



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

JAN 30 1996

Mr. Fred Angelone
Mitsubishi International Corporation
One Oxford Center, Suite 4400
301 Grant Street
Pittsburgh, PA 15219-6401

Dear Mr. Angelone:

The following information is provided in response to the questions that you sent December 3 and December 4, 1996 to Ms. Betty Wright concerning U.S. export controls on exports of U.S.-origin zirconium material. I have discussed my responses with nuclear export officials at the Departments of State, Commerce, and Energy and the Arms Control and Disarmament Agency and they have no objection.

QUESTION 1. We would like to confirm whether U.S.-origin "Zirconium Alloy No. 4 Tube Reduced Extrusions" (ZRY-4 TREX) (see enclosure) is stipulated as "Zirconium tubes, i.e., zirconium metal and alloys in the form of tubes or assemblies of tubes especially designed or prepared for use in a nuclear reactor" in (6) of appendix A to part 110-illustrative list of nuclear reactor equipment under NRC export licensing authority and to be exported to Japan in accordance with NRC General License 10 CFR 110.26.

Response: Exports of "ZRY-4 TREX" from the U.S. are controlled by the Nuclear Regulatory Commission under the Atomic Energy Act, as amended, and the implementing regulations set out in 10 CFR Part 110. Item (6) of Appendix A to Part 110 stipulates "Zirconium tubes, i.e., zirconium metal and alloys in the form of tubes or assemblies of tubes especially designed or prepared for use in a nuclear reactor" as equipment under NRC authority. This includes "ZRY-4 TREX." "ZRY-4 TREX" can be exported to Japan under the NRC general license in § 110.26.

QUESTION 2. On the other hand, Trigger List of London Guideline (INFCIRC/254/Rev.1/Mod.3; Nov. 1994) includes "zirconium tubes" in 1.6 of ANNEX B and London Guideline requires "formal governmental assurance prior to export" in article 2 of part 1. We would like to know whether "zirconium tubes" made in U.S. are categorized as London Guideline part 1. If it is categorized, we would like you to advise us of procedure of governmental assurance for export of ZRY-4 TREX to Japan.

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Response: Exports of "zirconium tubes" from the U.S. are considered by the U.S. government as trigger list items on Part 1 of the Nuclear Suppliers Group (NSG) guidelines. The U.S. government, as a matter of policy, has interpreted Part 1 of the guidelines broadly to include "zirconium tube" material that requires further fabrication to final size as items under NRC regulatory jurisdiction. "Zirconium tubes" can be exported to Japan under NRC's general license in § 110.26. All of the countries which have been issued a general license under § 110.26, including Japan, have previously provided written generic assurances to the U.S. government that satisfy the statutory criteria of the Atomic Energy Act, as amended, and the requirements of the NSG guidelines, Part 1. The U.S. government considers these written generic assurances, as explained below, as the "formal governmental assurance prior to export" as required by 1.6 of ANNEX B of the NSG guidelines (INFCIRC/254/Rev.1/Mod.3) for export of ZRY-4 TREX to Japan. They need not reference an agreement for cooperation.

For the U.S. to consider approval of "ZRY-4 TREX" or "zirconium tube" exports to Japan, the following three criteria, as specified in 10 CFR 110.42(b), must be met to satisfy the statutory requirements of the Atomic Energy Act, as amended: 1) International Atomic Energy Agency (IAEA) safeguards will be applied with respect to such items; 2) no such items will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and 3) no such items will be retransferred without the prior approval of the U.S. The U.S. considers that Japan meets the first two criteria as a non-nuclear weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons in good standing with full-scope IAEA safeguards in force. The third criterion is met because the Japanese government has provided prior written generic assurances to the U.S. confirming that any nuclear reactor component proposed for export to Japan will not be retransferred to any other nation or group of nations without prior U.S. approval.

QUESTION 3. We would like to know whether ZRY-4 FINAL TUBES which are fabricated by Japanese manufacturer and consists of materials which are made in U.S.A. are categorized as (6) in appendix A to part 110--illustrative list of nuclear reactor equipment under NRC export licensing authority. Or may we understand that ZRY-4 FINAL TUBES can be exported from Japan without U.S. regulation because they are recognized as Japanese origin?

