied to Category 6 affect all countries except Canada. This implies that the US considers all countries and all regions except Canada to be unstable, so much so that the uncontrolled export of US commercial night vision or thermal imaging equipment will provide the potential for conflict and disruption. It is highly unlikely that this is truly the policy, and position that the US articulates to our friends and allies around the world. It is certainly legitimate to use export controls to help preserve regional stability but the indiscriminate application of these controls via RS Column 1 makes this appear to be a control of convenience rather than a foreign policy control.
- 3. **Is the reaction of other countries to such controls by the US likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to the US foreign policy interests?** As mentioned in #1 above, the use of RS controls and the condition of the export licensing system relative to Category 6 commodities has fostered growth in the comparable industries in other countries, diminishing the effectiveness of the US controls.
- 4. **Does the effect of the controls on the export performance of the US, the competitive position of the US in the international economy, the international reputation of the US as a supplier of goods and technology, or the economic well-being of individual US companies and their employees and communities exceed the benefit to US foreign policy objective?** The SITAC's opinion is that the negative effect on US companies exceeds the perceived benefit to the foreign policy objective. It is, again, difficult to separate the effect of the RS controls from the overall condition of the US export licensing system with respect to Category 6 application of these controls, but the damage to US companies is undeniable. To earn **and/or** maintain a reputation as reliable suppliers, US companies in commercial businesses must be able to provide predictable and timely delivery of products. This is simply not possible and is well recognized by experienced distributors and customers in foreign countries. US companies have been successful in creating explosive growth in the use of thermal imaging in firefighting. This growth has gained the attention of firefighters and manufacturers throughout the world. The US suppliers have been severely restricted in their attempts to export firefighting cameras, even to NATO countries, creating an open door for other countries to fill the demand. There is still a leadership position to be exploited but it will evaporate shortly. There are similar situations in other markets.
- 5. **Is the US able to enforce the controls effectively?** Although enforcement is not our expertise, there are members of the SITAC who feel strongly that the level of enforcement and associated punishment levels serve to encourage abuse, particularly by smaller companies, thus penalizing compliant companies. Examples of controlled products illegally exported and displayed at foreign trade shows in Russia and elsewhere were cited in a recent SITAC meeting. In general, however,

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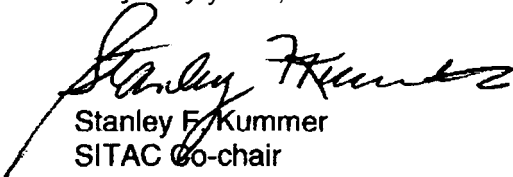
the SITAC does not wish to promote historic enforcement issues as a justification for decontrol.

The SITAC believes that the world has changed considerably since the 1992 decision to apply RS controls. It is time for the US government to **acknowledge** the emergence of a legitimate and large commercial market for night vision /thermal imaging equipment. US export policy is sheltering and fostering the development of foreign competition. As a first step, the SITAC strongly encourages movement of Category 6 commodities presently controlled under RS Column 1 to RS Column 2. This will provide several benefits pertinent to this subject.

1. It will serve to advise our closest friends that we do not consider them to be unstable,
2. It will allow US companies to compete **with** domestic sources in some of the countries most aggressively developing **uncooled IR** imaging technology.
3. It will allow the export control and enforcement processes to focus more closely on areas that truly are of a regional stability concern.

We thank you again for the opportunity to comment on this important subject.

Very truly yours,



Stanley F. Kummer
SITAC Co-chair

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Comment #2

Ms. Kirsten Mortimer
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
P.O. Box 273
Washington, DC 20044

Dear Ms. Mortimer:



Sun Microsystems welcomes the opportunity to comment on the effects of foreign policy-based export controls, in response to the solicitation in the Federal Register of November 6, 2000 (Docket No. 001013285-0285-01).

Sun feels that export controls can serve a valuable purpose in furthering U.S. foreign policy objectives, including the important goal of slowing or halting the spread of weapons of mass destruction. However, we also feel that such controls must be focused, effective in depriving bad end-users of controlled items, and be demonstrated as having positive long and short-term impact on the behavior of potentially bad actors.

While effective in the past, Sun feels that performance-based export controls on general-purpose commercial information technology and products no longer meet these critical tests for three fundamental reasons

1. The wide availability of the technology, the globalized, mass-market nature of the industry, and the advent of high-speed, high-bandwidth interconnectivity severely limit the controllability of both IT products and of computing itself. Coupled with lack of consensus among the industrialized countries as to the scope and targeting of controls, these factors combine to make it difficult or impossible to effectively deprive target countries of the IT products and services they seek.
2. IT controls have important negative effects on the competitiveness of the U.S. IT industry. In embargo situations, U.S. firms are deprived of revenue that flows to non-US. competitors. In individual validated license (IVL) situations, licensing requirements introduce uncertainty, delays and restrictive conditions on use.

However, these effects are only the tip of the iceberg. The infrastructure of controls, including transaction screening requirements, part and product classification requirements, reporting requirements, limits on intra-company technology transfer, service and upgrade limitations, deemed export, and other export requirements impose not only substantial costs, but constrain the flexibility of U.S. IT companies to acquire and employ resources effectively on a global basis. This dead hand of secondary and indirect controls is not necessarily targeted at any one controlled destination and often has negative effects never envisioned by the regulating agencies.

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3. Global integration of the IT industry offers real benefits in furthering the foreign policy objectives of the United States, which need to be considered and thoughtfully balanced **against** any minor short-term gains of embargo or other export restrictions. Integration of national economies into the international **IT infrastructure** provides **societies** and governments with a substantial and growing stake in playing by international rules. This is true both because of the **unprecedented** speed in which IT is **being** integrated into economic activity, but also because of its pervasiveness.

For economic systems that embrace it, information technology provides higher productivity, more accessibility to information, a need to adjust practices, regulations and attitudes to exploit its benefits, as well as useful decentralizing and democratizing impacts **from** the **freer** flow of information and enlarged economic participation. These effects suggest that the old, narrow view of foreign policy controls may be harmful to the extent that they hinder economic and social changes in target countries that would help enable realization of U.S. foreign policy **interests**.

Sun has chosen two specific dimensions of foreign policy controls to illustrate **these** effects.

