



## Chapter 1: Export Control Policy and Regulations

### Mission

The Bureau of Industry and Security (BIS) is charged with the formulation and implementation of U.S. export control policy on dual-use commodities, software, and technology. Dual-use items subject to BIS regulatory jurisdiction have predominantly civilian uses, but also have military and proliferation applications, or may be used in terrorist activities. One of BIS's principal objectives is to ensure that direct exports from the United States and reexports of U.S.-origin items from third countries are consistent with U.S. national security and foreign policy interests, without imposing unnecessary regulatory burdens on U.S. exporters or impeding the flow of legitimate trade. Another critical objective is to ensure that U.S. persons are not involved in any activity related to the proliferation of chemical, biological, or nuclear weapons or their means of delivery.

To accomplish its objectives, BIS seeks to promulgate clear, concise, and timely regulations setting forth licensing policy and license requirements and for the export and reexport of dual-use items and the provision of related services. A principal area of focus is implementation of controls agreed in the four multilateral export control regimes: the Australia Group (AG) (chemical and biological nonproliferation), the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG), and the Wassenaar Arrangement (WA) (conventional arms and dual-use goods and technologies). See Chapter 5. Other BIS regulations further U.S. foreign policy and national security interests, including imple-



Under Secretary Kenneth I. Juster addresses the Bureau of Industry and Security's Update Conference.

menting sanctions policies, specifying licensing agency jurisdictional authority for a given item, and clarifying the rights and obligations of U.S. exporters.

In the development of regulatory policy, BIS consults with industry through its six Technical Advisory Committees (TACs). The TACs provide valuable input regarding industry perspectives on trends in technology as well as the practicality and likely impact of export controls. In addition, BIS publishes important rules in proposed form to give the exporting community an opportunity to comment before the regulations take effect.

### Accomplishments In Fiscal Year 2004

In Fiscal Year 2004, BIS took important steps toward fulfilling its mission, while building a solid foundation

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for more progress in Fiscal Year 2005. In addition to the regime-related rules discussed in Chapter 5, BIS took important policy actions and published significant rules related to individual countries, including China, Cuba, India, Iraq, Libya, Republic of Korea, and Syria to reflect the change in U.S. foreign policy toward each of these countries. BIS also developed other regulations and policies relating to encryption, items on the U.S. Munitions List, and computer and microprocessor technologies.

### *China*

In Fiscal Year 2004, BIS continued its efforts to expand U.S. trade in controlled items with the large and growing Chinese market, in a manner consistent with U.S. national security interests. In April 2004, BIS – on behalf of the Department of Commerce – and China’s Ministry of Commerce agreed to procedures to strengthen end-use visit cooperation and thereby give greater confidence that U.S. exports of controlled dual-use items are being used by their intended recipients for their intended purposes. The understanding resolves a long-standing issue of great importance to the U.S.-China high-technology relationship and should facilitate increased U.S. exports of controlled items to China.

China also is a party to several nonproliferation treaties, including the Treaty on the Non-Proliferation of Nuclear Weapons, the Chemical Weapons Convention, and the Biological Weapons Convention. In Fiscal Year 2004, China became a member of the Nuclear Suppliers Group (NSG). However, China is not a member of the Australia Group (AG), the Missile Technology Control Regime (MTCR), or the Wassenaar Arrangement (WA).

Section 1512 of the National Defense Authorization Act for Fiscal Year 1999 requires Presidential certification for the export to China of missile-related equipment or technology, as defined in Section 74 of the Arms Export Control Act. The President must report to Congress 15 days prior to shipment that the export is not detrimental to the United States space launch industry and the equipment, including any indirect technical benefit that could be derived from the export, will not measurably improve the missile or space launch capabilities of China. All items

controlled for missile technology reasons on the Commerce Control List of the EAR require such Presidential certification prior to export. On March 8, 2004, the President made the required certifications for seven license applications, thus permitting BIS to authorize the exports.