Response: The U.S. considers U.S.-origin ZRY-4 FINAL TUBES as items in Appendix A (6) to Part 110 and in Part 1 of the NSG guidelines. If such tubes are exported from Japan, they are subject to NRC retransfer regulations. Please see discussion below.

QUESTION 4. Even in case that ZRY-4 FINAL TUBES are exported to United Kingdom and/or France from Japan by Japanese fabricator as items recognized as U.S. origin, we understand that ZRY-4 FINAL TUBES are able to be exported from Japan to the United Kingdom and/or France under NRC General License 10 CFR 110.6 which stipulates "Retransfer of any nuclear equipment ... requires authorization by the Department of Energy, unless,

the export to the destination is authorized under a special license or a general license (underline added) or an exemption from licensing requirements." However, we found that 10 CFR 110.42(b) stipulates "No such equipment or materials will be retransferred...without the prior consent of the United States." So, we would like you to clarify whether export of ZRY-4 FINAL TUBES from Japan are authorized without any regulation and wish you to advise us of procedures for the authorization.

Response: As stipulated in § 110.6, DOE authorization is not required for a retransfer of nuclear equipment listed in §§ 110.8 and 110.9 (such as ZRY-4 FINAL TUBES) if the new destination is authorized to receive the nuclear equipment directly from the U.S. under an NRC general license. The United Kingdom and France are eligible recipients of direct exports from the U.S. of Section 109b nuclear components under NRC general license in § 110.26. As noted in the discussion in QUESTION 2 above, all of the countries that have been issued a general license under § 110.26 have previously provided the U.S. government written generic assurances that satisfy the statutory criteria of the Atomic Energy Act, as amended, and the requirements of the NSG guidelines, Part 1. "Prior consent" for retransfers under § 110.42(b) has been given with respect to each of these countries in light of the provision of such generic assurances. Therefore, U.S.-origin ZRY-4 FINAL TUBES can be retransferred from Japan to the United Kingdom or France without additional U.S. regulation.

QUESTION 1: We understand that it is possible to retransfer U.S.-origin zirconium metal. (you advised about trex only). However, as we suggested in Question 4, § 110.42(b)(3) states that zirconium tube which is stipulated by Appendix A (6) to Part 110 requires prior consent of U.S. in case of transfer and retransfer as stipulated in § 110.6, request for authority to retransfer is processed by DOE. We wish you to check linkage of §§ 110.6 and 110.42 with DOE and NRC.

Response: Exports of zirconium metal from the U.S. are regulated by the U.S. Department of Commerce, not NRC. U.S. export authorities do not consider zirconium metal as a trigger list item. Any reexport from Japan of ZRY-4 TREX or ZRY-4 FINAL TUBES consisting of U.S.-origin zirconium metal would be regulated by Japanese export authorities without additional U.S. regulation. In this regard, the U.S. government would presume that all NSG member governments are committed to act responsibly within the context of the NSG guidelines. The U.S. government considers that both ZRY-4 TREX and ZRY-4 FINAL TUBES are trigger list items on Part 1 of the NSG guidelines.

QUESTION 2: Ms. Wright advised that she will need to know exact quantity of US zirconium metal to be retransferred to what country. Please advise us by which article of 10 CFR 110 it is regulated. May we understand that we need to add such retransfer information in yearly report to NRC instead current yearly report of only export items from U.S. to Japan? Does it also mean that final

tubes stipulated in our December 3 fax are not recognized as Japanese origin so that you need to obtain prior consent of U.S. competent authority?

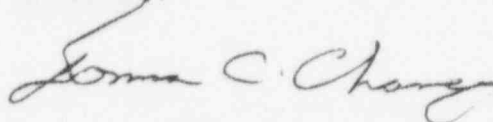
Response: U.S. exports of zirconium metal are controlled by the U.S. Department of Commerce; therefore, NRC does not require any reports, including information on the quantity of material to be retransferred. Commerce also does not require such reports. Reexports from Japan of "final tubes" consisting of U.S.-origin zirconium metal would be made under the export regulations of Japan. Prior U.S. government consent is not required. Please see discussion in QUESTION 1 above.