1. **Section 742.12 on High Performance Computers**

Controls on high **performance** computers encompass a number of objectives, including foreign policy. **Ostensibly**, these controls are primarily constructed to meet national security/non-proliferation goals. However, the Tier structure has substantially wider-4 the scope and the objectives of controls.

Controls on Tier II **are** a case in point. Tier II controls apply to 108 countries, **some** of which are long established allies of the United States (including South Korea, which maintains a sizable U.S. military presence). According to the U.S. Department of Defense, these countries pose no proliferation threat; the controls on computers are not in fact directed at them. However, they all have in common the fact that they have no native export control system or that their control **system** **is** lacking in some feature deemed significant by the U.S.

Some of these flaws may have no relationship to computers or the IT industry – a frequently cited problem **is** lack of **consensus** on small arms shipments under the Wassenaar Arrangement. As a result, the continuance of controls has been justified as providing an **incentive** for these countries to “correct” their systems.

It is not convincing on its face that maintenance of a licensing requirement on a specific class of commodities would motivate countries to change major aspects of national policy or their export control systems. The record demonstrates that the policy has not in fact been a **success** by any measurement. While countries like Poland, the Czech Republic, Hungary, Estonia and Romania have acceded to U.S. demands on export issues, **arguably** they did so within the context of there



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accession to or desire for NATO membership; the computer control issue was a marginal factor at best.

The maintenance of 'Tier II controls does not justify their cost to U.S. exporters. While they are confined to a small number of system exports, these tend to be important, precedent setting, and highly visible sales. Many involve infrastructural projects that are highly sensitive to predictable and flexible implementation. In contrast, predictability and flexibility the very features constrained by the U.S. export licensing system.



While most Tier II licenses are ultimately approved, they are processed with full interagency reviews, long delays, and complex, restrictive conditions on use. The controls ultimately affect not only the perceptions of the customer on the reliability of U.S. vendors as solutions provider, but also cause changes to the way the technologies are implemented, affecting downstream provision of products and services.

Tier III controls pose similar problems, but for a higher volume of products owing to the lower control thresholds. Rather than being focused on countries of proliferation concern, Tier III contains 53 countries, many of which (like Saudi Arabia and Egypt) have military cooperation agreements with the U.S. The scope of Tier III controls should be narrowed substantially in order to recognize the realities of the networked world and to discontinue the dangerous and counterproductive pretension that controlling commercial computing power will be either viable or effective in the coming years.

The U.S. needs to instead substantially alter its policies in this area, to include moving to seater emphasis on ensuring that the US. military continues to expand its advantages in the integration and exploitation of information technologies. We have opportunity to yeady expand the U.S. military's battlefield information and decision superiority.

2. Section 744 Proliferation Controls

In the early 1990's, provisions were included or elaborated upon in the EAR requiring that all items, listed or not, require prior government approval for export/reexport if there is "reason to know" that they will be used to support a proscribed proliferation activity (e.g., Section 7442(a)). These provisions, collectively known as "EPCI" (Enhanced Proliferation Control Initiative), were originally intended to provide legal authority to stop shipments of recently decontrolled items.

EPCI requirements ultimately implemented do not discriminate, and in theory apply to all items subject to the EAR, from pencils to high-performance systems. These secondary controls have inserted substantial unnecessary cost into export compliance for global IT companies, distort the management of global electronic commerce, and serve little or no strategic purpose. Policies, procedures and

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automated systems must be constructed to screen tens of thousands of transactions involving uncontrolled or uncontrolable products, and techniques must be devised to stop transactions indicating purchase by an entity of proliferation concern.

The lack of specificity and discrimination in the EPCI rules poses serious problems not only for the U.S. exporter, but for the Government as well. Spending substantial money and time on screening shipments of de minimis, irrelevant and uncontrollable items, or attempting to enforce compliance with such a system, detracts from the ability of both companies and enforcement authorities to enforce what really matters.

Extensive screening done without reference to control status is incompatible with E-business models, which operate without human intervention and geographic boundaries.

For products that are downloaded, the time required to manually screen, or to evaluate "false hits," directly translates into lost business, as potential customers instantly switch to a competitor.

The problem is not confined to downloads. An increasing proportion of E-commerce orders are placed online, even though physical delivery via more traditional modes is still required. In these modes, only very limited customer data is available. This data is distributed among multiple points in a complex multinational organization where manufacturing, order entry and distribution occur in different geographic locations or in different countries. Techniques must be devised to perform full export screening on all such transactions, regardless of control status; this process impedes and distorts the optimal design of such systems and thus affects overall competitiveness.

A number of approaches have been discussed over the years that would improve the situation, although there is no consensus on approach. One approach would be recognition by enforcement authorities of certain basic practices as creating a threshold for the initiation of enforcement actions. This would have the advantage of allowing industry to share information on compliance practices and tools, and encourage wider and more focused compliance.

Alternatively, bounds could be established for screening in some geographic areas. Under this scenario, for example, the absence of screening of itself could not be used as grounds for prosecution.

Another approach would be to eliminate de facto screening requirements for transactions under a given dollar volume, say \$5,000, or a figure corresponding to LVS limits. Exclusion of requirements on the basis of de minimis value is well established in international export licensing practice.

Finally, there should be a clear elimination of responsibility on the part of vendors that have informed distributors of export controls requirements, and that



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have made such requirements part of the contractual relationship with the distributor.

Ultimately, foreign policy controls are not imposed in a vacuum. The fact that such controls actually prevent shipments in some portion of U.S. export and reexport business is only a small part of the problem, and represents a severe oversimplification of the drag that such controls impose on the dynamic qualities of U.S. IT industry.



We contend that some controls, if applied indiscriminately, can represent an outmoded and narrow view of U.S. national interest that may no longer apply in today's global economic environment. Performance based controls on IT, and the broad, indiscriminate application of EPCI controls are in this category and should be subject to a fundamental top-down review.

We again appreciate the opportunity to comment on these specific aspects of U.S. foreign policy controls.

