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EXPORTS AND TERRORISM

**U.S. Export Licenses to Iran:
September 1990 to September 1991**

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From September 1990 to September 1991, the U.S. Department of Commerce approved nearly \$60 million dollars' worth of sensitive exports to Iran. Most of these items were "dual use," meaning that in addition to their civilian uses, they can be used to make nuclear weapons, long-range missiles or other military equipment. The record of these exports has just become available.

The Commerce Department granted these licenses despite Iran's "terrorism" status under U.S. export law. For several years U.S. regulations have designated Iran as having "repeatedly provided support for acts of international terrorism." As a result, the regulations provide that export licenses to Iran "will generally be denied" for a specific list of sensitive items. This amounts to a denial rule for items on that list.

From 1990 to 1991, however, the Commerce Department licensed the export of millions of dollars' worth of these very items. The Commerce Department does not appear to be following its own regulations, and therefore is not implementing the U.S. policy against international terrorism.

Commerce approved one of these exports over the opposition of the State Department and another over the opposition of the Defense Department. Commerce also approved several other cases after either State, Defense or the Department of Energy recommended that the application "return without action." According to a knowledgeable Defense Department official, "return without action" is usually a polite denial for a country like Iran. The government has information showing that the license should not be granted, but does not want to say so publicly with a rejection. The RWA is a polite way of informing the exporter of this fact. The unspoken implication is that the application will be rejected if submitted again. Applications may also be returned without action because the file is incomplete or because the application was filed for an item that does not require a license.

In the past, Commerce has deferred to the recommendations of State, Defense and Energy on dual-use licensing. These latter agencies, rather than Commerce, possess the diplomatic and strategic expertise to decide whether an export might be diverted to A-bomb or missile production. Now a new pattern has appeared: Commerce can ignore the judgement of other agencies in order to promote exports.

The following discussion is organized according to the items Commerce approved for export. Computers, the first category, have a number of military uses depending on their speed and configuration. They can powerfully aid in the design, development, and testing of both nuclear weapons and long-range missiles. Navigation, direction-finding and radar equipment, the second category, is necessary for missile guidance and military targeting. Oscilloscopes, the third category, are high-speed electronic diagnostic instruments that can be used to develop missile guidance systems and to process the rapid signals from nuclear weapon tests. Compasses, gyroscopes and accelerometers, the fourth category, are also necessary for missile guidance systems.

Computers (ECCN 1565)

Of the 92 export licenses granted, 30 were for computers, with a total value of over \$33 million. One computer license alone (Case No. D112977) was valued at \$28 million. The most remarkable aspect of this approval was that there was no stated end-use or end-user. This means that the buyer was free to resell the computers to whomever he wished. The Department of Energy (DOE) recommended that this case be "returned without action," probably because of the lack of information on end-use. The Department of Commerce, however, approved it.

In addition, the Commerce Department approved the following computer cases:

- | | |
|--------------------------|---|
| <u>Case No. D119049:</u> | Value \$1.5 million; DOD recommended that the case be returned without action |
| <u>Case No. D129095:</u> | Value \$105,000; DOE recommended that the case be returned without action |
| <u>Case No. D139248:</u> | Value \$358,000; DOD recommended that the case be returned without action |

Navigation, direction-finding, radar, and airborne communication equipment (ECCN 6598)

The Commerce Department approved the following eight cases in this category, despite the fact that all of the items are on the list that "will generally be denied" to Iran:

- | | |
|--------------------------|---|
| <u>Case No. D139105:</u> | Value \$150,062; State recommended that the license be rejected |
| <u>Case No. D130025:</u> | Value \$70,919; DOD recommended that the license be rejected |

Case No. D131504: Value \$276,407; State and DOE recommended that the case be returned without action

Case No. D114219: Value \$13,211; DOE recommended that the case be returned without action

Case No. D130639: Value \$100,000; DOE recommended that the case be returned without action

Case No. D134953: Value \$532,800

Case No. D139107: Value \$36,145

Case No. D122107: Value \$58,110

It should be emphasized that Commerce approved two of these denial list items over the opposition of either the State or Defense Departments, both of which have expertise in national security matters and are charged with executing U.S. national security policy. Commerce also approved three other cases despite a recommendation by DOE that they be returned without action.

