THE AMERICAN CHAMBER OF COMMERCE IN HONG KONG
Fact Sheet

Export Controls

What are export controls? Export controls are measures, such as licensing and inspection taken to restrict or monitor export and entry of sensitive goods into a territory. These measures are intended to promote national security, enhance the effectiveness of the export control system, and ease unnecessary regulatory burdens on government and industry.

What is Hong Kong's export control system? Hong Kong's export control, or strategic trade control system, is 100% staffed by Hong Kong officials, and comprises four imperative components: *(i) A legal framework:* The Import and Export Ordinance and the Strategic Commodities Regulations regulate Hong Kong's trade control system. *(ii) A licensing system:* Hong Kong utilizes a licensing system to monitor and regulate trade of high technology goods to the territory. The licensing system is meant to prevent illegal diversion of such high technology goods via the SAR. *(iii) An enforcement system:* The Customs and Excise Department takes preventative measures entailing pre-license background checks and continuous monitoring of any suspect trade. The department carries out regular document checks, consignment inspections at entry and exit points, border checks, and post importation disposal checks, and conducts investigations on any found unlicensed shipment of high technology goods. *(iv) International cooperation and standards:* As a major transshipment center for high technology goods, the SAR works closely with key trading partners like the United States, the United Kingdom, Australia, and Japan, sharing information and intelligence concerning strategic trade. Hong Kong also permits US customs officials to conduct unlimited, unannounced pre-license and post-shipment checks to verify the integrity of the controls.

How is Hong Kong affected by US export controls? The 1992 Hong Kong Policy Act mandated that the US treat Hong Kong as a separate entity from the PRC for purposes of controlling exports of sensitive technologies "as long as the US is satisfied that such technologies are protected from improper use or export". Concerns over Chinese espionage and the integrity of US export controls led to new questions about whether militarily sensitive technology might have been transshipped to China through Hong Kong. These allegations were detailed in the Cox Report, and resulted in the US considering restrictions in Sino-US trade. Changing the SAR's trade status to that of China was one possible measure considered; however, to date there has been no substantive change in US export policy to Hong Kong. Officials in both the United States and Hong Kong maintain that Hong Kong continues to have an effective trade control regime. To maintain this confidence, Hong Kong must continue to prove that it has total control of trade movements, including PLA movements, across the border into the Mainland.

What would the economic impact on Hong Kong be if restrictions were imposed? The US-HK trade partnership involves a total trade volume of US$23.4 billion per year. Of US exports to the SAR, the top three product areas are electronic machinery, office machines and telecommunications technology. Besides being an important destination for US high technology, Hong Kong is an important transshipment center for high technology goods en-route to other destinations from high technology producers. In 1998, Hong Kong exported US$6.16 billion worth of electronic products, including high technology electronic goods – this is Hong Kong's second largest principal domestic export commodity group. Approximately 16% of both Hong Kong imports and re-exports comprise electronics, data processing machines, telecommunications and sound equipment goods.

Why do computer exports need controls? Computer technology is advancing rapidly and has many non-civilian applications that could potentially compromise national security. Although the US supports the sale of computers to the PRC for commercial purposes, there are fears that mainland China has or might divert sensitive dual-use and militarily significant US technology coming through Hong Kong. The Administration's export controls on computers are designed to permit the government to calibrate the control levels and licensing conditions depending on the national security or proliferation risk posed at a specific destination, while ensuring that controls are effective and do not unnecessarily impede legitimate computer exports.

How were US export controls on computers amended? On July 1, 1999 President Clinton announced reforms to the Administration's export controls on high-performance computers (HPSC) and semiconductors. The Administration found that advances in the power and capabilities of widely available computing systems have exceeded the 1995 control levels. Given advances in basic computing technologies and the difficulty in trying to control commodity level items, controls have been amended by raising the licensing threshold of high-performance computers to "Tier 2" and "Tier 3" countries as they present greater risks from a national security viewpoint. The Administration will continue its policy of maintaining a lower threshold for military end-users than civilian end-users. The President requested that export controls be updated every six months.

What is the difference between Tier I – IV countries? Countries are grouped according to their risk to national security, and are subject to the following conditions:

> **Tier I:** (Western Europe, Japan, Canada, Mexico, Australia, New Zealand, Hungary, Poland, Czech Republic and Brazil): General license for all computers (ie. no prior government review but companies must keep records on higher performance shipments that will be provided to the US government as directed).
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> **Tier II:** (South America, South Korea, ASEAN countries, Slovenia, South Africa; also includes Taiwan and Hong Kong): General license up to 20,000 MTOPS (Millions of Theoretical Operation Per Second, a computer performance metric for export control purposes), with record-keeping and reporting as directed; individual license (requiring prior government review) above 20,000 MTOPS.
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> **Tier III:** (India, Pakistan, Middle East/Maghreb, former Soviet Union, China, Vietnam, Central Europe): Regulations require a two-level system for civilian and military/proliferation end-users. Individual licensing levels for both classes of end-users are 6500 MTOPS for military end-users and 12,300 MTOPS for civilian end-users. The 1998 National Defense Authorization Act (NDAA, P.L. 105-85), imposed a requirement for companies to provide the Commerce Department with prior notice of exports for systems above 6,500 MTOPS to all Tier 3 end-users.
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> **Tier IV:** (Iran, Iraq, Libya, North Korea, Cuba, Sudan, and Syria): The US maintains a virtual embargo on computer exports to these countries.

What is the status of changes in US legislation affecting Hong Kong? The US Senate Banking Committee has approved a bill toughening the export of sensitive technology to rival nations; however, controls on exports of high-powered computers and other technology to Hong Kong were eased. The bill cracks down on exports of sensitive technology with nuclear and military applications but would exempt high-performance computers that are readily available overseas. This provision could free some Hong Kong super-computers from the threat of specially targeted export controls. Hong Kong would continue to be treated as a separate entity from the PRC.

What is AmCham's position on this issue? AmCham supports the status quo on Hong Kong's strategic trade controls status, as long as the SAR continues to strictly adhere to the current system. The SAR maintains the highest of international standards of export controls, imposing stringent licensing controls on both imports and exports of dual-use technology. According to the Basic Law, Hong Kong remains a separate trading entity and customs territory from mainland China, thus any move to end or change Hong Kong's current status would severely jeopardize the SAR's autonomy, and undermine US technology by imposing unreasonable delays and increasing costs. While the Cox Report put Hong Kong's export controls regime under the spotlight, it is essential to Hong Kong's status as an international business center to continue to benefit from high technology products.