



Operating Committee for Export Policy (OC)

- First level to resolve differences among agencies (Commerce, Defense, Energy, State)
- Established in 1995 by E.O. 12981, amended by E.O. 13020, other amending E.O.'s
- Promulgated in section 750.4 of the Export Administration Regulations (EAR)
- Chaired by a BIS employee but the OC Chair's role is to be neutral, impartial, and independent in decision-making
- Final decision rests solely with the OC Chair – except for cases involving jet engine hot section technology and commercial communications satellites which are decided by majority vote
- Dissenting agency must appeal within 5 days of the OC Chair's written decision or the decision will be final

Meeting format of the OC

- Meet once a week on Thursdays in closed session
- Support documentation, intelligence information if applicable, initial agency recommendations and rationale available to all representatives
- Each agency articulates its position – the Chair does not represent the Commerce position
- Agencies provide additional support documentation as part of the discussion
- Depending on the case and the discussion, a case may be held over to the next meeting
- The Chair alone decides the outcome of the case, after considering all agencies' input, except when a vote is required

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Escalations above the OC

- Agencies have 5 days to escalate the OC Chair's written decision to the Advisory Committee for Export Policy (ACEP)
 - ACEP members are presidential appointed sub-cabinet level – Assistant Secretary level or his/her designee
 - Same 4 departments as represented in the OC, plus the intelligence community
 - Chaired by Commerce Assistant Secretary of Export Administration
 - Unlike the OC, outcome based on departments' vote at the table – majority rules
 - Cases sent to the ACEP usually have larger policy implications
- Agencies have 5 days from ACEP decisions to escalate to the Export Advisory Review Board (EARB) (Not based on the date of written decision like the OC)
 - Cases are rarely sent to EARB
- Agencies have 5 days to escalate EARB decisions to the President

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Rebuttals/Appeals

- Rebuttals within 20 days of receipt of the intention to deny notification - would be reviewed by the last reviewing body (OC/ACEP) (see part 750 of the EAR)
- Appeals to the Commerce Under Secretary within 45 days of receipt of a denial – Under Secretary is the final/final decision maker in appeal process - may confer with interagency in his/her decision-making (see part 756 of the EAR)

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FY 2017 Statistics of the OC and ACEP

- OC:
 - 336 cases escalated to the OC
 - 57 cases de-escalated before discussion because agencies worked out differences
 - 250 decisions issued
 - 104 approved 4-0
 - 31 denied 4-0
 - 3 RWA 4-0
 - 33 policy denial by an agency
 - Making about 70 percent of cases resolved by “consensus”
 - China, Russia, Iran deemed export cases
 - Conditions issues – agencies cannot agree on how to restrict the export
- ACEP:
 - 15 OC decisions issued in 2017 were escalated
 - 8 approvals were overturned
 - 6 approvals were affirmed
 - 1 returned without action

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PLAYBILL

Mock OC meeting – Making the call
A play in three acts



Cast

Commerce representatives: Aaron Amundson/Steve Clagett

Defense representative: Andrew Mueller/Elyas Akram

Energy representative: Ed Fox

State representative: Thomas Krueger

OC Chair: You

Director: Mi-Yong Kim

Producer: BIS



Act 1

- Applicant: Lockbox – a high tech company specializing in internet of things and artificial intelligence
- ECCNs: 3E001, 3E002, 3E991, (semiconductor technology and software); 5D002, 5E002 (encryption technology and software); NS, EI and/or AT-controlled
- Ultimate Consignee: Fiona Ryder, a Republic of Wausau (RoW) national
- RoW is a country group E country
- Job description: Software Engineer
- Recent graduate of Cornell University with a PhD in Data Engineering – on optional practical training (OPT) visa which expires in July 2018
- Undergraduate and graduate degrees from State University of Wausau (SUW) in Electrical Engineering
- Married to an RoW national who recently applied for U.S. permanent resident status
- Brother living in the U.S. – all other family members living in RoW

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Act 2

- Applicant: CBG (Chemical Be Good)
- ECCN: 1C111 - Chlorine trifluoride and hydrazine, controlled for MT and/or NP reasons
- Ultimate Consignee: APT Company in Ryderstan, a country group D country
- End use: Cleaning solution for semiconductor manufacturing equipment
- Licensing policy: MT – material contribution to missile proliferation; NP – whether the item is of significance for nuclear explosive purposes; NS crossover for D countries - denial if determined to make a material contribution to a D country's military capability
- APT Company sells integrated circuits to ZHW Inc. in Ryderstan, a company founded by retired military officers of Ryderstan

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The Final Act

- What do agencies look at in reviewing license applications?
- How do agencies collaborate in decision-making?
- Why is it important to submit applications specifically tailored to a transaction?