CHAPTER 9 – U.S. Export Policy Toward the PRC

4. P.L. 103-10 (March 27, 1993); P.L. 103-277 (July 5, 1994).
7. Export Administration Act of 1979, as amended, sec. 5(b); 50 U.S.C. app. sec. 2404(b).
8. Export Administration Regulations, part 772, definition of “controlled country.”
10. Export Administration Regulations, sec. 738.2.
12. Export Administration Act of 1979, as amended, sec. 6(f); 50 U.S.C. app. sec. 2405(f).
21. Ibid.
23. Ibid.
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Export Administration Regulations, sec. 730.4.

Ibid.


Export Administration Regulations, sec. 774.1, Supplement No. 1.

Export Administration Regulations, sec. 774.1, Supplement No. 2.

“A Report of the Rationalization of the U.S. Munitions List with the Commerce Control List as Required by

54 Export Administration Regulations, sec. 774.1, Supplement No. 1.
55 Export Administration Regulations, part 738, Supplement No. 1.
56 Export Administration Regulations, sec. 738.1(b).
58 Export Administration Regulations, part 740.
59 Export Administration Regulations, sec. 740.1.
60 Export Administration Regulations, sec. 740.5, License Exception Civil end-users (CIV); identified as “CIV - Yes” on the Commerce Control List.
61 Export Administration Regulations, sec. 740.5 and part 740, Supplement No. 1, Country Group D:1.
62 Export Administration Regulations, sec. 740.7.
63 Export Administration Regulations, part 744.
66 International Traffic in Arms Regulations, sec. 120.2 and 120.3.
67 Ibid.
68 Ibid.
69 Ibid.
71 Defense Production Act, sec. 721.
73 Ibid.
74 Ibid.
78 Ibid.
80 Ibid.
84 Executive Order 12981 (Administration of Export Controls, December 5, 1995).
85 Ibid.
86 In summary, Executive Order 12981 (Administration of Export Controls, December 5, 1995) specifies the following deadlines: initial processing by Commerce, 9 days; referral to other departments and agencies, end of the ninth day; return to Commerce of recommendations to approve or disapprove by other departments and agencies, 30 days; review of disputes and decision by the Chair of the Operating Committee, 14 days; appeal to the ACEP of the decision by a department or agency, 5 days; review of appeal and majority vote decision of the ACEP, 11 days; appeal of the ACEP decision by a department or agency, 5 days; review of appeal and majority vote decision of the Export Administration Review Board, 11 days; and appeal of the majority vote decision of the Export Administration Review Board to the President by a department or agency, 5 days.
87 “Commercial Communications Satellites and Hot Section Technology for the Development, Production or Overhaul of Commercial Aircraft Engines,” Federal Register, October 21, 1996, Vol. 61, No. 204.
88 Executive Order 13020 (Amendment to Executive Order 12981, October 12, 1996).
89 Executive Order 13026 (Administration of Export Controls on Encryption Products, November 15, 1996).
91 Ibid.
92 Ibid.
94 Export Administration Regulations, sec. 750.4(b)(2).
96 Export Administration Regulations, sec. 750.4(b)(2).
97 “Nuclear Nonproliferation: Export Licensing Procedures for Dual-Use Items Need to Be Strengthened”; see, e.g. GAO/NSIAD-94-119, April 26, 1994.
99 Export Administration Regulations, part 772.

100 Effective October 1, 1998, the Defense Technology Security Administration (DTSA) was renamed the “Technology Security Directorate” and became part of the new Defense Threat Reduction Agency (DTRA).


