

FIBER MATERIALS, INC.

... for materials Ingenuity

November 29, 2001

FOIA/Privacy Act Officer
U.S. Nuclear Regulatory Commission
Mail Stop T-6 D8
Washington, DC 20555-0001

FOIA/PA REQUEST

Case No: 2002-0059
Date Rec'd: 12-07-2001
Action Off: _____
Related Case: _____



5 Morin Street
Biddeford Industrial Park
Biddeford, Maine 04005-4497
Tel: 207-282-5911
Fax: 207-282-7529

Re: Freedom of Information Act Request

Dear Sir/Ma'am:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552.

I request a copy of the following documents (or documents containing the following information): All documents indicating the definition(s) or interpretation(s) of the term "specially designed" currently being applied by the NRC in the exercise of its export licensing authority under items 0A001, 0B001, 0B002, 0B004, 0B005, 0B006, and 0B009 of the CCL.

In the event that the NRC applies the definition of "specially designed" provided in section 772 of the EAR, please indicate so and also provide all documents indicating the effect of the "(MTCR context)" language located at the end of the definition provided in part 772.

If my request is denied, please indicate to me the name and address of the official to whom an appeal should be made. If you withhold exempted information from any documents, please release any segregable portions.

I request waiver of all fees for this request. Disclosure of the requested information is in the public interest because it is likely to contribute significantly to the public's understanding of the operations or activities of the government, and is not primarily in the commercial interest of the company I represent, Fiber Materials, Inc. (FMI), for the reasons described below:

a. The interpretation of the term "specially designed" applied by U.S. export control authorities is a matter of public interest for three reasons: 1) it is presently being debated in at least one multilateral export control regime in which the United States participates (see enclosure 1); 2) it is used throughout the Commerce Control List and it is being interpreted in a "number of different ways by both the government and industry" resulting in "serious uncertainties as to the scope of controls" (see enclosure 2, p. 21) which may result in exporters unwittingly failing to apply for a license when one is required. (see enclosure 2, p. 24); and 3) confusion over the interpretation of the term is stalling the resolution of the enforcement action against FMI which the Department of Justice declared the public had a strong interest in resolving over a year ago (see enclosure 3). Public interest in the interpretation of the term "specially designed" was expressed in 1996 (see enclosure 4) and was officially recognized by the DOC Inspector General in 2001 (see enclosure 2).

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b. Disclosure of the requested information will contribute to the public's understanding of the interpretation of the term "specially designed." We will provide the record of any official discussion regarding the government's interpretation of the term "specially designed" to the court presiding over the enforcement action against FMI. This will help the court define the term by providing it the actual interpretation used by export licensing officials. This information will also help the court by indicating the meaning attributed by individuals in the export community, which may guide any "plain meaning" interpretation the court might apply. Any action by the court to define the term "specially designed" will be dispositive to our case and therefor will likely be reported in national trade publications and read by the export community. The action is also likely to be reported in popular news media. Last year, the enforcement action against FMI was reported on the front page of one of Boston's largest newspapers. (see enclosure 5). Finally, once the court rules on the definition of the term "specially designed," it is likely that DOC will publicly address the issue, either ratifying the court's definition or taking other action. Both the court's definition of the term and DOC's subsequent action will provide the public with the only answer it will have received since the public requested an official interpretation of the term and was rebuffed by BXA in 1996. (see enclosure 4)

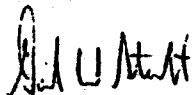
c. Disclosure of the requested information is not primarily in the commercial interest of FMI. Public interest in ensuring that exporters are aware of the definition of key terms within the export control regulatory scheme is predominant for two reasons: 1) U.S. national security and foreign policy dictate U.S. export controls; and 2) The U.S. export control compliance system is largely self-regulated. FMI has no commercial interest in the information sought. However, we have a civic interest in knowing the prohibitions on lawful exports so that we can comply with relevant laws and so that we can defend against past and future allegations of violations.