Sincerely,

Hans Luemers
Director, International Trade Services



The National Council on International Trade Development

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Ms. Kirsten Mortimer
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
P.O. Box 273
Washington, DC 20044

Dear Ms. Mortimer:

NCITD is pleased to respond to the request in the November 6 Federal Register for comments on how existing foreign policy-based export controls have affected exporters. As you may be aware, NCITD is a non-profit membership organization, supported by a diverse membership of large, mid-size and small firms. Membership includes exporters and importers, freight forwarders and brokers, ocean and air carriers, banks, attorneys, trade groups, and consulting firms. NCITD's mission is to identify impediments to international commerce and provide solutions to facilitating the global trade process. Our comments will address unilateral controls and foreign policy controls on e-commerce transactions and deemed exports.

I. Unilateral Controls

The NCITD recognizes the need for certain multilateral controls and supports US efforts to work with multilateral regimes. US controls should be consistent with those agreed to multilaterally and should not be unilaterally imposed. The NCITD does not believe that unilateral export controls are generally effective in achieving their purposes, nor do they further the United States' national interests. Such unilateral economic sanctions weaken US competitiveness by providing advantages to foreign competitors who have access to foreign markets that US companies do not have. Sanctions create uncertainty about the availability of US origin goods, services, and technology and can cause foreign companies to "design out" US components. These companies often decide that they do not want to assume the burden of complying with US reexport controls

and source from other, less restrictive countries. NCITD members are losing business opportunities at the same time **they** are devoting considerable resources to compliance with an increasingly complex regulatory environment. We therefore urge a reevaluation of unilateral export controls.

II. E-Commerce

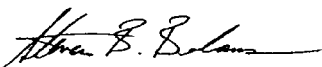
The Council believes that a growing number of foreign policy controls are increasingly less effective and difficult to implement in an e-commerce environment. As an example, the controls mandated under the Enhanced Proliferation Control Initiative (EPCI) present exporters with compliance challenges. EPCI controls require a license if the exporter knows an item will be used in a **proscribed** activity. The regulations define “knowledge” to include not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such information is difficult to determine in an e-commerce transaction, despite extensive efforts by companies to comply with the regulations through such **measures** as automated screening. The lack of guidance and the current complexity of **complying** with foreign policy controls on e-commerce transactions only serves to discourage US businesses from advancing into this new business environment while failing to support foreign policy objectives.

III. Deemed Exports

The application **of** foreign **policy controls** to foreign nationals as “deemed exports” provide still another regulatory requirement that fails to achieve US foreign policy goals. **US companies** must apply **for** an export license under the “deemed export” rule when they intend to transfer, in the United States, controlled technology to foreign nationals if the transfer of the technology would require an export license to the foreign national’s home country. The NCITD does not believe this licensing requirement significantly furthers the foreign policy of the United States. The licensing requirement, however, does impose compliance requirements and can act to discourage companies **from** hiring the expertise that they need to remain competitive in today’s economy.

We appreciate the opportunity to submit comments on the effects of foreign policy-based export controls and would value the opportunity to discuss our concerns at greater length. If you have any questions, or would like to have a discussion with our membership, please contact the NCITD office at (202)872-9280.

Sincerely,



Steven B. Belaus
Chairman

**REGULATIONS AND PROCEDURES
TECHNICAL ADVISORY COMMITTEE**

November 30, 2000

VIA TELECOPY AND E-MAIL

Joan M. Maloney-Roberts
Division Director
Foreign Policy Controls Division
Export Administration
U.S. Department of Commerce
14th & Constitution Ave., N.W.
Room 2620
Washington, D.C. 20230

Re: **RPTAC Comments on Foreign Policy Based Export Controls**

Dear Ms. Maloney-Roberts:

Pursuant to Assistant Secretary Majak's letter dated October 25, 2000, the Department of Commerce Regulations and Procedures Technical Advisory Committee ("RPTAC") respectfully submits these comments on 'U.S. foreign policy-based export controls.

Over the past several years, the RPTAC has commented on foreign policy based export controls and our comments over this time period have remained consistent: foreign policy based controls should be imposed only on a limited basis and should be designed to achieve specific results. We also suggested that when a specific foreign policy control no longer achieves the desired (targeted) effect, it should be eliminated. Often it seems that these controls are retained well beyond their usefulness with the only real effect being denial of potential markets to U.S. companies. During this time period, we took note of a number of foreign policy controls: we targeted the India/Pakistan sanctions, Iran sanctions, controls applicable to China, and the Deemed Export rule, among others. We regret that that, with the exception of some limited changes for India, our comments did not result in any changes to the foreign policy based controls. A copy of our 1999 comments is attached to this submission.

In responding to this year's request for comments, we reiterate the concerns previously expressed, as summarized above and as reflected in our 1999 comments. We also add the following additional comments:

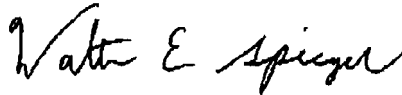
1. In cases where an exporter's license application is denied based on 'foreign policy objectives,' we request that (1) the exporter be given a clear and definitive

statement as to the status of the end user involved and (2) the statement be provided in a timely manner. We are aware that in one specific case which has been open since February 2000, a U.S. exporter has not been provided a definitive answer, except to be told that a U.S. Government inquiry has been initiated. We note that if the U.S. Government finds that delivering products to a specific end user is against foreign policy objectives, this fact should be published in the Federal Register, If such publication is not possible for national security reasons, then all U.S. suppliers of similar items should be informed by the Bureau of Export Administration by letter of the end user's status. In this particular case, the failure by the U.S. Government to act in a timely manner put one U.S. company at a competitive disadvantage vis-à-vis other U.S. and foreign competitors, created an embarrassing customer relations situation for the company, and, most importantly, failed to achieve the foreign policy objective for which this control is intended. To the contrary, for almost one year, other U.S. and foreign companies have been unencumbered from delivering similar items to this end user. We respectfully request that BXA implement the suggestions above so as to avoid a repetition of this type of situation.

2. The U.S. Government has within the past year announced its intentions to relax the embargoes on Serbia and North Korea. To date, these announcements have not yet translated into appropriate regulatory changes. We request that the regulations be revised to reflect the government's political intentions.

The RPTAC appreciates the opportunity to submit these comments.