102 Interview of James A. Lewis, October 30, 1998.


104 Export Administration Regulations, sec. 730.9(b).

105 Export Administration Regulations, sec. 764.5(b)(4).

106 Export Administration Act of 1979, as amended, sec. 11(b); 50 U.S.C. app. sec. 2410(a).

107 Ibid.


109 Iran Air v. Kugelman, 996 F.2d 1253 (D.C.Cir. 1993).

110 Export Administration Regulations, sec. 764.3(a)(2).


112 Export Administration Regulations, sec. 766.24.

113 Export Administration Regulations, sec. 750.8(a) and sec. 740.2(b).

114 Export Administration Regulations, sec. 764.3(a)(3).


117 Ibid.

118 Interview of William A. Reinsch, November 19, 1998.

119 Export Administration Regulations, part 774, Supplement No. 1.

120 Export Administration Regulations, sec. 748.3.


123 Interview of Iain S. Baird, November 17, 1998.
124 Ibid.
126 Ibid.
127 Ibid.
128 Ibid.
129 Ibid.
130 International Traffic in Arms Regulations, sec. 120.
132 Interview of William Lowell, November 19, 1998; Executive Order 12981 (Administration of Export Controls, December 5, 1995).
134 International Traffic in Arms Regulations, sec. 120.3.
135 Export Administration Regulations, part 768.
136 International Traffic in Arms Regulations, sec. 120.4.
138 Ibid.
141 Ibid.
142 Ibid.
143 Ibid.
144 International Traffic in Arms Regulations, sec. 120.8 and 123.15.
145 Interview of William Lowell, November 19, 1998; International Traffic in Arms Regulations, sec. 123.15. Regarding exports of major defense equipment to NATO countries, 15 calendar days are required to lapse after notification to Congress before the license is approved; regarding such exports to any other destination, including the PRC, 30 calendar days are required to lapse.
146 Ibid.
147 Ibid.
148 Ibid.
149 22 U.S.C. sec. 2778(e); International Traffic in Arms Regulations, sec. 127.3.
150 International Traffic in Arms Regulations, sec. 127.7, 127.8 and 127.6.
International Traffic in Arms Regulations, sec. 127.12(b)(3).


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Letter to the Honorable Newt Gingrich, Speaker of the House of Representatives from President William J.


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“Request for a Presidential National Interest Waiver for Exports to China for the Chinasat Satellite Program,” Memorandum from William J. Burns, Executive Secretary, Department of State, to Glyn T. Davies, Executive Secretary, National Security Council, January 8, 1998.


“U.S. Sanctions Authority,” Department of Commerce document.


Federal Register, July 17, 1991


189 Ibid.


195 Ibid.

196 Ibid.


202 Letter to President from C. Michael Armstrong, Chairman and Chief Executive Officer of Hughes Electronics Corporation, Bernard L. Schwartz, Chairman and Chief Executive Officer of Loral Corporation, and Daniel M. Tellep, Chairman and Chief Executive Officer of Lockheed Martin Corporation, October 6, 1995, White House document.

“Commercial Communications Satellites and Hot Section Technology for the Development, Production or Overhaul of Commercial Aircraft Engines,” Federal Register, Vol. 61, No. 204, October 21, 1996.

“USML Transfers to the CCL,” undated, Department of Commerce document.


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Export Administration Regulations, part 778, Supplement No. 4.


Building the Basics: An Examination of High-Performance Computing Export Control Policy in the 1990’s, Seymour Goodman, Peter Wolcott, and Grey Burkhart (Center for International Security and Arms Control, Stanford University, November 1995); The changes also were said to be based on a Department of Defense study (interview of Sue E. Eckert, November 6, 1998). The Select Committee has not been able to identify a copy of the Department of Defense study.
224 U.S. Department of Commerce Procurement Request EXBX2100500806.
227 Ibid.
229 Ibid.
230 Ibid.
231 Ibid.
235 Export Administration Regulations, sec. 399.1, Supplement No. 1, Group 0, ECCN 1091A, January 1, 1986.
236 Ibid.
237 Export Administration Regulations, part 774, Supplement No. 1, ECCN 2B001.
241 Ibid.
243 Ibid.
244 Letter, including Answers to Questions for the Record, to the Chairman and Ranking Member of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China from the U.S. General Accounting Office, December 3, 1998.

U.S. Customs briefing to Select Committee Staff, October 28, 1998.

Memorandum from Gary Christopherson to Bruce R. Lindsey, December 6, 1993 (Exhibit 14-5 to the U.S. Senate Committee on Governmental Affairs Report).

Testimony of Thomas R. Hampson before the U.S. Senate Committee on Governmental Affairs, July 15, 1997.


Ibid.

China Satellite Launches (undated).


Interview of Lewis Williams by the SCGA, June 11, 1997; deposition of Alan Neuschatz by the SCGA, May 22, 1997.

Deposition of Janice Stewart by the SCGA, May 16, 1997.

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Testimony of Paula Greene before the SCGA, July 17, 1997.