If waiver is deemed inappropriate then I request NRC's rationale for its determination. However, if waiver is denied, I agree to pay up to \$100 for production of these documents. Please contact me if production is expected to exceed this amount. Please forward records or correspondence to me at the following address instead of the Biddeford, Maine, address on my letterhead:

Materials International
Attn: David Starratt
289 Great Road
Suite 103
Acton, Massachusetts 01720

Thank you for your anticipated support. Please call me if you have any questions. I can be reached at (978)263-1028.

Sincerely,



David W. Starratt
General Counsel

MEMORANDUM

TO: Materials Processing Equipment Technical Advisory Committee
FROM: Charles F. Carter Jr., Chairman
DATE: June 25, 2001
SUBJECT: Minutes of Meeting Held on June 19, 2001

This meeting of the committee lasted from 9:00 a.m. until 12:30 p.m. The meeting was open to the public.

INTRODUCTIONS, AGENDA AND COMMENTS

The Chairman asked each person to make a self-introduction. The Chairman also asked if there were requests or changes to the agenda or comments from the public. There were none.

MINUTES OF THE MARCH 23, 2001 MEETING

It was noted that the next meeting date stated in the minutes was listed as October 19 not June 19, 2001. With that notation, the minutes were approved.

UPDATE ON THE WASSENAAR ARRANGEMENT AND RELATED ISSUES

The biggest issue for machine tools in the WA is the validity note that must be resolved by December 1, 2001. The Swiss have made it clear that they want parameters that do not involve a measurement, and that repeatability is not an acceptable parameter.

In some cases, proposed changes to the control list or proposed changes in licensing procedures depend on reaching agreement on "countries of concern" that would be treated more rigorously than other countries. Unfortunately, there appears to be little hope in getting WA members to agree to the countries of concern.

Other issues brought out by industry members during the WA discussion:

- The United States leads in liberalizing computers on the CCL but is most conservative about machine tools. It would appear that such statistics as industry size and total employment carry more weight than threats to national security.
- The U.S. no longer has unique machine tool capability. The technologies involved are available from many other countries.
- China expects to meet all of its internal machine tool needs in five years. This gives us a short window of opportunity to engage in that market. Our WA partners are taking advantage of this window.
- Considerable work is going into China from both Airbus and Boeing.
- On one hand, the Defense Department says that machine tools are critical items for national security. On the other hand, that department engages in licensing practice contributing to the loss of the industry as a national resource.

SUGGESTED CHANGES IN WORDING IN PARAGRAPH 2B04 IN THE WA LIST

It was noted that this entry dealing with hot isostatic presses could be interpreted to control furnaces since the detail on the items controlled does not make it clear that both temperature and pressure are required. There should be an "and" inserted between sub paragraphs b.1 and b.2.

ACTION: Paul Huber will suggest an appropriate change in wording.

POST SHIPMENT VISIT

The committee continues to work for a defined process of follow-up when a post shipment visit is called for as a condition of license approval. Mr. Carter has provided background to Matt Borman, and will continue to follow the issue.

LICENSE DENIAL AND UNDERCUTTING

The Nuclear Suppliers Group has a firm rule to prevent one nation from undercutting another when a license is denied. The problem is that some nations notify others when an "intent to deny" is issued. There is then a lengthy appeals process, and the license may or may not be denied. In the meantime, all nations are on hold with respect to accepting an order from the customer named in the license request. Unfortunately, the USG waits to notify until the appeals process is complete. By that time, a supplier in a cooperating NSG country may have picked up the order.

Charles Carter will work with the Commerce Department to resolve the inequity.

SPECIALLY DESIGNED

There has been no further progress in having the WA provide a definition for the term "specially designed." There is a mandate for the Expert Working Group to address this issue, and some countries have proposed definitions. However, there is little enthusiasm in the WA for examining every entry in the list using the term.