### *Cuba*

On June 22, 2004, BIS amended the EAR to revise the export and reexport restrictions to Cuba in order to implement certain recommendations made in the Commission on Assistance to a Free Cuba’s May 2004 Report to the President. BIS participated in the Commission’s working group that recommended policies and programs to hasten Cuba’s transition to democracy. The rule tightens eligibility requirements for gift parcels and travelers’ accompanying baggage, and also implements a case-by-case review policy for private aircraft and vessels going on temporary sojourn to Cuba when explicitly delivering humanitarian goods or services or when the temporary sojourn is in the foreign policy interests of the United States. As in the previous year, BIS processed approximately 600 export applications for Cuba during Fiscal Year 2004, with roughly one-third involving authorizations for food and other agricultural items eligible under License Exception Agricultural Commodities (AGR).

### *India*

BIS is playing a major role in a Presidential initiative with the Government of India to promote cooperation in bilateral high-technology commerce. In January 2004, the United States and India agreed to the “Next Steps in Strategic Partnership (NSSP),” which will expand cooperation in three specific areas: civilian nuclear activities, civilian space programs, and high-technology trade. In addition, the two countries agreed to expand their dialogue on missile defense. These areas of cooperation are designed to progress through a series of reciprocal steps that build on each other.

In September 2004, the United States and India completed Phase One of the NSSP. The Government of India implemented measures to address proliferation concerns and to ensure compliance with U.S. export controls. These actions enabled the U.S. Government to make



Under Secretary Kenneth I. Juster and Indian Foreign Secretary Shyam Saran sign documents concluding Phase I of the U.S.-India Next Steps in Strategic Partnership initiative. Under Secretary of State Marc Grossman also is pictured.

modifications to U.S. export licensing policies, including the removal of the Indian Space Research Organization (ISRO) Headquarters from the Department of Commerce Entity List, the removal of licensing requirements for low-level dual-use items exported to ISRO subordinate entities, and the application of a “presumption of approval” policy for all dual-use items not controlled by the Nuclear Suppliers Group (NSG).

The United States and India will continue to move forward under the NSSP, and have created a joint implementation group for this purpose. The progress to date is only Phase One in this important effort, which is a significant part of transforming the strategic relationship between the two countries.

### *Iraq*

On May 7, 2003, following the end of major hostilities in Iraq, President Bush suspended most of the provisions of the Iraq Sanctions Act of 1990. As a result, the U.S. Government was no longer required to prohibit the export of items to Iraq that would require an export license under the Export Administration Regulations (EAR) and had the discretion to review and approve license applications on their merits.

The President signed Executive Order 13350 terminating the national emergency declared in Executive Order

12722, revoking this Executive Order and certain related Executive Orders on July 29, 2004. The termination of the national emergency ended the Department of the Treasury’s authority to maintain export controls, and export licensing jurisdiction reverted to BIS.

On July 30, 2004, BIS amended the EAR to reflect the new licensing policy and requirements for Iraq. This rule focused on three major objectives: liberalizing licensing policy for exports and reexports to support civil end-uses and end-users and rebuilding of civil infrastructure in Iraq; ensuring that U.S. and Coalition forces could receive supplies in a timely and efficient manner; and

ensuring that U.S. origin items would not be used by terrorist groups, insurgent military forces or for the development of weapons of mass destruction and delivery systems.

Generally, under the new BIS export licensing requirements for Iraq, a license is required for the export, reexport, or transfer of all items controlled on the Commerce Control List (CCL). Items that are not specifically listed on the CCL, known as EAR99 items, and items controlled for anti-terrorism reasons only, do not usually require a license to Iraq. However, a license is required for the export, reexport to Iraq or transfer within Iraq of any items destined for “military end-use” or by a “military end-user,” for weapons of mass destruction (WMD) activities, and to designated terrorists or terrorist organizations. The EAR set forth exceptions for military end-use by the U.S. Government and the Interim Government of Iraq.