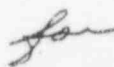
QUESTION 3: Please check and advise us of applicable part of DOC general license which regulate export/retransfer of ZRY-4 bar and please kindly send the part to us as soon as possible. Many thanks.

Response: According to Mr. Joseph Chuchla, U.S. Department of Commerce, Bureau of Export Administration, assuming the ratio of hafnium to zirconium in ZRY-4 is less than 1 part hafnium to 500 parts of zirconium by weight, the Export Control Commodity Number (ECCN) is 1C234. Exports to Japan may be made under the provisions of "No License Required" (NLR) provided that none of the general prohibitions 4 through 10 contained in part 732.3(d) are applicable. The pertinent parts of the Commodity Control list Supp. 1 part 774, Country Chart Supp. 1 part 738 and general prohibitions part 736.2 are enclosed. Retransfer of ZRY-4 within Japan does not require U.S. government authorization. Reexport from Japan can be made in accordance with the provisions of part 740.11 (enclosed) using license exception Additional Permissive Reexport (APR).

I hope that this information is helpful. If I can be of further assistance, please call me at (301) 415-2344. If you have specific questions regarding Mr. Chuchla's response, I suggest that you contact Mr. Chuchla directly at (202) 482-4188.

Sincerely,



 Ronald D. Hauber, Director
Nonproliferation, Exports and
Multilateral Relations
Office of International Programs

- Enclosures: 1. Description of Materials
(from your facsimile dtd 12/3)
2. U.S. Department of Commerce
Export Regulations

[Information from Mitsubishi's facsimile of December 3, 1996 to Ms. Wright]

DESCRIPTION OF MATERIALS:

(1) ZRY-4 TREX to be imported to Japan from US.

1. Chemical composition:

<u>Alloying Elements</u>	<u>Composition Range (%)</u>
Tin	1.20 - 1.45
Iron	0.18 - 0.24
Chromium	0.07 - 0.17
Iron + Chromium	0.28 - 0.37
Oxygen	0.1000 - 0.1500
Carbon	0.0100 - 0.0160
Silicon	0.0080 - 0.0120
Zirconium	balance

2. Dimensions - Two types:

- A. Outer diameter, 31.75 mm; Wall thickness, 5.08 mm;
Length range of multiples 2.480 mm \approx 3.800 mm
- B. Outer diameter, 31.75mm; Wall thickness, 5.08 mm;
Length range of multiples 2.370 mm \approx 3.930 mm

(2) ZRY-4 FINAL TUBES with plug on one side

1. Chemical composition: Same as above.

2. Dimensions - Two types:

- A. Outer diameter, 9.525 mm; Inner diameter, 9.5 mm;
Length, 4.000 mm
- B. Outer diameter, 12.24 mm, 10.9 mm and 11.43 mm; Wall thickness, 0.348 mm; Length, 3.894 mm; 4 holes of 2.32 mm diameter bored every 90 degrees from center of inside of tube. Outer diameter of tube has three different dimensions.

a. Lithium enriched in the 6 isotope (^6Li) to greater than 7.5 atom percent, alloys, compounds or mixtures containing lithium enriched in the 6 isotope, and products or devices containing any of the foregoing; except thermoluminescent dosimeters.

Note: The natural occurrence of the 6 isotope in lithium is 7.5 atom percent.

b. Reserved.

1C234 Zirconium, with a hafnium content of less than 1 part hafnium to 500 parts zirconium by weight.

License Requirements:

Reason for Control: NP, AT

<i>Control(s)</i>	<i>Country Chart</i>
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

License Exceptions:

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled:

Unit: Kilograms

Related Controls: N/A

Related Definitions: Zirconium metal and alloys in the form of tubes or assemblies of tubes, specially designed or prepared for use in a reactor are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)

Note: This entry does not control zirconium in the form of foil or strip having a thickness not exceeding 0.10 mm (0.004 in.).