CATEGORY 2 MATRIX GUIDE

Approval by Matt Borman is the final step in having the matrix approved for the BXA Web site.

MACHINE TOOL PARAMETERS NOT REQUIRING MEASUREMENT

The following parameters were discussed and are listed here for the record. None were considered to be of an important defining nature.

- Resolution of the CNC control
- Spindle Accuracy
- Ball Screw Accuracy
- Hydrostatic ways and spindles

NEXT MEETING

The date for the next meeting will be determined at a later date.

ADJOURNMENT

The meeting adjourned at 12:30 p.m.

ambiguous terms "specialized" and "specially designed" for military applications or for technically defined equipment in the CCL. Also, pointers from the CCL to the USML are unnecessarily confusing, and we found some outdated terminology being used in the CCL. Finally, there are some ways in which the CCL's structure can be modified to make it easier to navigate. We believe that BXA needs to convene a working group to address problems with the CCL, as well as work with State and the applicable congressional committees that are considering new legislation for dual-use exports to resolve the issues relevant to both the CCL and the USML.

Items appearing on both the CCL and the USML

Numerous ECCNs on the CCL also can be interpreted as being on the USML. For example, ECCN 1A984 is listed in the CCL as "chemical agents, including tear gas containing one percent or less of CS or CN²⁸; smoke bombs; non-irritant smoke flares, canisters, grenades, and charges; and other pyrotechnic articles having dual military and commercial use." Similarly, Category XIV(a) of the USML covers "chemical agents, including but not limited to lung irritants, vesicants, lachrymators, tear gases (except tear gas formulations containing one percent or less of CN or CS), sternutators and irritant smoke, and nerve gases, and incapacitating agents." The only clear difference between the CCL and the USML in these two listings is that the CCL would cover tear gas containing one percent or less of CS or CN, whereas the USML would cover any tear gas containing over one percent. However, because of the USML's statement "including but not limited to" any of the items, with the exception of the tear gas, listed under ECCN 1A984 could also arguably fall under Category XIV(a) of the USML. Such confusion is not necessary, and BXA should work with State's Office of Defense Trade Controls (DTC) to remedy this problem which occurs with approximately 45 ECCNs on the CCL.

Confusion over the terms "specialized" and "specially designed"

There has long been a debate about the use of the terms "specialized" and "specially designed" for military applications or for technically defined equipment in certain ECCNs. For example, ECCN 2B018, one of many ECCNs that contain these terms, covers "*specialized* machinery, equipment, gear, and *specially designed* parts and accessories therefor, including but not limited to the following, that are *specially designed* for the examination, manufacture, testing, and checking of arms, appliances, machines, and implements of war . . . [emphasis added]." Because the terms are ambiguous, they are being interpreted in a number of different ways by both the government and industry. These informal interpretations have resulted in serious uncertainties as to the scope of controls.

²⁸CS is orthochlorobenzalmalononitrile and CN is chloroacetophenone.

The terms "specialized" and "specially designed" should not be used as substitutes for complete technical descriptions of what is being controlled. We recognize that the use of these terms stems from their use by the Wassenaar Arrangement and other multilateral regimes, and that BXA is well aware of this problem. In fact, BXA staff are currently participating in an expert group, sponsored by the Wassenaar Arrangement, to address the problem. To avoid further confusion, it is preferable to address this problem multilaterally because the CCL effectively mirrors the Wassenaar Arrangement dual-use list. Therefore, we encourage BXA's efforts to resolve this problem in conjunction with the multilateral regimes.

Confusing pointers

The CCL closely mimics the structure of the European Union and Wassenaar Arrangement dual-use lists, even using the same numbering scheme. However, some items on the European Union and Wassenaar Arrangement lists are subject to State's jurisdiction in this country. Therefore, certain ECCNs (or parts of ECCNs) on the CCL "point" to State as having the licensing jurisdiction for the item(s). Specifically, the entries state that "These items are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. See 22 CFR part 121."