### *Libya*

On April 23, 2004, the President announced the termination of the application of the Iran and Libya Sanctions Act (ILSA) with respect to Libya, in response to Libya’s actions to dismantle its weapons of mass destruction and missile programs, and its renunciation of terrorism.

On April 29, 2004, the Department of the Treasury, Of-

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Office of Foreign Assets Control (OFAC), modified sanctions imposed on U.S. firms and individuals under the authority of the International Emergency Economic Powers Act (IEEPA) to allow the resumption of most commercial activities, financial transactions, and investments between the United States and Libya. Consequently, OFAC issued a General License, which transferred licensing jurisdiction for the export of items subject to the



Secretary of Commerce Donald L. Evans and U.S. Trade Representative Robert B. Zoellick watch as Under Secretary Kenneth I. Juster and Vice Minister Ma Xinhong of China's Ministry of Commerce sign the U.S.-China End-Use Visit Understanding.

EAR back to the Department of Commerce.

Concurrent with the publication of the OFAC rule, on April 29, 2004, BIS published an amendment to the EAR setting forth the new license requirements and licensing policy for exports and reexports to Libya to implement the President's decision to modify U.S. sanctions against Libya. As a result, items not on the Commerce Control List no longer require a license in most circumstances. Most license applications for exports to civil end-uses and end-users are reviewed on a case-by-case basis.

On September 20, 2004, the President signed Executive Order 13357 terminating the national emergency and revoked certain Executive Orders related to Libya, which removed economic sanctions on aviation services with Libya and unblocked Libyan frozen assets. However, Libya remains a terrorist-designated country, and

exports of items requiring a license that are for military, police, intelligence, terrorists or terrorist groups, or weapons of mass destruction programs are subject to a policy of denial.

### *Republic of Korea*

From July through September 2004, the U.S. Government hosted a series of meetings with government officials from the Republic of Korea (ROK) to discuss plans for ROK companies' investment and manufacturing in the Gaesung Industrial Park, a special economic zone created in the Democratic People's Republic of Korea. The U.S. and ROK Government officials discussed U.S. license requirements for U.S. origin items that will be reexported to the Gaesung Industrial Park.

### *Syria*

On December 12, 2003, the President signed the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (SAA) (Public Law 108-175). The SAA required a prohibition on the export to Syria of all items on the Commerce Control List (CCL). The SAA also required the President to select at least two of six additional sanctions to apply to Syria. On

May 11, 2004, the President elected to prohibit the export or reexport to Syria of all U.S. origin products, with the exception of food and medicine, and to prohibit Syrian aircraft from landing in, or overflying the United States, except in limited circumstances.

Consistent with the President's implementation of the SAA, on May 14, 2004, the Bureau published a General Order (General Order No. 2 to Supplement No. 1 to Part 736 of the EAR) in the *Federal Register* restricting all exports or reexports to Syria of items subject to the EAR as specified in the General Order. The General Order reflects waivers of the export ban for six classes of items: items for the use of the U.S. Government, certain medicines and medical devices, parts and components intended to ensure the safety of flight for civil passenger aircraft, aircraft used by the Syrian Government for its

official use, telecommunication equipment and associated parts and components, and items for the use of the United Nations in Syria. In many cases, these items remain subject to a license requirement.

### ***Encryption***

U.S. encryption export control policy, which was updated in June 2002 and June 2003, is guided by three fundamental principles: technical review of encryption products prior to export, streamlined post-export reporting, and license review for certain exports of strong encryption to foreign government end-users. In Fiscal Year 2004, BIS continued the effective implementation of this policy and consulted extensively with other U.S. Government agencies, Technical Advisory Committees, and industry to explore ways to further strengthen and streamline U.S. encryption export regulations. Drawing on these consultations, BIS prepared a rule to update the EAR to streamline the License Exception ENC pre-export technical review process, address the May 1, 2004, expansion of the European Union license-free zone, and simplify certain encryption reporting requirements. BIS expects this rule to be published early in Fiscal Year 2005.