Items:

- a. Zirconium metal;
- b. Alloys containing more than 50% zirconium by weight;
- c. Compounds;
- d. Manufactures of zirconium metal, alloys, or compounds described in 1C234.a, .b, or .c; or
- e. Waste and scrap from zirconium metal, alloys, compounds, or manufactures thereof controlled by 1C234.a, .b, .c, or .d;

ADVISORY NOTE: (Not eligible for License Exception GBS) Licenses are likely to be approved for export and reexport to satisfactory end-users in Country Group D:1 of the following:

a. Finished parts made of zirconium metal or alloys, specially designed for an identified civil research or power reactor facility, provided that:

a.1. None of the parts contains fissile materials; and

a.2. The importing country has agreed to the application of the Safeguards of the International Atomic Energy Agency (IAEA) in connection with the nuclear reactor facility;

b. Contained zirconium metal, or parts made therefrom, in individual shipments not exceeding 100 kg, when intended for use in, or in support of, an identified civil research or power reactor facility, in connection with which it is contemplated that IAEA Safeguards would be applied.

N.B.: The provisions of this ADVISORY NOTE notwithstanding, current law prohibits

approval to nuclear production or utilization facilities in the People's Republic of China.

1C236 Alpha-emitting radionuclides having an alpha half-life of 10 days or greater, but less than 200 years, including compounds and mixtures containing these radionuclides with a total alpha activity of 1 curie per kilogram (37 GBq) or greater; except devices containing less than 3.7 GBq (100 millicuries) of alpha activity per device.

License Requirements:

Reason for Control: NP, AT

<i>Control(s)</i>	<i>Country Chart</i>
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

License Exceptions:

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled:

Unit: Millicuries

Related Controls: Alpha emitting radionuclides are subject to the export licensing authority of the Nuclear Regulatory Commission. (See 10 CFR part 110.)

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

1C237 Radium-226, radium-226 compounds, or mixtures containing radium-226, and products or devices containing any of the foregoing; except medical applicators, or a product or device containing not more than 0.37 GBq (10 millicuries) of radium-226 in any form.

License Requirements:

Reason for Control: NP, AT

<i>Control(s)</i>	<i>Country Chart</i>
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

License Exceptions:

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled:

Unit: \$ value

Related Controls: N/A

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

1C238 Chlorine trifluoride (ClF₃).

License Requirements:

Reason for Control: NP, AT

<i>Control(s)</i>	<i>Country Chart</i>
NP applies to entire entry	NP Column 1
AT applies to entire entry	AT Column 1

§732.1

STEPS OVERVIEW

(a)(1) Introduction

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part is intended to help you determine your obligations under the EAR by listing logical steps in §732.2 through §732.5 of this part that you can take in reviewing these regulations. By cross-references to the relevant provisions of the EAR, this part describes the suggested steps for you to determine applicability of the following:

(i) The scope of the EAR (part 734 of the EAR);

(ii) Each of the general prohibitions (part 736 of the EAR);

(iii) The License Exceptions (part 740 of the EAR); and

(iv) Other requirements such as clearing your export with the U.S. Customs Service, keeping records, and completing and documenting license applications.

(2) These steps describe the organization of the EAR, the relationship among the provisions of the EAR, and the appropriate order for you to consider the various provisions of the EAR.

(b) Facts about your transaction

The following five types of facts determine your obligations under the EAR and will be of help to you in reviewing these steps.

(1) **What is it?** What an item is, for export control purposes, depends on its *classification*, which is its place on the Commerce Control List (see part 774 of the EAR).

(2) **Where is it going?** The *country of ultimate destination* for an export or reexport also determines licensing requirements (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List).

(3) **Who will receive it?** The *ultimate end-user* of your item cannot be a bad end-user. See General Prohibition Four (Denial Orders) in §736.2(b)(4) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with.