However, the pointers are confusing for two reasons. First, they do not provide exporters with any specific information, such as the USML category in which the item(s) fall. So, exporters are potentially faced with reviewing the entire USML to find the appropriate category for their item. This information could easily be included in the pointers. Second, in some cases, even after scouring the entire USML, exporters cannot find any reference to their item. Two examples of this problem are ECCNs 9B115 and 9B116. The only possible category in which these items might fall on the USML is Category XXI, Miscellaneous Articles, which is characterized as "Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specially designed or modified for military purposes." Exporters can often be left guessing whether this is in fact the correct category for their item. The CCL should not only "point" to the USML, but it should provide an exporter with the specific category within the USML so as to avoid confusion.

Term on the CCL is outdated

The CCL describes some ECCNs as being on the International Munitions List. For example, ECCN 1C018 is titled "Commercial charges and devices containing energetic materials on the International Munitions List." However, the International Munitions List was eliminated when its creator, COCOM, was dissolved in March 1994. The successor list to the International Munitions List is the Wassenaar Arrangement Munitions List, which is what the CCL should be referencing. The CCL should be updated to reflect this change.

List navigation issues

Several structural and reference changes could be made to make the CCL easier to use. For example, several users cited the two-column format of the CCL as being hard to use. We found this to be particularly true when the CCL is viewed in an electronic format, such as over the Internet. Because of the narrow columns, a user has to do much scrolling up and down to read an entry, which is confusing. Also, users suggested that emphasizing words such as "and," "or," and "all" in the ECCN entries would help exporters determine exactly what is intended to be controlled. Changing the CCL to a one-column format and emphasizing certain key words would help exporters more easily navigate the entries.

Many users told us that having a consolidated index of items on the CCL and USML would greatly help in navigating the two lists and understanding which agency has jurisdiction for a particular item. It would serve as a single source for exporters to consult to determine which list they should review to determine whether they need to apply for an export license. In addition, the exercise of creating such an index would likely help ameliorate many of the overlapping jurisdiction and confusing pointer problems discussed above.

Another helpful change would be to cross-reference between the CCL and the applicable Schedule B or Harmonized Tariff Schedule of the United States codes.²⁹ The National Customs Brokers and Forwarders Association of America told us that referencing the CCL against the applicable Schedule B or Harmonized Tariff Schedule codes would be very helpful to its members. The association pointed out that most people responsible for the shipping of items for export (and those who must determine whether an item is a licensable export) do not have the technical knowledge required to make the fine distinctions necessary to determine which ECCN an item might fall under. However, because all shippers, freight forwarders, and customs brokers are very familiar with the Schedule B or Harmonized Tariff Schedule codes, it would be helpful to start with these codes and work back to the CCL. As an example, if an exporter is shipping an item with a Harmonized Tariff Schedule code of 1234.67.8901, there could be reference next to this code telling the exporter to check ECCN 1C350. We recognize that this approach was tried nearly 40 years ago, and that problems arose because items can often be categorized as being in more than one Schedule B or Harmonized Tariff Schedule code. However, given the time that has elapsed and the changes to the CCL in the meantime, it is certainly appropriate to reconsider whether such a cross-referencing system might help make today's CCL more user-friendly.

²⁹The Harmonized Tariff Schedule of the United States provides the applicable tariff rates and statistical categories for all merchandise imported into the United States. It is based on the international Harmonized Tariff System, the global classification system that is used to describe most world trade in goods. The Harmonized Tariff Schedule of the United States is administered by the U.S. International Trade Commission. Schedule B codes, also based on the international Harmonized Tariff System, are used to classify products being exported from the United States. The Census Bureau's Office of Foreign Trade Statistics administers the Schedule B codes.