### ***U.S. Munitions List Review***

Progress continued in Fiscal Year 2004 on the U.S. Government review of the United States Munitions List (USML), which sets forth the products controlled by the Department of State as defense articles. Items on the USML are reviewed, analyzed, and updated on an ongoing basis, in order to keep the list current with technological developments and changed market conditions. As part of this process, items that are determined to have predominantly commercial uses are moved to the Commerce Control List (CCL), administered by BIS.

In Fiscal Year 2004, the review process included Categories IV (Launch Vehicles, Guided Missiles), XI (Military Electronics), XII (Fire Control, Optical and Guidance) and XV (Spacecraft). BIS published changes to ECCN

9A018 and the related Interpretation thus bringing that ECCN in line with the agreed changes in Category VII (Tanks and Military Vehicles). Congressional approval is still pending for the proposed movement of certain items from the USML to the CCL for Categories VI (Vessels of War) and VIII (Aircraft). Several of these categories have moved from a technical review to a policy review/deci-



U.S. and Indian government officials discuss bilateral issues at the third meeting of the U.S.-India High Technology Cooperation Group.

sion level, guided by the National Security Council.

### ***Other Policy Areas***

In Fiscal Year 2004, BIS completed discussions with other U.S. Government agencies on a proposed rule to revise the “knowledge” definition in the EAR, update red flag guidance, and provide a safe harbor mechanism for exporters. This proposed rule was published in early Fiscal Year 2005. In late Fiscal Year 2004, BIS also reached agreement with other agencies on two rules relating to computer and microprocessor technology, which will revise the control levels for technology transfers to foreign nationals in the United States. These rules also were published in early Fiscal Year 2005. Similar rules for actual technology exports are expected later in Fiscal Year 2005 pending the outcome of discussions in the multilateral export control regimes. Finally, BIS began

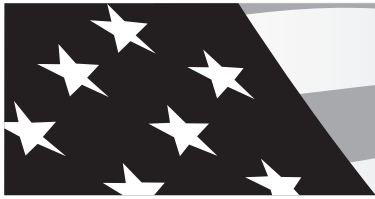
agency discussions on a two-stage process to overhaul how export controls are applied to countries in the EAR. The first stage of this process is aimed at streamlining the EAR, conveying the same policy information in a format that will be easier for exporters to understand, and making certain policy adjustments to update country groups that currently reflect Cold War era relationships. In the second stage, BIS plans to update controls on a country-by-country basis to better reflect current national security and foreign policy concerns.

### Goals For Fiscal Year 2005

In Fiscal Year 2005, BIS anticipates publishing additional rules relating to Cuba, Iraq, and Libya to address changes suggested by exporters to the related rules published in Fiscal Year 2004. BIS also intends to publish a rule that places the changes established in General Order No. 2 regarding Syria into the relevant sections of the EAR. In

addition, BIS will examine deemed export rules and conduct outreach with universities and other research-based entities to ensure sensitive technology is protected and to revise, if needed, the rules for technology transfers to foreign nationals in the academic community. BIS will also review and revise as appropriate the *de minimis* rules, which have not been reviewed since 1996. These rules state, in percentage terms, the amount of U.S.-origin value that is sufficient to render a foreign-made item subject to the EAR.

Finally, BIS intends to continue working closely with other agencies and with Congress toward the renewal and revision of the Export Administration Act (EAA), which has been in lapse since 2001. Renewal would place the U.S. export control system on a stronger legislative foundation and enhance the U.S. Government's ability to encourage other countries to enact similar legislation. In the meantime, BIS will continue to effectively administer dual-use export controls with the authorities currently available.



