§ 768.2 Foreign availability described.

(a) Foreign availability. Foreign availability exists when the Secretary determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of a license ineffective. For a controlled country, such control or denial is "ineffective" when maintaining such control or denying a specific license would not restrict the availability of items that would make a significant contribution to the military potential of the controlled country or combination of countries detrimental to the national security of the United States (see sections 5(a) and 3(2)(A) of the EAA).

(b) Types of foreign availability. There are two types of foreign availability:

(1) Foreign availability to a controlled country; and

(2) Foreign availability to a non-controlled country.

§ 768.3 Foreign availability assessment.

(a) Foreign availability assessment. A foreign availability assessment is an evidentiary analysis that BIS conducts to assess the foreign availability of a given item according to the assessment criteria, based on data submitted by a claimant, the data gathered by BIS, and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry. BIS uses the results of the analysis in formulating its recommendation to the Secretary on whether foreign availability exists for a given item. If the Secretary determines that foreign availability exists, the Secretary will decontrol the item for national security reasons or approve the license in question if there is no foreign policy reason to deny the license, unless the President exercises a National Security Override (see § 768.7 of this part). The effect of any such determination on the effectiveness of foreign policy controls may be considered independent of this part.

(b) Types of assessments. There are two types of foreign availability assessments:

(1) Denied license assessment; and

(2) Decontrol assessment.

(c) Expedited licensing procedures. See § 768.8 of this part for the evaluation of eligibility of an item for the expedited licensing procedures.

§ 768.4 Initiation of an assessment.

(a) Assessment request. To initiate an assessment, each claimant or TAC must submit a FAS or a TAC Certification to BIS. TACs are authorized to certify foreign availability only to controlled countries. Claimants can allege foreign availability for either controlled or non-controlled countries.

(b) Denied license assessment. A claimant whose license application BIS has denied, or for which it has issued a letter of intent to deny on national security grounds, may request that BIS initiate a denied license assessment by...