Respectfully submitted,



Walter E. Spiegel
RPTAC Chair

cc: William Reinsch
R. Roger Majak
Steven Goldman
Eileen Albanese
Members of the RPTAC

Regulations & Procedures Technical Advisory Committee

December 22, 1999

Mr. Prank Ruggiero
Regulatory Policy Division (Room 2096)
Office of Exporter Services
Bureau of Export Administration
U.S. Department of Commerce
P.O. Box 273
Washington, D.C. 20044

RE: Request for Comments on Foreign Policy-Based Export Controls

Dear Mr. Ruggiero:

Pursuant to BXA's Request for Comments dated November 30, 1999 (64 Fed. Reg. 66821), the Regulations and Procedures Technical Advisory Committee ("RPTAC") respectfully files these comments on foreign policy-based export controls. The RPTAC appreciates the opportunity to submit these comments.

The RPTAC believes; that foreign policy based controls should only be imposed on a limited basis and, when imposed, should be designed to achieve specific results. In our view, any unilateral controls should only be imposed within certain parameters:

1. **The controls should be designed to achieve a specific, articulated objective.** Unilateral controls should not be imposed simply because the statutory authority exists to impose such restrictions. Rather, the U.S. government should identify the specific objective that it seeks to address through the foreign policy control that is imposed. The controls imposed should be precisely and narrowly crafted to obtain the identified objective. Identifying a precise and achievable objective will increase the likelihood of obtaining it and decrease the likelihood of unintended and economically wasteful results. Conversely, the failure to tailor the controls to meet an achievable objective dooms the initiative from the outset.
2. **Controls should be removed if they are not and cannot accomplish their objectives, If items are not controllable** because there are numerous foreign sources available

to supply the **controlled items**, then U.S. **unilateral** controls cannot be effective in achieving **their** intended purpose but will only be **effective** in hurting **the** U.S. **economy**. Ongoing examples of such failed controls include the broad sanctions imposed on India and **Pakistan** and the long-standing 'U.S. embargo of Iran. In **these** cases, the inability of U.S. companies to supply **even** low-level products has not deprived the prospective **purchasers** of the desired commodities, but has merely driven the business away **from** U.S. companies and to their foreign competitors. The U.S. government should **revisit the** effectiveness of such controls and, where it is clear that the **controls** are not accomplishing their **objectives**, the controls should either be removed or **narrowed** to accomplish the specific foreign policy objective.

The U.S. **government** has **implemented** several foreign **policy-based** controls that have **not** addressed the **objectives** sought and resulted in unintended consequences **for** U.S. industry. Although **not** a comprehensive list, the following controls merit special attention:

1. **India-Pakistan Sanctions:** **The** basis for export controls **imposed** on India and Pakistan in **1998** was the Glenn amendment. Section 102(b)(2)(G) of that amendment **required** controls on "specific **goods and technology**" and section 830(2) defined the "goods and technology" **affected as** "items **designated** by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978," i.e., **those designated "NP"** on the Commerce **Control List (CCL)**. Thus, **the** only statutorily required **controls** are **on those NP items** specified for this purpose,

However, with the exception of **exports** related to aviation safety, the controls as **actually** imposed **deny**:

- **all** items to a long list of **specified** entities, i.e., even paper clips;
- **all** items technically defined on the CCL to a long list of additional specified entities, e.g., including **computers** exceeding 6 **mops**, even though vastly **more powerful** computers are so **widely** available that they are considered to be **uncontrollable**;
- **all** items controlled for missile technology (MT) reasons to all **end-users**; and
- all NP items to **all** end-users.

Recent **Congressional** action **authorized** a Presidential waiver of these controls and established a **criterion** of direct and material contribution to nuclear proliferation, This

criterion is **narrower than** the **significance** for nuclear **explosive purposes** criterion which **appears** in section 309(c) of the Nuclear Non-Proliferation Act of 1978. In any event, it **does not extend** to **paper clips** nor to **6 mtops computers** nor to **all of the presently listed controlled entities**. It also is **clearly** less restrictive than the present blanket denial policy of **all NP and MT items** to **all** end-users.

The RPTAC recommends the following:

- The entities and the **items** controlled should adhere to **the** Congressional criterion, by replacing the existing denial policy for a **wide** range of items and a **wide range** of end-users with a case-by-case review of **NP** items. License applications should be denied only for those items and those end-users which **would** make a material and **direct** contribution to **nuclear** proliferation. If considered necessary, the policy **might** also apply to **MT items**. Sanctions should **not** apply to items that **are** neither **NP** nor **MT**.
- Exports to India and Pakistan **should** be eligible for exceptions of general applicability elsewhere. Some of these would actually further the **objective** of the controls, **such** as exports to the U.S. Government and **exports furthering** international **nuclear** safeguards.
- U.S. unilateral controls should not apply to reexports. The elimination of **unilateral** controls on re-exports would reduce friction with our allies over **extra-territorial** controls.
 2. **Controls applicable to the People's Republic of China ("PRC" or "China")**. The U.S. **government** continues to impose Cold War **controls on China** as if COCOM were still in effect. Yet, none of our other Wassenaar **Arrangement allies** do so because these nations do not consider China to be a "target" of **the Wassenaar Arrangement regime**. The result is that U.S. **export** controls for China are **held out** as multilateral **controls, when in fact** they are not. These unilateral export controls will continue to make it more difficult for **certain U.S. industry sectors** to participate on a **competitive** basis in **trade** with the PRC. The RPTAC urges the U.S. government to eliminate controls that lack multilateral support so that U.S. companies can **compete** on a **level** playing field.
 3. **Iran Sanctions**. The **United States** continues to **enforce** a complete **ban** on U.S. companies doing **business** with Iran. The embargo precludes **U.S. companies from** exporting all items to Iran, not just those items that could make a material contribution to **proliferation** or **other military activities**. Given that neither European nor Asian **competitors** are barred from doing business in Iran, the **embargo does not** deny Iranian companies access to dual-use items, but **merely precludes** U.S. companies from competing for this business. The U.S.

government should revisit its policy on Iran and impose **sanctions** that are narrowly tailor-ed to meet an **articulated** foreign policy **objective**.