## Chapter 2: Export Licensing

### Mission

A primary mission of the Bureau of Industry and Security (BIS) is the accurate, consistent, and timely processing of license applications for proposed exports of dual-use goods and technology from the United States. BIS's objective is to protect U.S. national security and foreign policy interests without imposing undue regulatory burdens on legitimate international trade. Consistent with that objective, BIS attempts to minimize the length of time necessary to analyze proposed export transactions, while working closely with other U.S. Government agencies to determine the appropriate disposition of such transactions.

### Accomplishments In Fiscal Year 2004

#### *Export License Processing*

In Fiscal Year 2004, BIS reviewed 15,534 license applications covering transactions valued at approximately \$15.3 billion. Overall, BIS approved 13,058 license applications worth \$13.8 billion returned 2,181 applications worth \$1.3 billion without action, denied 272 applications worth \$162 million, and revoked 23 licenses worth \$154,532,454. BIS received 15,019 license applications in Fiscal Year 2004, compared to 12,918 applications in Fiscal Year 2003. This marked the highest volume of applications in 11 years.

In Fiscal Year 2004, the commodity classification with the highest number of approvals was thermal imaging and light intensifying cameras (ECCN 6A003), with 2,768 approved applications worth \$575 million. Ap-

provals for Germany and Japan accounted for 46 percent of all 6A003 approvals.

The People's Republic of China was the destination for the largest number of approved licenses in Fiscal Year 2004. BIS approved 1,336 licenses for exports to China worth \$528 million Thirty-five percent of these licenses were for deemed exports.

The average processing time for all completed license applications during Fiscal Year 2004 was 36 days, compared to 44 days in Fiscal Year 2003.

#### *Deemed Exports*

Of the 15,534 applications reviewed, 995 were for deemed exports, an increase of almost 20 percent over



Assistant Secretary for Export Administration Peter Lichtenbaum addresses the Bureau of Industry and Security's Update Conference.

Fiscal Year 2003. This increase has been due in large part to an expanded deemed exports outreach program that promotes better industry awareness and understanding of deemed export licensing requirements. There were 116 such outreach events conducted in Fiscal Year 2004.

BIS also implemented several improvements to the deemed export license process. These improvements included tying the validity period of a license to the expiration date of the foreign national's visa in those instances where the visa expires beyond the standard two year validity of an export license. In addition, under certain conditions, automatic six month extensions are provided for existing deemed export licenses that need to be renewed. Finally, agencies involved in the review process have committed to make their best effort to process deemed export technology upgrade applications in 20 days. These process improvements have reduced the licensing burden for deemed export applications for renewals and technology upgrades, which continue to make up approximately 30 percent of the deemed export licensing volume.

These efforts have contributed to the continued reduction in average deemed export license process time. In spite of the continued rise in license applications, deemed export license processing time was reduced from 62 days in Fiscal Year 2003 to 42 days in Fiscal Year 2004. Most deemed export cases continue to involve the transfer of technology associated with the semiconductor manufacturing, telecommunications, and computer industries that are controlled for security reasons. Approximately 70 percent of the deemed export licenses reviewed were for Chinese and Russian foreign nationals.

### ***Reduction in Cases Escalated for Dispute Resolution***

The interagency Operating Committee is tasked with resolving license applications when there is disagreement among the relevant U.S. Government agencies as to the appropriate licensing action. In Fiscal Year 2004, 269 cases were escalated to the Operating Committee for dispute resolution. Of these, 35 were further escalated to the policy-level Advisory Committee on Export Policy (ACEP) for resolution. The average time for decision for

escalated cases in Fiscal Year 2004 was 22 days, down from 45 days in Fiscal Year 2003.

### ***Short Supply Controls***

BIS implements the policy set forth in Section 3(2) and the procedures set forth in Section 7 of the Export Administration Act of 1979, as amended (EAA). Section 3 states that it is the policy of the United States 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 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 on domestic supply has an adverse effect on the U.S. economy. In addition, BIS 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.