(4) **What will they do with it?** The *ultimate end-use* of your item cannot be a bad end-use. See General Prohibition Five (End-Use End-User) in §736.2(b)(5) and part 744 of the EAR for general end-use and end-user restrictions.

(5) **What else do they do?** *Conduct* such as contracting, financing, and freight forwarding in support of a proliferation project (as described in §744.6 of the EAR) may prevent you from dealing with someone.

(c) Are your items and activities subject to the EAR?

You should first determine whether your commodity, software, or technology is subject to the EAR (see part 734 of the EAR concerning scope), and Steps 1 through 6 help you do that. For exports from the United States, only Steps 1 and 2 are relevant. If you already know that your item or activity is subject to the EAR, you should go on to consider the ten general prohibitions in part 736 of the EAR. If your item or activity is not subject to the EAR, you have no obligations under the EAR and may skip the remaining steps:

(d) Does your item or activity require a license under one or more of the ten general prohibitions?

→ (1) **Brief summary of the ten general prohibitions.** The general prohibitions are found

in part 736 of the EAR and referred to in these steps. They consist, very briefly, of the following:

(i) **General Prohibition One (Exports and Reexports):** Export and reexport of controlled items to listed countries.

(ii) **General Prohibition Two (Parts and Components Reexports):** Reexport and export from abroad of foreign-made items incorporating more than a *de minimis* amount of controlled U.S. content.

(iii) **General Prohibition Three (Foreign-produced Direct Product Reexports):** Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software.

(iv) **General Prohibition Four (Denial Orders):** Engaging in actions prohibited by a denial order.

(v) **General Prohibition Five (End-Use End-User):** Export or reexport to prohibited end-user or end-users.

(vi) **General Prohibition Six (Embargo):** Export or reexport to embargoed destinations.

(vii) **General Prohibition Seven (U.S. Person Proliferation Activity):** Support of proliferation activities.

(viii) **General Prohibition Eight (In-Transit):** In-transit shipments and items to be unladen from vessels and aircraft.

(ix) **General Prohibition Nine (Orders, Terms and Conditions):** Violation of any orders, terms, or conditions.

(x) **General Prohibition Ten (Knowledge Violation to Occur):** Proceeding with transactions with knowledge that a violation has occurred or is about to occur.

(2) **Controls on items on the Commerce Control List (CCL).** If your item or activity is subject to the EAR, you should determine whether any one or more of the ten general prohibitions require a license for your export, reexport, or activity. Steps 7 through 11 refer to classification of your item on the Commerce Control List (CCL) (part 774 of the EAR) and how to use the Country Chart (Supplement No. 1 to part 738 of the EAR) to determine whether a license is required based upon the classification of your item. These steps refer to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) for all countries except: Cuba, Iran, Iraq, Libya, and North Korea. For these countries, you may skip Steps 7 through 11 and go directly to Step 12.

(3) **Controls on activities.** Steps 12 through 18 refer to General Prohibitions Four through Ten. Those general prohibitions apply to all items subject to the EAR, not merely those items listed on the CCL in part 774 of the EAR. For example, they refer to the general prohibitions for persons denied export privileges, prohibited end-uses and end-users, embargoed countries (e.g., Cuba, Iran, Iraq, Libya, and North Korea), prohibited activities of U.S. persons in support of proliferation of weapons of mass destruction, prohibited unloading of shipments, compliance with orders, terms and conditions, and activities when a violation has occurred or is about to occur.

(4) **General prohibitions.** If none of the ten general prohibitions applies, you should skip the steps concerning License Exceptions and for exports from the United States, review Steps 27 through 29 concerning Shipper's Export Declarations to be filed with the U.S. Customs Service, Destination Control Statements for export control documents, and recordkeeping requirements.

Reason for Control

[illegible]

§736.1

Introduction

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in this part and the License Exceptions specified in part 740 of the EAR must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of the EAR regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of the EAR regarding export clearance requirements. Also note that for short supply controls all prohibitions and License Exceptions are in part 754 of the EAR.

(a) In this part we tell you:

(1) The facts that make your proposed export, reexport, or conduct subject to these general prohibitions, and

(2) The ten general prohibitions.