4. **Deemed Export Rule.** The deemed export rule **requires** U.S. companies that employ foreign nationals to **control** conversations, telephone calls, e-mails, and other transfers of **technology among its own employees** – even if those foreign nationals **have been** authorized **under** the immigration laws to work in the United States. Other countries **do not** interpret their regulations this way, **making** the rule in essence a **unilateral** control. The rule places a heavy burden on U.S. industry at a time when it is especially difficult to **hire** U.S. **citizens** who have **the** necessary education and skills. **Further**, the **deemed** export licensing **process** is unnecessarily lengthy, and **licenses** are **issued** with conditions unrelated to the licensed transaction. The **deemed** export rule should be modified to apply only when an actual **export** occurs.
5. **Selective anti-terrorism controls:** The RPTAC recommends that **most** of the hundreds of **items** on the Commerce Control List numbered **xx99x**, which require a license only to terrorist supporting **countries**, be decontrolled. **The** only **country** now affected is **Syria**. However, **establishing** the **proper** classification of hundreds of thousands of products which may or may not be covered by these **xx99x** items is **an** immense burden, even if the exporter **has no** intention of exporting to Syria. A small fraction of these items were **identified** originally for **foreign policy reasons**, such as ECCN 9A990, which **controls** specified types of **diesel** engines and tractors. There **may** be **sound** reasons for continuing such items, although the **judgments** that such control was necessary **were** made, in most **instances**, decades ago and have not been seriously reviewed since. However, there is no foreign policy basis for the definitions of the vast majority of these items. They were picked **up** from what was **removed** from security control lists. **In** most cases the **removal from** security controls was based on **findings** that **the** items were uncontrollable. Also in most cases **the** security control removal took place *many years ago*, so that any doubt on **uncontrollability** has **long** since vanished. For example, **4A994** controls computers **exceeding** 6 **mtops**, whereas the government concedes that **anything below** at least 2,000 **mtops** is so widely available that controls cannot be **enforced**.
6. **In-transit controls.** The long-standing control on exports transiting countries considered to **be** cold war adversaries (General Prohibition **Eight** 15 CFR 736.2(b)(8)) should be discontinued. This is a unilateral U.S. control and must, therefore, **be** considered a **foreign policy** control, **because** it would otherwise have expired **long ago** under the provisions of EAA Section 5(c)(6)(A). It is **difficult** to imagine any

current foreign policy (or security) objective which it furthers. This control applies to exports destined to any country. The items affected and the eligible exceptions vary among the named countries being transited. Moreover, the 740.1(a) statement that no License Exception is applicable to General Prohibition Eight makes controls on exports transiting the named countries unreasonably more restrictive than controls on exports going directly to those countries. Because there is no continuing justification for in-transit controls, the RPTAC urges BXA to eliminate these controls,

Thank you for the opportunity to provide these comments.

Sincerely,

Walter E. Spiegel
Chair, RPTAC

cc: Roger Majak, Assistant Secretary, BXA
Tain Baird, Deputy Assistant Secretary, BXA
Mr. James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls
Ms. Hillary Hess, Director, Regulatory Policy Division
Ms. Kirsten Sylvester, Export Policy Analyst
Members of the RPTAC



Michael Elias Buroody

Senior Vice President

Policy, Communications and Public Affairs

November 30, 2000

Ms. Kirsten Mortimer
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
P.O. Box 273
Washington, DC 20044

Re: Request for comments on foreign policy-based export controls, (65 Fed. Reg. 66514, Nov. 6, 2000)

Dear Ms. Mortimer:

The National Association of Manufacturers (NAM) appreciates the opportunity to comment on foreign policy-based export controls. These controls are primarily unilateral and should be allowed to expire, except in those instances where such controls are effective (a certification of "no foreign availability" is made), or hold a realistic prospect of being effective (active negotiation on enforceable multilateral controls).

We would like to address specifically the foreign-policy based re-export controls on Libya. We brought this issue to your attention last year, and, regrettably, it was not acted upon. The chief consequence of these re-export controls relating to Libya is to restrict sales of American-made products to third countries. This is the case because prospective buyers in third countries do not want to go through the process of complying with the U.S. re-export restrictions that automatically come with U.S.-made products. As a result, U.S.-made products are systematically "designed out." This is a boon to our competitors overseas none of whom face re-export controls on Libya and who are now actively engaged in what promises to be a rapidly-expanding market.

This situation can be addressed simply by not extending the Libya foreign policy re-export controls by January 20, 2001, when such controls automatically expire. Such an approach would address the competitive disadvantage faced by U.S. companies, while at the same not compromising our national security-related concerns in any way, since the comprehensive U.S. trade embargo would remain in effect.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Buroody", written in a cursive style.

Manufacturing Makes America Strong

1331 Pennsylvania Avenue, NW, Washington, DC 20004-1790 · (202) 637-3120 · Fax (202) 637-3182 www.nam.org

November 16, 2000

Kirsten Mot-timer
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
P.O. Box 273
Washington, DC 20044

Dear Kirsten,

I am writing to express the hardship that sanctions on entities in India are having on our company. As a privately-owned, small business manufacturer, in a very competitive worldwide market for our products, our inability to fulfill several orders received for our equipment is having a devastating impact on our business, not only for current business relationships we have worked hard to build over the last 30 years, but for future opportunities for which we now are not being considered, due to the knowledge that export licenses for shipments will be denied. The loss of 25% of our annual sales, due to export restrictions to India, has had a direct impact on our ability to retain highly skilled, well-paid employees.

We manufacture scientific equipment used by laboratories to determine the thermophysical properties of materials, such as thermal expansion, thermal conductivity, and thermal diffusivity. Materials can include metals, ceramics, plastics, glass, insulation, etc. Our products are sold to R&D labs, QA labs, universities, and institutes worldwide. Our products are general purpose in use and do not appear on the commerce control list, therefore they fall under the EAR99 classification for "other" products, not specifically determined to have a strategic impact on nuclear proliferation or missile technology. The technology of our products date back to the 1950's and many universities build their own equipment for testing due to lack of funding for commercial purchase.

This loss of business will go to our international competitors in Germany, France, and Japan. Of course, it will be very difficult to re-enter this market, if and when the sanctions are lifted, as our former customers will now establish stronger relationships with them through the use of their products and technical support personnel. The punitive aspect of our government's actions against this friendly nation, have strained our relations with the scientific community we have had close dealings with over the years.