Domestically produced crude oil and certain unprocessed timber harvested from federal and state lands are controlled for short supply reasons. During Fiscal Year 2004, BIS approved 24 licenses for the export of crude oil, amounting to 901 million barrels. No licenses were approved during Fiscal Year 2004 for the export of unprocessed timber. No licenses were denied in either category.

BIS also is responsible for determining whether it is necessary to restrict the export of commodities in short supply to protect the domestic economy from the excessive drain of such materials and to mitigate the inflationary impact of excessive foreign demand. In April 2004, BIS received a short supply petition requesting that the Department of Commerce impose monitoring and controls on exports of recyclable metallic materials containing copper. In July 2004, BIS determined that neither monitoring nor the imposition of controls on exports of copper and copper-alloy scrap was necessary. BIS carefully reviewed and analyzed this petition in accordance with Section 3(2)(C) and 7(c) of the Export Administration Act of 1979 (EAA), as amended. Although BIS did not





Deputy Assistant Secretary for Export Administration Matthew S. Borman testifies before the House Government Reform Subcommittee on National Security, Emerging Threats, and International Relations.

find sufficient evidence to warrant imposing monitoring or export controls, BIS did work to refine the Schedule B classifications for copper and copper-alloy scrap in order to better delineate the varieties of scrap that are being exported. BIS also worked with the Department of State and the Office of the U.S. Trade Representative to address foreign government practices that may distort the global market.

Section 14(a)(13) of the EAA requires a report on any short supply monitoring program conducted pursuant to the EAA or Section 812 of the Agricultural Act of 1970. Information from the U.S. Department of Agriculture on its monitoring activities during Fiscal Year 2004 is included in Appendix H of this report.

### ***Special Comprehensive Licenses***

In Fiscal Year 2004, BIS completed five Internal Control Program (ICP) reviews for Special Comprehensive License (SCL) amendment submissions related to exports to China.

An SCL is a license that is issued to experienced and knowledgeable exporters and consignees. The SCL is used in place of individual export licenses for shipments by exporters that routinely participate in export and/or reexport transactions involving multiple destinations. Parties to the SCL must have mechanisms in place to ensure that each export and reexport meets all of the

terms and conditions of the SCL and is in accordance with applicable provisions of the Export Administration Regulations (EAR).

Consignee ICP reviews were required to ensure that SCL holders and consignees had sufficient controls in place to ensure compliance with the EAR and license conditions imposed on the consignee. BIS completed three ICP reviews for new SCL submissions and four domestic on-site reviews.

BIS also completed two Export Management Systems (EMS) reviews of corporate written compliance programs. An EMS review consists of a comparison of a company's written compliance program procedures and internal controls against EMS Guidelines as they relate to the company's typical export transactions.

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

BIS processed an increasing number of pre-export technical review requests for a variety of encryption products, including commodities and software for desktop and laptop computers, wireless handheld devices and access points, e-business applications, virtual private networking and other Internet security appliances, and telecommunications infrastructure products. Except for products that require a license to certain government end-users (such as high-end networking products, source code, and products for which the cryptography has been customized or tailored to customer specification), commercial encryption commodities and software that have met this up-front technical review requirement may be exported and reexported to both government and non-government end-users outside the designated terrorism-supporting countries, under License Exception ENC or "mass market" encryption provisions of the EAR.

In Fiscal Year 2004, BIS received over 1,520 technical review requests for over 2,500 controlled encryption

products, components, toolkits, and source code items. These encryption reviews comprised 31 percent of the Bureau's total output of commodity classifications in Fiscal Year 2004. Of the 2,078 encryption products reviewed during the fiscal year, 84 percent (1,736) were classified as "retail" (1048) or "mass market" (688) encryption items, making them eligible for export and reexport without a license to government and non-government end-users in most countries.

In addition, during Fiscal Year 2004 BIS approved 462 license applications for "non-retail" encryption items (such as high-end routers and other network infrastructure equipment) and technology valued at \$16.3 million.