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CHAPTER 10 – Manufacturing Processes

4 Gearing up for High-Tech Warfare, Richard Bitzinger and Bates Gill, Center for Strategic and Budgetary Assessments, 1996.
8 “Some Examples of Chinese Technology Targeting,” from the Defense Intelligence Agency program briefing on “Project Worldtech,” no date; and China’s Aerospace Industry, Jane’s Information Group, 1997.
11 Export Administration Regulations, Section 399.1, Supplement No. 1, Group 0, ECCN 1091A, January 1, 1986.
12 Export Administration Regulations, Part 774, Supplement No. 1, ECCN 2B001.
13 Export Administration Regulations, Part 738.4.
14 Export Administration Regulations, Part 774, Supplement No. 1, Category 2, Group B.
15 Export Administration Regulations, Part 774, Supplement No. 1, Category 2.
For example, the ECCN for numerically controlled machine tools is 2B001. The first “0” denotes that the reason for the control of machine tools with ECCN 2B001 is for national security reasons as opposed to a “1” (missile technology), a “2” (nuclear nonproliferation), a “3” (chemical & biological weapons), or a “9” (anti-terrorism, crime control and other factors). The second “0” indicates that the reason for control is for multilateral vice a unilateral (“9”) concern. Export Administration Regulations Part 738.2.


It was noted that this information is mostly anecdotal and far from comprehensive.


Defense Department report, 1996.

The machine tool diversion reportedly remains under investigation by the Department of Justice.

E-mail from Iain Baird to Sue Eckert, May 27, 1994.

Memorandum for Deputy Assistant Secretary for Counterproliferation Policy from Acting Director/DTSA, June 8, 1994.


Memorandum for the Director, Strategic Trade Policy, Defense, DTSA from Chief, Technology Transfer Branch, Nonproliferation and Arms Control Division, DIA, July 27, 1994.

Memorandum for Director, Strategic Trade Policy, Defense, DTSA from Chief, Technology Transfer Branch, Nonproliferation and Arms Control Division, DIA, Subject: Chinese Acquisition of U.S. Machine Tools, August 9, 1994.

CATIC Inventory Lists.

Attachment B to Export License Application #C771659.


Memorandum for the Record authored by Dr. Peter Leitner, Senior Strategic Trade Advisor, DTSA, Subject: Telecon w/Joyce Poetzl and Bob Hitt, July 26, 1994. Memorandum for Executive Secretary, ACEP from Colonel Raymond Willson, Acting Director, Licensing Directorate, DTSA, August 5, 1994.

Interview of Elroy Christiansen, October 19, 1998.


ACEP Minutes from June 24, 1994.

Ibid.
38  Memorandum for Commerce Deputy Assistant Secretary for Export Administration Sue Eckert from Director DTSA Dave Tarbell, August 26, 1994.
40  State Department cable 235206 to U.S. Embassy/Beijing, August 29, 1994.
43  McDonnell Douglas Briefing Notes, June 7, 1994.
45  Memorandum to Acting Director/ÖEE Menefee from DTSA/TSO, October 4, 1995.
49  Export Administration Regulations, Part 766.24(a).
50  Select Committee staff were afforded an opportunity to examine the TDO request, but Commerce officials declined to provide a copy of the document to the Select Committee based on a claim that the document contained law enforcement sensitive information regarding an active criminal investigation.
51  Letter to Douglas Aircraft Company President Robert Hood from CATIC Vice President Tang Xiaoping, September 30, 1993.
53  Telephone Interview of Douglas Monitto, October 20, 1998.
55  Letter to Lawrence W. Clarkson, Corporate Vice President, Planning and International Development, Boeing Company from Tang Xiaoping, Executive Vice President, CATIC, January 27, 1994.
56  Letter to Tang Xiaoping, from J.D. Masterson, Boeing Commercial Airplane Group, April 6, 1994.
57  Telephone Interview of Douglas Monitto, October 20, 1998.

Telephone Interview of Douglas Monitto, October 20, 1998.

Ibid.