ANTER CORPORATION
1700 UNIVERSAL ROAD
PITTSBURGH, PA 152353998 USA

ISO9001
CERTIFIED COMPANY



e-mail: sales@anter.com


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tel: (412) 795-6410

fax: (412) 795-8225

Any assistance you can provide to lift the sanctions, or at a minimum, to waive export license requirements for the EAR99 classification would be greatly appreciated by our company, our employees, and our Indian friends. For reference purposes, the application control number for our denied export license is Z224718.

Sincerely,,



Robert C. Purvis, Jr
General Manager
Anter Corporation

Michael H. Jordan

**4140 Brownsville Road
suite 220
Pittsburgh, Pennsylvania 15227-3332
Telephone: 412-885-2300
Fax: 412-885-9335**

November 30, 2000

Joan Maloney-Roberts, Director
Foreign Policy Controls Division
Office of Strategic Trade and Foreign Policy Controls
Bureau of Export Administration
US Department of Commerce
14th and Constitution Ave NW
Washington DC 20230

Dear Ms. Maloney-Roberts:

Assistant Secretary Majak solicited the views of the PEC/SEA concerning the foreign policy export controls which will automatically expire by January 20, 2001, unless specifically extended by the Secretary in accordance with the Export Administration Act which was reauthorized earlier this month. Mr. Majak asked that we forward our response to you.

Our comments relate solely to the foreign policy reexport controls concerning Libya. We believe that the Secretary should take no action to extend these reexport controls, so that they would automatically lapse by operation of law. By allowing this to happen, the Administration could legitimately state that this non-action "does not represent any change in the [US] position on the [Pan Am 103] bombing or the need for full Libyan compliance with UNSC resolutions" as it stated in March at the time the Secretary of State authorized a consular visit to Libya.

The Libyan reexport controls are an anachronism. There is no policy rationale for these controls, particularly since they reflect a much tighter control regime than exists for Sudan or for Iran. These controls have been largely untouched for almost two decades, and so they are woefully out of date. For example, March 1982 is referred to as a key control date even though it has no current relevance; they also refer to a petrochemical complex that has no contemporary significance. There is simply no credible reason to restrict the reexport of EAR 99 items. It is not difficult to restrict the reexport of items that are significant for reasons of national security, anti-terrorism or for non-proliferation reasons.

Joan Maloney-Roberts, Director
November 30, 2000
Page 2

Five separate "determinations" must be made under Section 6 (b) of the EAA before these reexport controls can be extended in January. We believe that it is impossible for the Secretary affirmatively to make all five such determinations.

1. The intended foreign policy purpose for these reexport controls is not clear, in part because they have not been treated in isolation from the vast array of other controls and sanctions the US employs against Libya. But, the EAA requires that the purpose of these reexport controls be clearly stated. The undifferentiated purpose set out in the January 2000 Report is to "demonstrate US opposition to and to distance the US from" certain Libyan actions. The determination must find that these reexport controls will achieve that purpose and that the purpose cannot be achieved through other means. While it is easy to find that these reexport controls "demonstrate distance," it is not possible to determine that this purpose cannot be achieved by other means. Indeed, **the existence** of massive, comprehensive embargo against virtually all US economic, political and cultural relations with Libya is quite sufficient to "demonstrate distance" between the US and Libya; these additional reexport controls are wholly unnecessary to achieve that purpose.

2. The second determination relates to whether the extension of these reexport controls is compatible with the overall US policy toward Libya. These reexport controls are obviously incompatible with the recent laudable relaxation of the direct US export controls relating to food and medicine for shipment to Libya. In addition, most countries object to US reexport controls for other than national security reasons as being inconsistent with international law, and that result is incompatible with the US policy objective of encouraging Libya to respect international law. Therefore, it is not possible affirmatively to reach this second required determination,

3. The third determination relates to the reaction of other countries to a decision to extend these reexport controls, and this is linked to Section 6 (d)'s requirement that there must be consultation with other countries. The January 2000 Report failed completely to deal with this requirement, since it noted only the UN sanctions--not remotely relevant to this determination. We believe that other countries would welcome an automatic expiration of these foreign policy reexport controls. Of course, whether an affirmation determination is possible depends on the required intergovernmental consultations relating to these reexport controls.

4. The penultimate determination relates to the competitive position of the US including the reputation of the US as a supplier of goods. The January 2000 Report failed to record any such determination; it set out old statistics. The chief impact of the reexport controls is provide a rationale for competitors to encourage countries to "design-our US products for the Libyan market-a market that is beginning a dramatic expansion, Without question the extension of these reexport controls would damage the reputation of the US as a reliable supplier. Thus, it is not possible affirmatively to make this determination.

Joan Maloney-Roberts, Director
November 30, 2000
Page 3

5. The final required determination is perhaps the simplest: that these reexport controls can be enforced effectively. The January 2000 Report noted substantial voluntary compliance by US companies and their foreign subsidiaries; we agree that this continues-but at a price to those US companies that their foreign competitors do not have to pay. However, compliance by US companies is at the **very** edge of the enforcement question, since the impact of potential violations falls overwhelmingly on non-US companies who would be involved in exporting to Libya goods previously exported from the US. The January Report honestly states that it is "virtually impossible" even to monitor such transfers. The necessary conclusion is that it must be truly impossible to enforce **effectively** these reexport controls-even apart from the fact that governments of foreign companies will not assist in enforcement of these US controls against their nationals. Therefore, it is impossible affirmatively to make this key determination.

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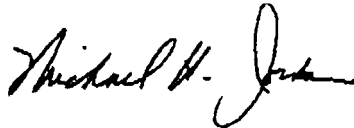
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The foreign policy reexport controls relating to Libya are obsolete, are totally ineffective in achieving any rational **foreign** policy, and needlessly cause harm to American competitiveness-both in the long and short term, They have long ago outlived whatever their original value may have been. There are a great many alternative means for achieving foreign policy goals without the costs entailed by these reexport controls.

For the reasons indicated above, we believe that **all** five affirmative determinations required by the **EAA** cannot be made, and thus the Secretary does not have the authority to extend these Libyan reexport controls. The resulting automatic lapse of these controls, especially in the context of the existing massive US embargo against Libya, harms no US interest. Protection of US national security interests, as well as non-proliferation and anti-terrorism, can be achieved easily and legitimately through targeted controls on those sensitive goods and technologies.