Oscilloscopes (ECCN 5584)

The following two cases were licensed in this category, despite the fact that they are for items on the denial list:

Case No. D123901: Value \$75,735

Case No. D125372: Value \$5,000

These items are also on the "Nuclear Referral List," a list of equipment that the U.S. nuclear weapon laboratories have designated as especially useful in the production of atomic bombs. Neither case was referred to the Subgroup on Nuclear Export Coordination, an interagency group that is supposed to review sensitive nuclear export cases.

Compasses, gyroscopes, and accelerometers (ECCN 1485)

The following two cases were licensed in this category, despite the fact that they are for items on the denial list:

Case No. D115751: Value \$277,200

Case No. D115918: Value \$18,952

The items in this category are also on the "Missile Technology Control List," a list of items judged especially useful for missile development and manufacture.

Other licenses for items on the denial list

The following additional items were licensed despite the fact that they are in categories on the denial list:

- Case No. D110773: Electronic measuring, calibrating and testing equipment (ECCN 1529); value \$179,000; on both the Nuclear Referral and the Missile Technology Control lists
- Case No. D114141: Microwave equipment (ECCN 1537); value \$35,050
- Case No. D119763: Radio spectrum analyzers (ECCN 1533); value \$40,000; on the Missile Technology Control List
- Case No. D099075: Diesel engines for trucks, tractors and automotive applications of 400 horsepower or greater (ECCN 6498); value \$15.5 million

Other licenses approved

The following items, although not on the denial list, were also licensed:

- Case No. D132016: Explosives, propellants, fuels (ECCN 2708); value \$600,000
- Case No. D135230: Frequency standards (ECCN 4529); value \$12,500; State recommended that the case be returned without action
- Case No. D135369: Radio relay communication equipment (ECCN 5A93); value \$12,890; State recommended the case be returned without action
- Case No. D138311: Electronic devices (ECCN 3A01); value \$9,454; DOD recommended that the case be returned without action

Exceptions to the denial rule

U.S. export law does provide certain exceptions to the denial rule for Iran. A license may be granted for sales contracts in effect before November 27, 1987; or if the U.S. item is less than 20% of a foreign-produced commodity; or if the item will be used for humanitarian purposes.⁴ None of these exceptions appear to apply to the above cases, save perhaps one case in which U.S. equipment was to be combined with a foreign-produced system.

Conclusion

Despite the clear anti-terrorism policy of the United States, Iran has been able to buy millions of dollars' worth of strategically sensitive American equipment. The Commerce Department records do not reveal why individual sales were approved, or why agencies recommended that some applications be returned without action. Congress should require the Commerce Department to explain why it approved the numerous cases covered by the denial rule. Congress should also require the Commerce Department to publish a record of all export licenses granted to other countries on the terrorism list. Providing this information would allow Congress and the public to determine whether American exports are undermining the U.S. policy against terrorism.