Conclusions

There are several reasons for the problems associated with using the CCL. First, the current annual reviews of the CCL are insufficient to address the types of problems discussed above. While BXA officials try to ensure that the list is current and does not contain errors, the emphasis during the annual reviews is to ensure that any changes, mostly due to changes made by the multilateral regimes, are accurately reflected in the CCL. As a result, the CCL does not receive a thorough "scrub" every year to address many of the problems identified during our review. The last time the underlying structure of the list was addressed was in 1996, when BXA published the first comprehensive rewrite of the Export Administration Regulations in over 40 years. Second, comparative reviews of the CCL and USML are infrequent at best. In fact, no one at BXA or DTC could remember when the two lists had last been reviewed in tandem. Finally, some of the problems exporters have with using both the CCL and USML are simply due to the different structures of the two lists, as described earlier. Because of this fact, it is difficult for users to navigate between the two lists and determine which agency has licensing jurisdiction.

To encourage greater compliance with the CCL, BXA should endeavor to make the list as user-friendly as possible. To its credit, BXA has taken some steps in recent years to make the CCL easier to use. For example, it was very helpful to multinational exporters when BXA, in 1996 as part of its rewrite of the Export Administration Regulations, adopted virtually the same numbering system for the CCL as is used by the European Union and the Wassenaar Arrangement. Now, multinational exporters can more easily find their item on the CCL, as well as on the European Union or Wassenaar Arrangement lists, to determine what controls may be applicable. However, based on the numerous examples enumerated above, there is still much room for improvement in the user-friendliness of the CCL. Because the CCL can be confusing for exporters, exporters may make errors in determining whether their item is covered by the CCL. As a result, they may not apply for a license when one is required.

To address the concerns we have identified, we recommend that BXA convene a working group of interested constituents (small and large exporters, trade associations, and U.S. government agency representatives), under the auspices of the Regulations and Procedures Technical Advisory Committee, to improve the user-friendliness of the CCL. In addition, BXA should work with State to (1) eliminate the current overlap of items and make sure that it is very clear on which list an item falls, and (2) create a user-friendly consolidated index of the items on the CCL and USML. To ensure that this happens, we recommend that BXA also work with the applicable congressional committees, that are considering new legislation for dual-use exports, to ensure that any new Export Administration Act or similar legislation includes a requirement that the agencies eliminate the overlap and create such an index for both the CCL and the USML.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 93-10193-DPW
)
WALTER L. LACHMAN, ET AL.,)
)
 DEFENDANTS.)

GOVERNMENT'S OPPOSITION TO DEFENDANTS'
JUNE 2001 DISCOVERY REQUEST

The government opposes the defendants' June 2001 Discovery Request for the reasons stated in the government's previous post-verdict submissions, including: Government's Response to Defendants' Supplemental Memorandum and Exhibits and to the Memorandum of the Industry Coalition on Technology Transfer as Amicus Curiae in Support of Defendants' Motion for Judgment of Acquittal or New Trial, dated November 6, 1995; Government's Response to Defendants' Supplemental Evidentiary Submission Concerning the Phrase, Specially Designed, and to Defendants' Sealed Memorandum in Support of Their Motion for Judgment of Acquittal or New Trial, dated April 17, 1996; Government's Response to Defendants' Additional Memorandum and Exhibits in Support of Their Motion for Judgment of Acquittal and New Trial, dated August 22, 1997; Government's Response to Defendants' Supplemental Motion for Discovery in Aid of Their Post-Verdict Motions, dated December 17, 1997; Government's Opposition to Defendants' Third Joint Motion for Discovery in Aid of Their Post-Verdict Motions, dated February 19, 1999; and the

Government's Final Brief, dated June 19, 2000.