(b) Your obligations under the ten general prohibitions and under the EAR depend in large part upon the five types of information described in §736.2(a) of this part and upon the general prohibitions described in §736.2(b) of this part. The ten general prohibitions contain cross-references to other parts of the EAR that further define the breadth of the general prohibitions. For that reason, this part is not freestanding. In part 732, we provide certain steps you may follow in proper order to help you understand the general prohibitions and their relationship to other parts of the EAR.

(c) If you violate any of these ten general prohibitions, or engage in other conduct contrary to the Export Administration Act, the EAR, or any order, license, License Exception, or authorization issued thereunder, as described in part 764 of the EAR regarding enforcement, you will be subject to the sanctions described in that part.

§736.2

General prohibitions and determination of applicability***(a) Information or facts that determine the applicability of the general prohibitions***

The following five types of facts determine your obligations under the ten general prohibitions and the EAR generally:

(1) **Classification of the item.** The classification of the item on the Commerce Control List (see part 774 of the EAR);

(2) **Destination.** The country of ultimate destination for an export or reexport (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List);

(3) **End-user.** The ultimate end-user (see General Prohibition Four (paragraph (b)(4) of this section) and parts 744 and 764 of the EAR for a reference to the list of persons you may not deal with);

(4) **End-use.** The ultimate end-use (see General Prohibition Five (paragraph (b)(5) of this section) and part 744 of the EAR for general end-use restrictions); and

(5) **Conduct.** Conduct such as contracting, financing, and freight forwarding in support of a proliferation project as described in part 744 of the EAR.

(b) General prohibitions

The following ten general prohibitions describe certain exports, reexports, and other conduct, subject to the scope of the EAR, in which you may not engage unless you either have a license from the Bureau of Export Administration (BXA) or qualify under part 740 of the EAR for a License Exception from each applicable general prohibition paragraph. The License Exceptions at part 740 of the EAR apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of the EAR concerning embargo destinations and in §744.2(c) of the EAR regarding nuclear end-uses.

(1) General Prohibition One -- Export and reexport of controlled items to listed countries (Exports and Reexports). You may not, without a license or License Exception, export any item subject to the EAR to another country or reexport any item of U.S.-origin if each of the following is true:

(i) The item is controlled for a reason indicated in the applicable Export Control Classification Number (ECCN), and

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of the EAR. (The scope of this prohibition is determined by the correct classification of your item and the ultimate destination as that combination is reflected on the Country Chart).¹ Note that each License Exception described at part 740 of the EAR supersedes General Prohibition One if all

terms and conditions of a given License Exception are met by the exporter or reexporter.

(2) General Prohibition Two -- Reexport and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled U.S. content (Parts and Components Reexports).

(i) You may not, without a license or License Exception, export, reexport or export from abroad any foreign-made commodity, software, or technology incorporating U.S.-origin commodities, software, or technology respectively that is controlled to the country of ultimate destination if the foreign-made item meets all three of the following conditions:

(A) It incorporates more than the *de minimis* amount of controlled U.S. content, as defined in §734.4 of the EAR concerning the scope of the EAR;

(B) It is controlled for a reason indicated in the applicable ECCN; and

(C) Its export to the country of destination requires a license for that control reason as indicated on the Country Chart. (The scope of this prohibition is determined by the correct classification of your foreign-made item and the ultimate destination, as that combination is reflected on the Country Chart.)

(ii) Each License Exception described at part 740 of the EAR supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

¹ See part 738 of the EAR for selected controls that are not specified on the Country Chart.

(3) General Prohibition Three — Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software (Foreign-Produced Direct Product Reexports).

(i) *Country scope of prohibition.* You may not export, reexport, or export from abroad items subject to the scope of this General Prohibition Three to Cuba, North Korea, Libya, or a destination in Country Group D:1 (See Supplement No. 1 to part 740 of the EAR).