Endnotes

1. U.S. Department of Commerce, U.S. Export Administration Regulations, Part 785.4(d) (October, 1990).

2. U.S. Department of Commerce, U.S. Export Administration Regulations, Section 785.4(d)(3)(ii) (October 1990).

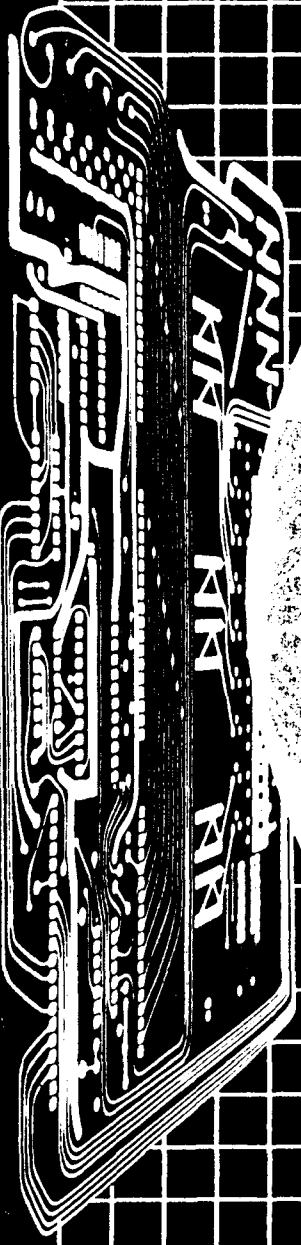
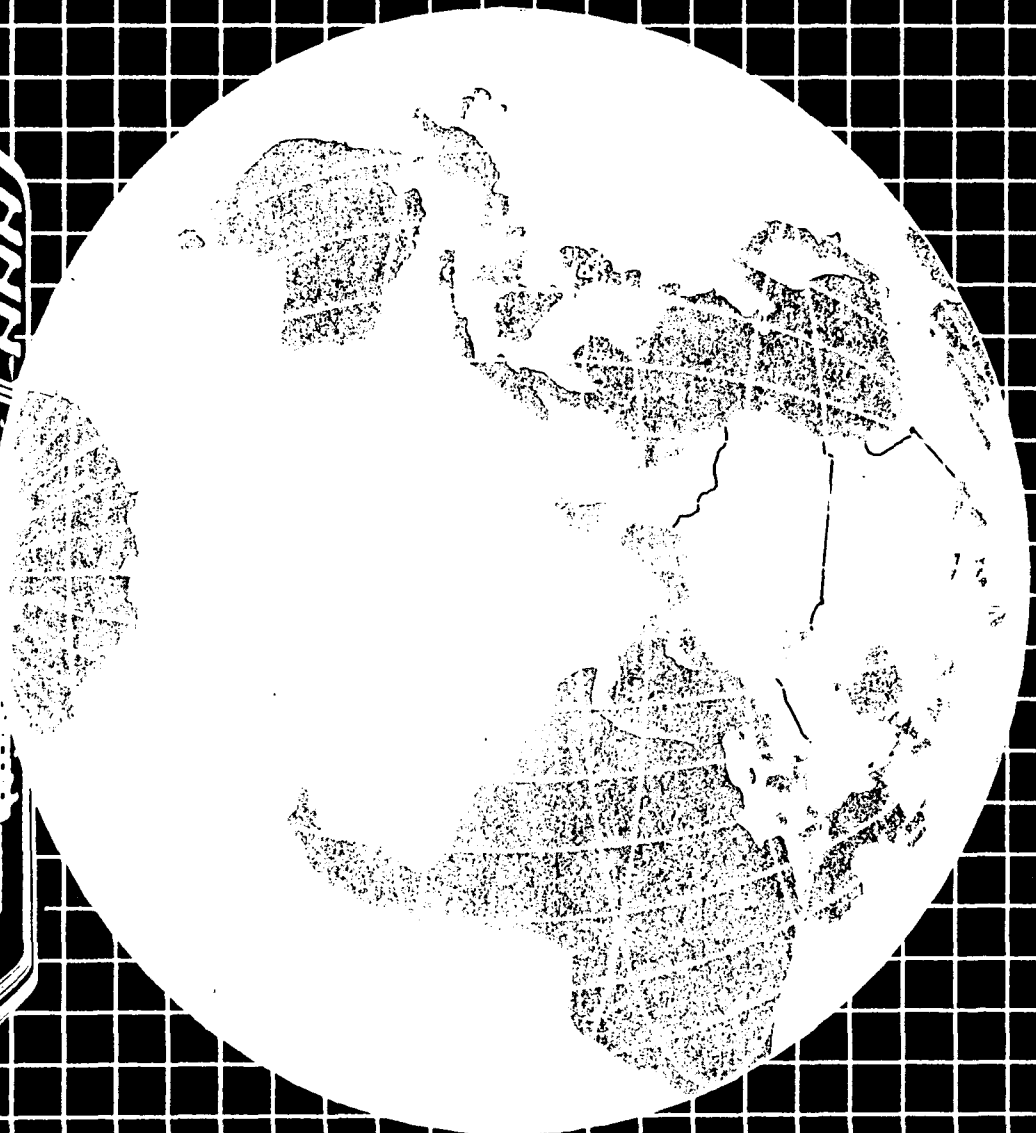
3. U.S. Department of Commerce, U.S. Export Administration Regulations, Part 776.18 (October, 1990).

