

## Chapter 2: Export Licensing

### Mission

A primary mission of the Bureau of Industry and Security (BIS) is the accurate, consistent, and timely evaluation and processing of licenses for proposed exports of goods and technology from the United States. BIS's objective is to protect U.S. national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. Consistent with that obligation, BIS attempts to minimize the length of time necessary to analyze proposed export transactions while fully consulting with the interagency community on the disposition of such transactions.

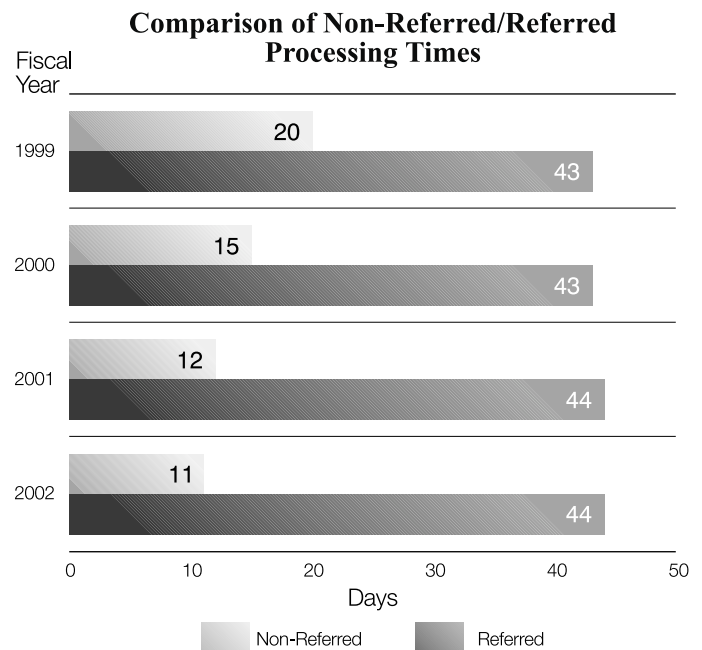
### Accomplishments in Fiscal Year 2002

#### Export License Processing

BIS reviewed 10,767 license applications with a total value of \$16.8 billion during Fiscal Year 2002. The greatest number of license approvals in Fiscal Year 2002 under one commodity classification was for thermal imaging and light intensifying cameras, with 1,344 approvals. Overall, BIS approved 8,735 license applications, returned 1,826 applications without action, and denied 206 applications during Fiscal Year 2002.

The People's Republic of China (PRC) was the destination for the largest number of approved licenses in Fiscal Year 2002. BIS evaluated and approved 777 licenses for exports to the PRC; 40 percent of these license approvals were for so-called "deemed exports." (Under the current deemed export rule, set forth in Part 734 of the Export Administration Regulations (EAR), the transfer of technology within the United States to foreign nationals who do not have permanent resident or asylum status requires a license if the direct transfer of the technology to the foreign national's home country would require a license.)

The average processing time during Fiscal Year 2002 for all completed license applications was 39 days, down from 40 days in Fiscal Year 2001. This slight decrease was due to the continued decline in the processing time for applications that are not referred to other agencies for review. In Fiscal Year 2001, non-referred applications were processed with an average time of 12 days. In Fiscal Year 2002, BIS reduced the time for processing non-referred applications to an average of 11 days. The challenge remains to reduce the average processing time for applications that are referred for interagency review. In Fiscal Year 2002, 86 percent of all license applications were referred to other agencies for review, with an average processing time of 44 days.



### *Deemed Exports*

BIS processed 1,016 deemed export cases in Fiscal Year 2002, slightly less than the 1,026 cases processed during Fiscal Year 2001. This small reduction is likely due to economic conditions that resulted in the hiring of fewer foreign nationals in industries involved with controlled technologies. Most deemed export cases involve the transfer of technology that is controlled only for national security reasons (e.g. semiconductor manufacturing, telecommunications, and computers). Accordingly, the deemed export program was transferred within BIS from the Office of Nonproliferation Controls and Treaty Compliance to the Office of Strategic Trade and Foreign Policy Controls, which is responsible for administering national security controls.

### *Short Supply Controls*

Sections 3(2)(c) and 7 of the Export Administration Act of 1979, as amended (EAA), authorize the President to prohibit or curtail the export of goods “where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.” Section 7 of the EAA also authorizes the President to monitor exports of certain goods to determine the impact of such exports on domestic supply and to evaluate whether this impact has an adverse effect on the U.S. economy.