(ii) *Product scope of foreign-made items subject to prohibition.* This General Prohibition 3 applies if an item meets either the Conditions defining the direct product of technology or the Conditions defining the direct product of a plant in paragraph (b)(3)(ii)(A) of this section:

(A) *Conditions defining direct product of technology.* Foreign-made items are subject to this General Prohibition 3 if they meet both of the following conditions:

(1) They are the direct product of technology or software that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR at §740.3(d) of the EAR, and

(2) They are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(B) *Conditions defining direct product of a plant.* Foreign-made items are also subject to this General Prohibition 3 if they are the direct product of a complete plant or any major component of a plant if both of the following conditions are met:

(1) Such plant or component is the direct product of technology that requires a written assurance as a supporting document for a license

or as a precondition for the use of License Exception TSR at §740.3(d) of the EAR, and

(2) Such foreign-made direct products of the plant or component are subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

(iii) *License Exceptions.* Each License Exception described at part 740 of the EAR supersedes this General Prohibition Three if all terms and conditions of a given exception are met by the exporter or reexporter.

(4) General Prohibition Four (Denial Orders) — Engaging in actions prohibited by a denial order.

(i) You may not take any action that is prohibited by a denial order issued under part 766 of the EAR, Administrative Enforcement Proceedings. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country either in the United States or abroad by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. The names of persons denied export privileges are published in the Federal Register and are also included on the Denied Persons List, which is referenced in Supplement No. 2 to part 764 of the EAR, Enforcement. The terms of the standard denial order are set forth in Supplement No. 1 to part 764. You should note that some denial orders differ from the standard denial order. BXA may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See §764.3(a)(3) of the EAR.

(ii) There are no License Exceptions described in part 740 of the EAR that authorize conduct prohibited by this General Prohibition Four.

(5) General Prohibition Five -- Export or reexport to prohibited end-uses or end-users (End-Use End-User). You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user of end-use that is prohibited by part 744 of the EAR.

(6) General Prohibition Six -- Export or reexport to embargoed destinations (Embargo).

(i) You may not, without a license or License Exception authorized under part 746, export or reexport any item subject to the EAR to a country that is embargoed by the United States or otherwise made subject to controls as both are described at part 746 of the EAR.

(ii) License Exceptions to this General Prohibition Six are described at part 746 of the EAR on Embargoes and Other Special Controls; and unless a License Exception is authorized in part 746 of the EAR, the License Exceptions at part 740 of the EAR are not available to overcome this general prohibition.

(7) General Prohibition Seven -- Support of Proliferation Activities (U.S. Person Proliferation Activity). If you are a U.S. Person as that term is defined at §744.6(c) of the EAR, you may not engage in any activities prohibited by §744.6(a) or (b) of the EAR which prohibits the performance, without a license from BXA, of certain financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation activities described further at part 744 of the EAR. There are no License Exceptions to this General Prohibition Seven in part 740 of the EAR unless specifically authorized in that part.

(8) General Prohibition Eight -- In transit shipments and items to be unloaded from vessels or aircraft (Intransit).

(i) *Unlading and shipping in transit.* You may not export an item through or transit through a country listed in (b)(8)(ii) of this section unless a License Exception or license authorizes such an export directly to such a country of transit.

(ii) *Country scope.* This General Prohibition Eight applies to Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

(9) General Prohibition Nine -- Violation of any order, terms, and conditions (Orders, Terms, and Conditions). You may not violate terms or conditions of a license or of a License Exception issued under or made a part of the EAR, and you may not violate any order issued under or made a part of the EAR. There are no License Exceptions to this General Prohibition Nine in part 740 of the EAR. Supplements Nos. 1 and 2 to this part provide for certain General Orders and Administrative Orders.

(10) General Prohibition Ten -- Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur). You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transfer, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

in their aircraft operations.

(3) Applicable commodities. This paragraph (c) applies to the following commodities, subject to the provisions in paragraph (c)(1) and (c)(2) of this section:

Note to paragraph (c)(3) of this section: Fuel and related commodities for shipment to vessels or planes of U.S. or Canadian registry as described in this License Exception must be shipped under the short supply License Exception SPR (see §754.2(h) of the EAR);

(i) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements;

(ii) Medical and surgical supplies;

(iii) Food stores;

(iv) Slop chest articles;

(v) Saloon stores or supplies; and

(vi) Equipment and spare parts.