Sincerely,



Michael H. Jordan
Chairman, PEG/SEA

cc: R. Roger Majak,
Assistant Secretary



Baker Hughes Incorporated

816 Connecticut Avenue, NW
Second Floor
Washington, DC 20006
Tel 202-785-8093
Fax 202-785-4509
Toll Free 800-685-8093
art.downey@bakerhughes.com

November 29, 2000

Arthur T. Downey
Vice President Government Affairs

**Ms. Kirsten Mortimer
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
P.O. Box 273
Washington DC 20044**

Dear Ms. Mortimer:

In accordance with the *Federal Register* notice of November 6th, we submit these comments relating to the foreign policy-based reexport controls on Libya. They focus specifically on the several points in which the Notice expressed particular interest. Baker Hughes provides equipment and services to the oilfield industry worldwide; our annual revenue is about \$6 billion.

The existence of the foreign policy reexport controls relating to Libya restricts sales to third countries. This is because foreign prospective purchasers do not wish to deal with the reexport restrictions that come with US origin products, including the problems of inventory control to keep US products segregated. US products are "designed out". In addition, foreign competitors use the existence of these reexport controls as a sales tool to persuade foreign potential buyers not to buy from US companies.

No foreign trade partner country maintains controls for foreign policy reasons on the reexport of their products to Libya. Indeed, all foreign competitor countries reject as a matter of principle the imposition by the US of reexport controls unrelated to national security. Late last month, the UN General Assembly adopted a resolution calling for the repeal of unilateral extraterritorial laws that impose coercive economic measures contrary to international law on corporations of other States—which is exactly the foreign policy based Libyan reexport controls. The vote was 136 in favor and only 2 opposed (me US and Israel). The resolution was sponsored by Libya, but was strongly supported by

Ms. Kirsten Mortimer

Page Two

November 29, 2000

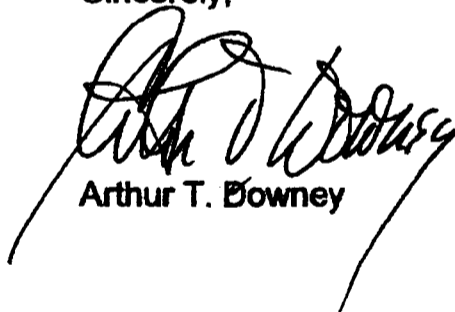
the European Union. This political/diplomatic situation presents a very difficult competitive environment for US companies.

The simplest and most sensible suggestion for revision is to eliminate—by failing affirmatively to extend in January—the Libyan foreign policy reexport controls. Commerce Department reexport controls can be continued relating to specific products and technology that might be significant for legitimate reasons of national security, non-proliferation or anti-terrorism. This would reduce the competitive disadvantage suffered by US companies, while at the same time protect US national security interests. Competitor governments would be more willing to accept those reexport controls, and they might be enforceable—in contrast to the foreign policy reexport controls which are not.

The Libyan market is at the verge of a fundamental expansion. The Prime Minister recently announced that Libya plans to invest \$65 billion over the next five years. The Europeans have a natural advantage over US companies for that market due to the complementary nature of the economies and geography, and the existence of normal political/diplomatic relations between Libya and the EU countries. The continued existence of the virtually total US embargo on trade with Libya ensures that the US will remain out of the Libyan market, but the suggested change in the reexport control regime would provide a benefit for US companies even in the context of continued broad US sanctions against Libya.

If you have specific questions or would like additional information, please let us know.

Sincerely,



Arthur T. Downey

NATIONAL FOREIGN TRADE COUNCIL, INC.

1625 K STREET, N.W., WASHINGTON, DC 20006

Tel: (202) 887-0278



FAX: (202) 452-8160

November 29, 2000

Ms. Kirsten Mortimer
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
Washington, DC 20044

Dear Ms. Mortimer:

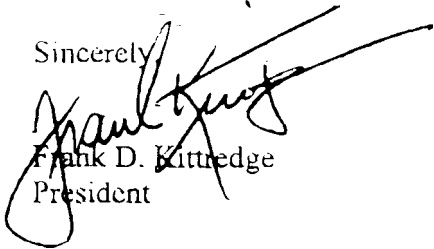
I am writing on behalf of the National Foreign Trade Council, a business organization of more than 500 U.S. companies engaged in international trade and investment. We are responding to the November 6 Federal Register notice requesting comments on the unilateral foreign policy re-export controls on Libya.

We believe that these controls should be permitted to expire for a number of reasons:

- foreign policy re-export controls are not enforceable;
- these controls depart from widely accepted international practice and put the United States at odds with our major trading partners;
- foreign policy re-export controls place U.S. firms at a serious disadvantage vis-à-vis our foreign competitors who operate without such controls. The simple burden of isolating U.S.-source product to ensure compliance with U.S. controls, together with the prospective liability if U.S. controls are violated, gives foreign purchasers a huge incentive to "design out" U.S. products;
- Libya is in the process of expanding and opening up its market. Our European competitors are positioned to take full advantage of Libyan development to the exclusion of U.S. firms.

The remedy for this situation is to permit the re-export controls on Libya to expire on January 20, 2001. Expiration of these controls would not affect the U.S. trade embargo on Libya, nor would it compromise the national security interests of the United States. It would, however, mitigate the unintended disadvantage which the re-export controls impose on U.S. industry.

Sincerely,



Frank D. Kittredge
President



SHERRY A. STEPHENS
PRESIDENT

November 30, 2000

Ms. Kristen Mortimer
Senior Export Policy Analyst
Assistant Secretary for Export Administration
Bureau of Export Administration
14th and Constitution Avenue
Washington, D.C. 20230

Dear Ms. Mortimer:

As president of the Petroleum Equipment Suppliers Association, a trade organization representing approximately 150 companies in the U.S. oilfield service and supply sector, I am writing to encourage the Secretary to forego the extension of several foreign policy export controls expiring in January 2001. Specifically this letter concerns the foreign policy reexport controls relating to Libya which are part of the group of expiring controls.