4. U.S. Department of Commerce, U.S. Export Administration Regulations, Part 785.4(d)(3) (October, 1990).

Attachment I

U.S. EXPORT ADMINISTRATION REGULATIONS

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U.S. DEPARTMENT OF COMMERCE • Bureau of Export Administration

entries 2018A, 1118A, 2406A, and 2603A (see § 776.16), and certain other commodities as specified below.

(2) For the People's Democratic Republic of Yemen, a validated license is required for the export of aircraft valued at \$3 million each or more and helicopters as defined in CCL entries 1460A(a), 1460A(b), 2460A and 5460F, except aircraft and helicopters for use by regularly scheduled airlines based in the People's Democratic Republic of Yemen for which assurances have been submitted to OEL against military use, and of goods or technology subject to national security controls if the export is destined to military end-users or for military end-use and is valued at \$7 million or more. In the case of the use abroad of U.S.-origin parts, components or materials in foreign-origin products, the **dollar** limits set forth above apply to the U.S. content. **Licenses and authorizations for helicopters 10,000 pounds empty weight or less will be approved when the export is in performance of a contract or agreement entered into before April 28, 1986, but subject to applicable national security or other applicable controls. Applications for validated licenses will be considered on a case-by-case basis to determine whether issuance of a license would be consistent with the provisions of section 6 and the applicable policies set forth in section 3 of the Act (exports subject to national security controls must also meet the national security provisions of the Act). When the request for authorization involves use of U.S.-origin parts, components, or materials in foreign-origin products destined for the People's Democratic Republic of Yemen, licensing decisions will take into account whether the U.S. content is 20% or less by value.**

(3)(i) For Iran, a validated license is required for foreign policy purposes for the export of the following items:

(A) All commodities and technical data subject to national security controls if the export is destined to a military end-user or for military end-use;

(B) All aircraft and helicopters and related parts and components, as defined in CCL entries 1460A, 2460A, 4460B, 5460F, 6460F, 1485A, 6498F, 1501A(a), (b)(1), and (c)(1) and 6598F;

(C) All mobile communications equipment and specially designed parts as defined in CCL entries 1502A(b), 1516A, 1517A, 1531A, and 6598F;

(D) All boats, including inflatable boats, and specially designed parts as defined in CCL entries 1416A and 6498F;

(E) All off-highway wheel tractors as defined in CCL entry 6490F;

(F) All large diesel engines and specially designed parts that can be used to power tank transporters, as defined in CCL entries 6394F, 2406A, and 6498F;

(G) All portable electric generators and specially designed parts as defined in CCL entry 6294F;

(H) All marine and submarine engines and equipment and specially designed parts as defined in CCL entries 1372A, 6394F, 5406C, 2409A, 1431A, 4431B, 5431C, 1460A, and 6494F;

(I) All surface effect and hydrofoil vessels and equipment as defined in CCL entry 1416(a), (b), (c), and (h);

(J) All acoustic underwater detection equipment and specially designed parts therefore as defined in CCL entries 2409A, 1510A, 5510C, and **6598F**;

(K) All naval equipment as defined in CCL entry 2409A;

(L) All underwater camera equipment and specially designed parts as defined in CCL entries 1417A, 6498F, and 6598F;

(M) All submersible systems and specially designed parts as defined in CCL entries 1417A, 1418A, 2418A, 6498F, and 1526A(a);

(N) All pressurized aircraft breathing equipment and specially designed parts as defined in CCL entries 2410A and 6994F;

(O) All sonar navigation equipment as defined in CCL entry 5510C;

(P) All electronic test equipment and specially designed parts as defined in CCL entries 1529A, 1531A, 1533A, 1584A, and 6598F;

(Q) All cryptographic equipment and specially designed parts as defined in CCL entries 1527A and 6598F; and

(R) All items defined in CCL entries 2414A, 1520A, 1526A, 1537A, 1555A, and 2913A.