In response to a Select Committee subpoena, CATIC USA, Inc., a wholly owned subsidiary of CATIC, provided documents responsive to Committee’s requests. Although a large number of the documents were in Chinese, most were provided with English translations. However, the transmittal letter that accompanied these documents indicated that CATIC (USA) could not guarantee the accuracy of the translations, although they had no reason to doubt their accuracy. Thus, in those instances in which a Chinese document is cited, the Select Committee is relying upon an English translation that accompanied that document. Letter to Rick Cinquegrana, Esq., Chief Investigative Counsel, Select Committee from Barbara Van Gelder, Esq., Wiley, Rein & Fielding, October 14, 1998.

Fax to Chris Riddle, McDonnell Douglas from Jenny Liu, TAL industries, August 19, 1994 and many others that reflect Ms. Liu of was in charge of the packout.

TAL Industries response to Interrogatories, November 6, 1998.

Ibid.


Inventory List of materials and equipment sold to CATIC.

Export Administration Regulations, Part 730 and other sections.


Letter to Bob Hitt, Project Manager, China Program from Luo Huajie, Vice President of Nanchang Aircraft Manufacturing Company, September 23, 1995.

Ibid.

Ibid.


DIA report, 1995. See also The Militarily Critical Technologies List. Part I: Weapons Systems Technologies,


81 China’s Aerospace Industry, Jane’s Information Group, 1997.


86 “A jet engine is composed of three sections: the cold section, or the fan and compressor, which is where the air enters the engine; the hot section, comprised of the combustor and portions of the turbine, which are the components exposed to combustion gases; and the warm section, or exhaust nozzle, which is where the exhaust gases leave the engine.” (Emphasis added). Export Controls: Change in Export Licensing Jurisdiction for Two Sensitive Dual-Use Items GAO/NSIAD-97-24, January 1997. See also China’s Aerospace Industry, Jane’s Information Group, 1997.


93 Memorandum for the Record, October 30, 1998.

95 *China’s Aerospace Industry*, Jane’s Information Group, 1997, pp. 67, 70, (B172); and “PRC Gas Turbine Acquisition Efforts” Memorandum by Peter Leitner, Defense Technology Security Administration, September 1, 1992.

96 *China’s Aerospace Industry*, Jane’s Information Group, 1997.

97 Ibid.


100 “WP-11 Engine Information,” James Clauson, Jane’s Information Group, June 26, 1996.

101 Ibid.


110 The K-8 is reportedly intended to serve primarily as a jet trainer. However, to meet future combat mission requirements and increase the potential for exports, the PRC designed the K-8 to carry a variety of armaments, including a gun pod, two air-to-air missiles, a 12-round rocket pod, or a bomb. “Myanmar is First Export Customer for K-8 Trainer,” Bruce Hawke, *Jane’s Defense Weekly*, June 24, 1998.


112 Memorandum from Peter Leitner to Peter Sullivan, Defense Technology Security Administration, December 30, 1992.


115 The Federal Aviation Administration can certify a jet engine as “civil” if it meets certain safety and other requirements for civil aviation. Military engines that meet such requirements can be certified as civil through this process. A civil certification places the engines on the Commerce Control List, giving Commerce authority to license exports, pursuant to Export Administration Act Section 17(c) on Civil Aircraft Equipment. However, Section 17(c) states that Commerce has jurisdiction over civil aircraft equipment that “is to be exported to a country other than a controlled country.” The PRC was a “controlled country” during the time of the Garrett case. Iain Baird believed that in-as-much as the statute mandated inclusion of civil aircraft engines to some destinations on the Commerce Control List (CCL), it was decided to put the item as a whole on the list. Commerce was unable to provide a formal legal analysis of 17(c) with respect to exports of civil aircraft equipment to controlled countries. Civil certification issues and EAA Section 17(c) are discussed in, Interview of Iain S. Baird, November 17, 1998; and Interview of Bruce C. Webb, December 2, 1998. For the response to the Select Committee’s request for records regarding commodity jurisdiction, see letter from John F. Sopko, Chief Counsel for Special Matters, Department of Commerce, to Chairman Christopher Cox and Ranking Member Norm Dicks, December 14, 1998.