Our member companies believe that the Libyan reexport controls should be allowed to lapse. Recent relaxation of the direct United States export controls relating to food and medicine for shipment to Libya indicates that the new direction of the United States is toward realism in trade matters. Other countries have reduced or eliminated trade restrictions against Libya, leaving the U.S. the only country to restrict trade for foreign policy reasons. The results that were to be brought about by these nearly 20 year old restrictions do not appear to be any closer because of the reexport controls than when they were instituted and the American workers and consumers are paying a healthy price with no return for their sacrifices.

There are a number of effective ways to restrict the reexport of items that are significant for reasons of national security, anti-terrorism or for non-proliferation reasons that do not include the need for perpetuating the foreign policy reexport controls relating to Libya. In fact, the most noticeable effect of the restrictions has been a loss of United States suppliers' reputation for dependability. When foreign companies do not buy U.S. products, it is a problem but when foreign buyers lose faith in American suppliers, it means the loss of sales for years to come. This is too heavy a loss to bear by American workers and companies for no national gain. We urge you to allow this restriction to lapse.

Sincerely,

Sherry Stephens

BMC Engineering

31 Pike Lane, Danvers, CT 06239

Thursday, November 16, 2000

Kirsten Mortimer
Regulatory Policy Division
Bureau of Export Administration
Department of Commerce
PO Box 273
Washington, DC 20044

Re: Request for Comments on Foreign Policy-Based Controls of Nov. 6, 2000

BMC Engineering is offering for sale, a series of encryption programs intended for consumers for use on their personal computers. The Away series allows a person to encrypt any Text, Data or Picture files on their computer. The program does this by asking for the users' password and then performs the encryption. There are options available such as a Viewer to look at picture files while they are encrypted and a Public Key/Digital Signature variation to allow a person to e-mail an encrypted tile to another person. We sell these products exclusively through the Internet. Our web page is www.bmc-engineering.com

We feel that while you have made incredible progress in opening up the export regulations to sell these type of programs, you need to consider eliminating restrictions entirely. We would like to set forth our reasons as answers to your enumerated criteria in the above Request. Our comments are strictly from an Internet Marketing point of view.

1. Controls do not achieve any foreign policy goals because any person can order on the Internet using a credit card with a US address.
2. Internet trade is not a candidate for negotiations.
3. The overall US foreign policy objectives toward other countries is invisible in Internet trade.
4. Other countries find our controls laughable in view of the fact that the US National Institute of Standards and Technology (NIST) has designated **Rijndael**, an algorithm developed by Belgian scientists, as its candidate for the next Advanced Encryption Standard (AES). Another leading candidate was **Twofish**, an algorithm developed here in the US with the Visual Basic implementation by a Scandinavian scientist. Any US product using these algorithms would come under your existing controls and be restricted in foreign trade. Foreign products using these algorithms could be sold with impunity in the US.
5. The benefit to US foreign policy objectives by eliminating controls would be to give us more credibility regarding foreign trade. It would improve our competitive position.
6. Without invading the privacy of citizens worldwide, it would be impossible to enforce export controls on products sold on the Internet

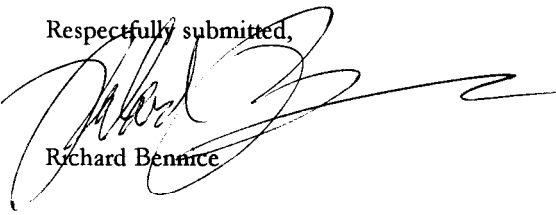
Phone 860 779-7987
E-Mail richard@bmc-engineering.com

Second Section:

1. Since we have extremely limited financial resources, it would be impossible for us to retain legal counsel in case of any infraction of controls. Controls are causing us to lose sales.
2. through 9. We have no information on controls maintained by US trade partners except to say that we are being put to an economic disadvantage by the US controls and there does not seem to be any restrictions on software developed in other countries.

The whole point is, that in view of the fact that the Internet has created an "International Community" with information freely exchanged, Encryption controls are like closing the barn door after the horses are gone.

Respectfully submitted,



Richard Benrice

(comment #12 of 1)

CLEMSON
U N I V E R S I T Y

November 21, 2000

Kirsten Mortimer
Regulatory Policy Division,
Bureau of Export Administration,
Department of Commerce,
P.O. Box 273,
Washington, DC 20044

Re: BXA, Effects of Foreign Policy-Based Export Controls

Dear/Ms. Mortimer:

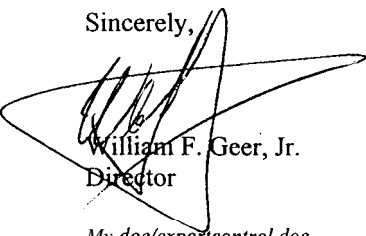
As Director of Sponsored Programs at Clemson University, I have just recently become involved in EAR export control (as well as ITAR) issues as they may or may not apply to research conducted by University. With close to thirty years' interpreting various federal compliance matters, the issue of what is, or is not "export controlled" within the university research setting is perhaps one of the most vague I've experienced. This is further compounded by the lack of established points of contact within the federal agencies, e.g. Commerce, State, NASA, that understand the issue as it pertains, not to private industry, but to university research.

Both EAR and ITAR recognize that "fundamental research" does not fall under export control procedures; however, that does not mean that all research is fundamental (by EAR or ITAR definitions). I would like to point out that the definition of fundamental research is not-but should be - consistent between the EAR and ITAR regulations (under the definition of "Public Domain"). Secondly, that definition should provide a more useful description of the exceptions used to determine under what circumstances research is not considered "fundamental" as well as the rationale(s) for such circumstances.

Universities by their very nature are essentially "open doors" when it comes to public access to our research findings, as opposed to the work normally undertaken by private industry and which is treated as proprietary and securely as possible. Universities' have difficulty (and some refuse) to accept research contracts/grants in which their ability to freely publish is withheld by the sponsor. The concept of export control and university research, therefore, are philosophically opposed to each other.

It would be extremely beneficial for the University community to be provided with a federal policy that recognizes the value of public dissemination of its research findings. If that dissemination must be restricted due to national interests, the criteria imposing such restriction on the particular research project in question should be very explicit for correct understanding and interpretation both by the federal grant or contract officer authorizing the project, the university's project director and the appropriate university officers. Unfortunately, in my opinion, the regulations do not lend themselves to this purpose.

Sincerely,


William F. Geer, Jr.
Director

My doc/exportcontrol.doc



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