(ii) Applications for export to Iran of commodities and technical data subject to these controls will generally be denied.

(A) However, applications may be considered on a case by case basis if the transaction involves the export or reexport of goods or technical data under a contract that was in effect before:

(1) January 23, 1984, in the case of helicopters over 10,000 lbs. empty-weight, aircraft valued at \$3 million or more each, or national security controlled items identified in paragraphs (d)(3)(i)(A) or (B) of this section and valued at \$7 million or more; or

(2) September 28, 1984, in the case of marine **outboard** engines with a horsepower of 45 or more and all other commodities or technical data identified in paragraphs (d)(3)(i)(A) or (B) of this section, except aircraft parts and components defined in CCL entries 6498F or 6598F.

(B) Applications will not be denied under this § 785.4(d)(3) if the transaction involves the export or reexport of goods or technical data under a contract that was in effect before October 22, 1987, in the case of all other commodities.

(C) Applications may be considered favorably on a case-by-case basis if:

(1) The transaction involves the reexport to Iran of items where Iran was not the intended ultimate destination at the time of the original export from the United States, if:

(i) In the case of helicopters over 10,000 lbs. empty-weight, aircraft valued at \$3 million or more each, or national security controlled items identified in paragraphs (d)(3)(i)(A) or (B) of this section and valued at \$7 million or more, the export from the U.S. occurred prior to January 23, 1984;

(ii) In the case of marine outboard engines with a **horsepower** of 45 or more and all other commodities or technical data identified in paragraphs (d)(3)(i)(A) or (B) of this section, except aircraft parts and components defined in CCL entries 6498F or 6598F, the export from the U.S. occurred prior to September 28, 1984; or

(iii) In the case of all other commodities, the export from the U.S. occurred prior to November 27, 1987;

(2) The U.S. content of foreign-produced commodities is 20% or less by value; or

(3) The commodities will be used for humanitarian purposes.

Applicants who wish such factors to be considered in reviewing their license applications must submit adequate documentation demonstrating the existence of the pre-existing contract, the date of export from the United States, or the value of the U.S. content-

(iii) The reexport provisions of 15 CFR Part 774 and the provisions of § 776.12 do not apply to the

foreign policy controls of § 785.4(d)(3) for commodities defined in CCL entries 6294F, **6394F**, 5406C, **5431C**, 6490F, 6498F, 5510C, 6598F or 6994F. However, the export of these commodities from the United States to any destination with knowledge that they will be reexported, directly or indirectly, in whole or in part, to Iran is prohibited without a validated license-

(e) Iran: scuba gear.

In support of U.S. foreign policy concerns, a validated license is required for the export to Iran of self-contained underwater breathing apparatus and related equipment, including the equipment listed in ECCN 5398F, all of which is herein referred to as scuba gear. Applications for export to Iran of commodities subject to these controls will generally be denied.

(f) Afghanistan

The Soviet military presence in Afghanistan requires special attention to exports because of the likelihood that commodities or technical data entering Afghanistan will be available to the U.S.S.R. Accordingly, the validated licensing requirements for the U.S.S.R. extend to shipments to Afghanistan. The purpose of this action is not to deny commodities or technical data to Afghanistan but to implement more effectively those national security and foreign policy controls already in existence with regard to the U.S.S.R. Accordingly, the statutory bases for controlling such shipments to Afghanistan parallel those for the U.S.S.R.- With regard to applications for shipments subject to national security controls, the general policy is to deny such applications if they would be denied if destined for the U.S.S.R.