(BIS also administers export controls under the Energy Policy and Conservation Act, the Mineral Leasing Act, the Naval Petroleum Reserves Production Act, the Outer Continental Shelf Lands Act, and the Forest Resources Conservation and Shortage Relief Act, as amended.)

During Fiscal Year 2002, BIS controlled the export of domestically produced crude oil and certain unprocessed timber harvested from Federal and state lands. BIS approved 14 licenses for the export of crude oil amounting to 38.1 million barrels. No licenses were approved during Fiscal Year 2002 for the export of unprocessed timber.

Section 14(a)(13) of the EAA requires a report on any monitoring program conducted pursuant to the EAA or Section 812 of the Agricultural Act of 1970. Therefore,

information from the U.S. Department of Agriculture on its monitoring activities during Fiscal Year 2002 is included in Appendix H of this report.

### *Special Comprehensive Licenses*

In Fiscal Year 2002, BIS completed nine system reviews of Special Comprehensive Licenses (SCLs) consistent with a new audit strategy designed to ensure that SCL holders and consignees are in compliance with the Export Administration Regulations (EAR). The SCL is a special license that is extended to experienced and knowledgeable exporters and consignees. The SCL is used in place of individual export licenses for shipments by exporters who routinely participate in export and/or reexport transactions to multiple destinations. Parties to the SCL must have mechanisms in place to ensure that each export and reexport meets all the terms and conditions of the SCL and is in accordance with applicable provisions of the EAR.



Assistant Secretary James J. Jochum addresses the Bureau of Industry and Security's 15th Annual Update Conference, October 10, 2002.

Under a new procedure implemented in Fiscal Year 2002, BIS audited the internal control systems of SCL holders by 1) reviewing the license holder site; 2) reviewing the consignee site; and 3) conducting a desk review of a second consignee through a spot check. Under this new system, BIS will not review the companies or their associated consignees again for three years. However, during the

three year moratorium on BIS audits, SCL holders are still required to conduct internal audits that will be subject to BIS spot checks.

### ***Technical Reviews of Encryption Exports***

In Fiscal Year 2002, BIS received nearly 1,200 technical review requests for over 2,000 controlled encryption products, components, toolkits, and source code items. Under current encryption export control policy, most encryption products require a one-time technical review prior to export. While many encryption products may be exported under a license exception to most destinations, there has been no change to the stringent license requirements and licensing policy for exports of such products to designated terrorist countries and sanctioned persons.

Of the 1,534 encryption products reviewed during Fiscal Year 2002, 76 percent were classified as “retail” or “mass market” encryption items, making them eligible for export without a license to government and non-government end-users in most countries. In addition, during Fiscal Year 2002 BIS approved 391 license applications for “non-retail” encryption items (such as high-end routers and other network infrastructure equipment) and technology valued at \$28.2 million.

### ***The Simplified Network Application Process System***

The Simplified Network Application Process (SNAP) system permits exporters to transmit submissions directly to BIS through a secure environment via the Internet. From a single secure web site, exporters can certify and submit license applications, reexport authorizations, and commodity classification requests.

During Fiscal Year 2002, 10,077 export and reexport license applications, commodity classification requests, and other submissions were submitted electronically to BIS through the SNAP system – a substantial increase from the 7,622 submissions received in Fiscal Year 2001. The majority of the Fiscal Year 2002 requests were license applications (7,351); the number of commodity classification requests submitted under SNAP was 2,611.

## **Goals for Fiscal Year 2003**

BIS will continue to work with other agencies to negotiate delegations of authority to increase the number of applications that BIS may review without referral. Another key initiative for BIS in Fiscal Year 2003 will be the development of standard license conditions for specific categories of cases (e.g., deemed exports, night vision equipment) that are acceptable to all agencies. Because more than 99 percent of all approved applications include license conditions, the use of pre-approved conditions could significantly reduce application processing times by reducing the time spent on the interagency review of license applications.

BIS is finalizing new capabilities for SNAP, including electronic submission of supporting documentation, tracking of interagency information requests, and elimination of additional paper-based forms. BIS plans to deploy these new capabilities to a limited set of exporters in early 2003.

BIS’s Export Control Automated Support System (ECASS) is used to request recommendations and input and issue export licenses, and to investigate export violators. An investigative tracking module will be deployed in early 2003 to all criminal investigators. BIS also will complete the development of requirements for the commodity classification module that will be utilized by BIS licensing officers.