117 Ibid.

118 Ibid.

119 Ibid.

120 Ibid.
121 Ibid.
122 Ibid.
123 Ibid.
126 Ibid.
127 The revised Export Administration Regulations are presented in Export Administration Regulations, Department of Commerce, Bureau of Export Administration, 1991, sections 9A01 and 9E03. FADECs are described in Interview of Bruce C. Webb, December 2, 1998; and The Militarily Critical Technologies List. Part I: Weapons Systems Technologies, Department of Defense, June 1996, sec.1.
130 Ibid.
131 Ibid.
132 Ibid.
137 For the request for records, see letter from Chairman Christopher Cox and Ranking Member Norm Dicks to William M. Daley, Secretary of Commerce, November 20, 1998. For Commerce’s response, see letter from
John F. Sopko, Chief Counsel for Special Matters, Department of Commerce, to Chairman Christopher Cox and Ranking Member Norm Dicks, December 14, 1998.

For the request for records, see letter from Chairman Christopher Cox and Ranking Member Norm Dicks to William M. Daley, Secretary of Commerce, November 20, 1998.

Interview of Peter Leitner, November 24, 1998.


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Memorandum to Ken Weiss, Arms Control; and Disarmament Agency, 1993; and Defense Intelligence Agency.


“Engineering Analysis and Technical Policy Recommendation of General Exception Status in CoCom of DOC IVL D130990,” Memorandum from Clarence M. Griffin, Director, DTSA Technology Directorate, to
the Acting Deputy Undersecretary of Defense (Trade Security Policy) and DTSA Director, December 21, 1992.


155 Ibid.

156 Ibid.


160 Letter from Martha Harris, Deputy Assistant Secretary for Export Controls, Bureau of Political Military Affairs, Department of State, to Mitchel B. Wallerstein, Deputy Assistant Secretary of Defense, Counterproliferation Policy, April 1, 1994.

161 Interview of Peter Leitner, November 24, 1998.

162 Interview of Iain S. Baird, November 17, 1998.


164 For the request for records, see letter from Chairman Christopher Cox and Ranking Member Norm Dicks to William M. Daley, Secretary of Commerce, November 20, 1998. For Commerce’s response, see letter from John F. Sopko, Chief Counsel for Special Matters, Department of Commerce, to Chairman Christopher Cox and Ranking Member Norm Dicks, December 14, 1998.

166 Letter from Mitchel B. Wallerstein, Deputy Assistant Secretary of Defense, Counterproliferation Policy, to Martha Harris, Deputy Assistant Secretary for Export Controls, Bureau of Political Military Affairs, Department of State, March 21, 1994.


168 Letter from Martha Harris, Deputy Assistant Secretary for Export Controls, Bureau of Political Military Affairs, Department of State, to Mitchel B. Wallerstein, Deputy Assistant Secretary of Defense, Counterproliferation Policy, April 1, 1994.


171 Ibid.

172 “China Aviation Project in Doubt,” South China Morning Post, May 15, 1996.


175 United Technologies Corporation’s Responses to Written Interrogatories, November 16, 1998.

176 Ibid.

177 United Technologies Corporation’s Responses to Written Interrogatories, November 16, 1998.


181 Ibid.


186 Department of Defense, Militarily Critical Technologies List, Section 10.


188 Chinese Plant Survey-Committee Files.

S. Kalpakjian, Loc. Cit.

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S. Kalpakjian, Loc. Cit.


B. C. Hoskins and A. A. Baker, Loc. Cit.

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214 Ibid.
215 Ibid.
216 Ibid.
217 Ibid.
218 Ibid.
219 Ibid.
220 Ibid.
221 Ibid.
222 Letter from the Secretary of Defense (Cheney) to the Secretary of Commerce (Mosbacher), April 21, 1989.
223 Department of Defense Militarily Critical Technology List.
224 Department of Defense Stealth Study, Ref: 0149467.
225 Department of Defense Stealth Study, Ref: 0149454.
226 FORDTIS Export License Printout, Ref: 0148821.
227 FORDTIS Export License Printout, Ref: 0148826.
228 FORDTIS Export License Printout, Ref: 0148821.
229 Department of Defense Stealth Study, Ref: 0149455.
230 Hexcel Briefing to DFTA, November 15, 1994.
231 Ibid.
232 FORDTIS Export License Printout, Ref: 0148812.
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234 Hexcel Briefing to DFTA, November 15, 1994.
235 Ibid.
236 Ibid.
237 Ibid.
238 Department of Defense Stealth Study, Ref: 0149453.
239 Ibid.
240 Sikorsky S-92 Documents.
241 Ibid.
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