(g) Other Countries in Group T and V

(1) General Policy. For other countries in Country Group T and V, the Department of Commerce requires prior approval for the export or reexport of selected commodities and technical data that include

(i) Commodities the United States and other Free World governments have agreed to control vis a vis their export to Communist destinations in Europe and the Far East, and

(ii) Certain other commodities that the United States considers to have high potential for strategic use, including nuclear-related commodities. Technical data relating to a few commodities of particular strategic significance also are subject to the prior approval procedure. (See § 779-4 for technical data controls, which may vary with country of destination and type of data.)

1985, will be subject to the October 11, 1985, revisions to the regulations that implement that Order. Applications involving contracts for equipment and technical data intended to manufacture computers entered into on or after October 2, 1986 will be subject to the restrictions **imposed pursuant to the Comprehensive Anti-Apartheid Act of 1986. Those involving contracts entered into prior to that date will be considered on a case-by-case basis consistent with the purposes** of that Act.

(13) Pursuant to § 721 of the **Comprehensive Anti-Apartheid Act of 1986**, a validated license is required for the export from the United States to the Republic of South Africa of crude oil (ECCN 4781B) and refined petroleum products (ECCNs 4782B, 4783B, and 4784B). License applications for these commodities will be denied. In addition, reexport authorization is required for any export of such commodities from outside the United States to South Africa if the commodities originated in the United States and are being exported by a person or firm subject to the jurisdiction of the United States. For purposes of this paragraph, the term "person subject to the jurisdiction of the United States" means:

(i) Any U.S. citizen or permanent resident alien, except if acting in the course of employment by a **juridical person organized** under the laws of a **foreign** jurisdiction;

(ii) A juridical person **organized under** the laws of the United States; or

(iii) Any person in the United States, defined to include those territories listed in § 770.2.

The reexport provisions of Part 774 and the provisions of § 776.12 are not applicable to the controls covered by this paragraph § 785.4(a)(13), except in the case of reexports to South Africa by a person subject to the jurisdiction of the United States as defined above. However, the export of these commodities from the United States to any destination with knowledge that they will be reexported, directly or indirectly, in whole or in part, to the Republic of South Africa is prohibited. Pursuant to section 604 of the CAA, no person may undertake or cause to be undertaken any transaction or activity with the intent to evade the restrictions described herein.

(14) The South African administration of the port of Walvis Bay requires special attention because of the possibility that commodities or technical data entering Walvis Bay will be available to South Africa. Accordingly, shipments to and for

consumption in Walvis Bay will be considered exports to South Africa. Shipments passing through Walvis Bay to Namibia are not subject to the controls on exports to South Africa. The purpose of this action is not to deny commodities to Namibia nor to imply recognition of South Africa's claim of **sovereignty** over Walvis Bay. Instead, the goal is to implement more effectively the foreign policy controls already in place for South Africa.

(b) [Reserved].

(c) People's Republic of China

(1) The general licensing policy is to consider exports for China under the Country Groups T and V policies set forth in **paragraph (g)** below, except that there are certain commodities, data, and end-uses that may require extended review or denial. Of particular concern are exports that would make a direct and significant contribution to nuclear weapons and their delivery systems, electronic and anti-submarine warfare, intelligence gathering, power **projection**, and air superiority. Licenses may be **approved** even when the end-user or end-use is military. Commodities or data may be **approved** for export even **though** they may **contribute** to Chinese military **development**.

(2) Each **application** will be considered **individually**. The **Advisory Notes** in the CCL (Supplement No. 1 to § 799.1) headed "Note for the People's Republic of China" **provide** guidance on **equipment** likely to be **approved** most **rapidly** for China and that for the most part will not require any interagency review. Items with higher performance levels than those described in the **Advisory Notes** may also be approved on a case-by-case basis.

(3) Applications covering commodities and technical data approved by the United States that are controlled by the COCOM international export control system may have to be forwarded to COCOM for consideration in accordance with established procedures before a license is issued.

(d) People's Democratic Republic of Yemen, Syria, and Iran.

(1) A validated license is required for foreign policy purposes for the export to the People's Democratic Republic of Yemen, Syria, or Iran (countries that have repeatedly provided support for acts of international terrorism.) of crime control and detection equipment (see § 776.14), military vehicles and items specially designed to produce military equipment as defined in CCL