The defendants' latest filing adds nothing material to the trial record or the post-verdict submissions, including disclosures made by the government. The documents filed with the defendants' Offer of Proof are not only cumulative but irrelevant to any issue in this case, which involved an export in 1988. The government therefore should not be required to take additional time to collect documents underlying those filed with the Offer of Proof. The defendants' other discovery requests are similarly cumulative and irrelevant. The Wassenauer Arrangement did not even exist in 1988. Since the defendants have argued that the Court should interpret "specially designed" based exclusively on the written COCOM record, see Defendants' Joint Memorandum of September 2000 at 12¹, the record of Wassenauer discussions is irrelevant. As for the tapes of the Wassenauer meetings at which controls for Hot Isostatic Presses were discussed, the government immediately sought those tapes after the Court issued its August 28, 2000 order, but was informed that the tapes no longer exist. A State Department official was informed by Wassenauer officials in Vienna that the tapes from the meeting in question were not available as they are continually being recycled.

In conclusion, the government respectfully submits that the

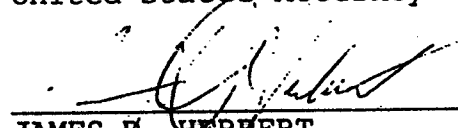
¹As argued in the Government's Response to Defendants' Joint Memorandum of September 2000, the government does not agree that the written COCOM record should be the only source of interpretation, but even that record does not support defendants' arguments.

post-verdict motions in this case should be decided without further delay. The jury returned its verdict more than six years ago. The government as a party to this case and the public in general have a strong interest in seeing this case resolved. The government therefore respectfully requests a ruling without the need for further filings.

Respectfully submitted,

JAMES B. FARMER
United States Attorney

By:


JAMES D. HERBERT
DESPENA F. BILLINGS
Assistant U.S. Attorneys

Dated: July 18, 2001

CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts
July 18, 2001

I, James D. Herbert, Assistant U.S. Attorney, do hereby certify that I have served a copy of the foregoing to the following counsel of record by first class mail:

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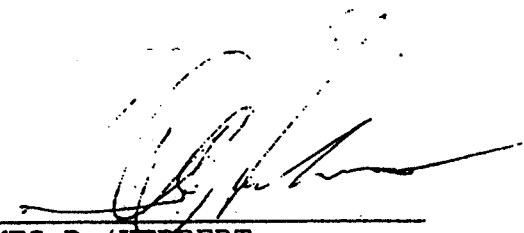
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JAMES D. HERBERT
Assistant U.S. Attorney

app. 2412(c)) makes the Administrative Procedure Act (5 U.S.C. 558) evidence standard ("reliable, probative, and substantial") applicable. BXA does not believe that any different EAR standard is needed.

Three commenters called for detailed provisions on how much evidence is needed to support a summary decision under § 766.8.

BXA did not adopt this suggestion. BXA concludes that the use of the standard "there is no genuine issue as to any material fact" is proper and sufficient.

Another commenter stated that § 766.24(b) should be revised to define the "imminent violation" criterion for issuance of a temporary denial order as requiring a showing of imminence both in nearness of time and in likelihood of occurrence. BXA did not adopt this suggestion. BXA retains its longstanding definition from the existing EAR, consistent with the legislative history of the 1985 amendments to the EAA, that either time or probability imminence will support the issuance or renewal of a temporary denial order.

This interim rule adopts many improvements in drafting clarity and precision that were suggested in the comments, along with numerous others that BXA developed. This interim rule revises § 766.7 to make default procedures available in antiboycott proceedings. There were no public comments suggesting this change, but it makes the procedures for imposing administrative sanctions and other measures in antiboycott cases more consistent with other proceedings under the EAR. Finally, BXA decided to remove from this interim rule one provision that appeared in the proposed rule even though no comments on it were received. This interim rule eliminates a provision from § 766.18 of the proposed rule that would have barred reference in a settlement order to a finding of a violation, as the content of such an order is consensual. This deletion makes this interim rule consistent with the existing EAR.

Part 768—Foreign Availability

Part 768 reflects the provisions described in part 791A of the existing EAR. It implements section 5(h) of the Export Administration Act (EAA) and contains procedures and criteria relating to determinations of foreign availability for national security controlled items. It is substantively unchanged from the existing part 791A. This revised version contains several technical changes, such as use of the term "claimant" instead of "applicant," intended to make part 768 easier to read and understand.