§740.11

ADDITIONAL PERMISSIVE REEXPORTS (APR)

This License Exception allows the following reexports:

(a) Reexports from Country Group A:1 and cooperating countries

Reexports may be made from Country Group A:1 or from cooperating countries, provided that:

(1) The reexport is made in accordance with the conditions of an export authorization from the government of the reexporting country;

(2) The commodities being reexported are not controlled for nuclear nonproliferation, missile technology or crime control reasons; and

(3) The reexport is destined to *either*:

(i) A country in Country Group B *that is not also included in Country Group D:2, D:3, or D:4*; Cambodia; or Laos; and the commodity being reexported is both controlled for national security reasons and not controlled for export to Country Group A:1; or

(ii) A country in Country Group D:1 *only* (National Security) (see Supplement No. 1 to part 740), other than Cambodia or Laos, and the commodity being reexported is controlled for national security reasons.

(b) Reexports to and among Country Group A:1 and cooperating countries

Reexports may be made to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR. All commodities except the following are eligible for reexport to and among Country Group A:1 and cooperating countries:

(1) Computers with a CTP greater than 10,000 MTOPS to Hong Kong and South Korea;

(2) Commodities controlled for nuclear nonproliferation reasons.

(c) Reexports to a destination to which direct shipment from the United States is authorized under an unused outstanding license may be made

under the terms of that license. Such reexports shall be recorded in the same manner as exports are recorded, regardless of whether the license is partially or wholly used for reexport purposes. (See part 762 of the EAR for recordkeeping requirements.)

(d) Reexports of any item from Canada that, at the time of reexport, may be exported directly from the United States to the new country of destination under any License Exception.

(e) Reexports (return) to the United States of any item. If the reexporting party requests written authorization because the government of the country from which the reexport will take place requires formal U.S. Government approval, such authorization will generally be given.

(f) Reexports from a foreign destination to Canada of any item if the item could be exported to Canada without a license.

(g) Reexports between Switzerland and Liechtenstein.

(h) Shipments of foreign-made products that incorporate U.S.-origin components may be accompanied by U.S.-origin controlled spare parts, provided that they do not exceed 10 percent of the value of the foreign-made product, subject to the restrictions in §734.4 of the EAR.

(i) Reexport to Sudan of items controlled by ECCNs 2A994, 3A993, 5A992, 5A995, 6A990, 6A994, 7A994, 8A992, 8A994, 9A990, 9A992, and 9A994. In addition, items in these ECCNs are not counted as controlled U.S. content for purposes of determining license requirements for U.S. parts, components, and materials incorporated into foreign-made products.

Country Group A

	[A:1]	[A:2] Missile Technology Control Regime	[A:3] Australia Group	[A:4] Nuclear Suppliers Group
Country				
Argentina		X	X	X
Australia	X	X	X	X
Austria ¹		X	X	X
Belgium	X	X	X	X
Brazil		X		
Bulgaria				X
Canada	X	X	X	X
Czech Republic			X	X
Denmark	X	X	X	X
Finland ¹		X	X	X
France	X	X	X	X
Germany	X	X	X	X
Greece	X	X	X	X
Hong Kong ¹				
Hungary		X	X	X
Iceland		X	X	
Ireland ¹		X	X	X
Italy	X	X	X	X
Japan	X	X	X	X
Korea, South ¹				X
Luxembourg	X	X	X	X
Netherlands	X	X	X	X
New Zealand ¹		X	X	X
Norway	X	X	X	X
Poland			X	X
Portugal	X	X	X	X
Romania			X	X
Russia		X		X
Slovakia			X	X
South Africa		X		X
Spain	X	X	X	X
Sweden ¹		X	X	X
Switzerland ¹		X	X	X
Turkey	X			
United Kingdom	X	X	X	X
United States	X	X	X	X

¹ Cooperating Countries

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