Only three commenters mentioned this part in their submissions, possibly because the Federal Register notice soliciting comments had stated that BXA did not intend to make any significant changes in this part.

One commenter questioned why Cuba is included in the definition of "controlled countries" for foreign availability purposes under § 768.1(d) and not for general purposes by inclusion in Country Group D:1, as described in Supplement No. 1 to part 740. Cuba is a "controlled country" pursuant to determination made by BXA under section 5(b) of the EAA. (See Export Administration Annual Report 1994, at II-8.) Country Group D:1 does not include countries subject to broad based embargoes, such as Cuba and North Korea, even though they are controlled countries. This interim rule adds a clarifying notation stating that since virtually all exports to Cuba and North Korea currently are subject to an embargo, the foreign availability procedures do not apply to these two controlled countries. A similar notation is included in Supplement No. 1 to part 740.

Another commenter suggested that § 768.7(d) be revised to clearly reflect the provision of section 5(f)(3) of the EAA that "the Secretary shall accept the representations of applicants . . . supported by reasonable evidence, unless contradicted by reliable evidence . . .". BXA did not make any revisions because § 768.7 paragraphs (c), (d)(1), (d)(2), and (d)(3) of this interim Rule already implement this provision.

One comment suggested that the provision in § 768.7(f)(1)(i)(C) for submitting foreign availability determinations to COCOM or a successor regime was unnecessary and should be deleted. When COCOM ceased functioning on March 31, 1994, the United States and other member countries agreed to maintain the control lists that were in place at that time until a successor regime was in place. A change has been made in this interim rule to reflect BXA's intention to conduct any necessary consultations with former member countries.

Another commenter questioned why foreign availability procedures do not apply to foreign policy controlled items. Foreign availability is always taken into account whenever foreign policy controls are imposed, expanded, or extended. Because the purposes of foreign policy controls vary, strict procedures for conducting assessments have not been deemed to be warranted. Finally, one commenter suggested that part 768 be revised to reflect the expanded role of the Strategic Industries

and Economic Security Office's Economic Analysis Division in considering unfair impact, effectiveness of controls, and foreign availability, and to discuss how exporters may contribute to this work and analysis. BXA will consider such an addition to the EAR in future revisions.

Part 770—Interpretations

Part 770 contains certain interpretations concerning commodities, software, technology, and *de minimis* exceptions for chemical mixtures. These are designed to clarify the scope of the controls. BXA intends to add interpretations to this part over time to aid you in interpreting the EAR. Since the publication of the proposed rule, BXA has issued certain interpretations on the application of the *de minimis* exclusion for certain mixtures of chemicals. Those interpretations are added to part 770 in this interim rule.

Some commenters suggested that the part numbers of this chapter and others will overlap with the part numbers of different chapters in earlier versions of the EAR and therefore BXA should use both odd and even numbers for the parts of this interim rule. BXA does not believe that using only even numbers for the parts of this interim rule will cause confusion. BXA further believes that it is useful to retain only even numbers in this interim rule so as to leave room for future parts that cannot now be anticipated.

Certain commenters urged BXA to add interpretations of certain issues; and BXA will review those recommendations for inclusion in the future.

Commenters also asked BXA to include an interpretation of the phrase "specially designed." BXA is not responding to this recommendation due to pending criminal enforcement action and for other reasons.

This part contains certain interpretations regarding the *de minimis* content of certain chemical mixtures. These reflect amendments to the EAR adopted after the publication of the proposed rule.

Part 772—Definitions

This part defines terms as used in the EAR.

In response to comments, this interim rule combines the definitions part from the proposed rule with the multilaterally-agreed definitions found on the Commerce Control List that are found in Supplement No. 3 to § 799A.1 of the existing EAR. These definitions may be distinguished from other definitions by the fact that they appear in quotation marks.