### Goals For Fiscal Year 2005

During Fiscal Year 2004, BIS developed with the Departments of Defense, State, and Energy a shared framework of license condition criteria to be used as the basis for review of approximately 54 commonly used license conditions. In Fiscal Year 2005, BIS will build on the framework by seeking to evaluate, strengthen, and streamline the language of the license conditions in order to ensure that they are easily understood and enforceable. The review will also ensure that the recent changes in market conditions and nonproliferation and foreign policy are reflected in Commerce's license conditions.

During Fiscal Year 2004, BIS explored ways to apply the Special Comprehensive License (SCL) to certain exports

of commercial night vision and thermal imaging equipment. Some night vision/thermal imaging companies submit over 200 license applications for similar products and destinations in a given year. Under an SCL, exports are approved for a four year period, eliminating the need for BIS to review each individual transaction. Implementation of an SCL for certain commercial night vision and thermal imaging exports to reliable commercial parties located in close U.S. allies would offer a more cost-effective, streamlined licensing mechanism and application procedure while still protecting national security interests. Such a licensing policy would allow U.S. industry to better compete in the global marketplace and strengthen the defense industrial base. BIS will continue to work with industry and the interagency community to try to achieve this objective during Fiscal Year 2005.

In Fiscal Year 2004, BIS made progress developing a proposal for a Special Intra-Company License (SIL) that responds to industry's concern for a licensing vehicle that takes into account the globalized environment for product development and production within the information technology industries. Companies need to be able to share information quickly within their domestic and overseas operations, provided that they have strong internal controls in place. During Fiscal Year 2005, BIS will work with the agencies and industry in an effort to reach consensus on this licensing vehicle.



## Chapter 3: Enforcement

### Mission

A central mission of the Bureau of Industry and Security (BIS) is to protect U.S. national security and foreign policy interests by vigorously enforcing the export control and antiboycott provisions of the Export Administration Regulations (EAR). Enforcement includes pursuing criminal and administrative sanctions against violators as well as deterring violations through a series of preventive enforcement measures ranging from end use checks to public outreach to assist the private sector in identifying illegal export transactions and avoiding participation in unsanctioned foreign boycotts. BIS works with the Department of Justice to impose criminal penalties for violations, including incarceration and fines, and the Department of Commerce's Office of Chief Counsel for Industry and Security to impose civil penalties for administrative violations, including fines and denials of export privileges.

Through its Office of Export Enforcement (OEE), BIS conducts investigations of possible export control violations. BIS has approximately 100 special agents that are located throughout the United States in eight field offices located in or near the following major cities: Boston, Chicago, Dallas, Los Angeles, Miami, New York City, San Jose, and Washington, D.C. BIS also opened a resident office in Houston in Fiscal Year 2004 that reports to the Dallas Field Office. The main responsibilities of BIS special agents are conducting criminal and civil investigations of possible EAR violations and working cooperatively with the exporting community to help prevent, deter, and detect violations. Special agents have police powers, including the author-

ity to carry weapons, execute search warrants, and make arrests. Special agents also may issue administrative subpoenas and detain and seize goods to prevent illegal exports. BIS's investigations are supported by an extensive analysis staff at headquarters in Washington.



Assistant Secretary for Export Enforcement Julie L. Myers addresses the Bureau of Industry and Security's Update Conference.

Through its Office of Antiboycott Compliance (OAC), BIS also enforces the antiboycott provisions of the EAR. The antiboycott regulations direct U.S. businesses not to participate in foreign boycotts that the United States does not sanction. To that end, BIS provides extensive guidance to the exporting community to educate them on the application of the antiboycott regulations, trends in boycott activity, and to prevent and deter violations. BIS uses a number of tools in working with the private sector, including its telephone and mail advice lines, and presentations to trade associations and banking groups.

In addition to its preventive work, BIS also pursues criminal and administrative cases related to violations of the antiboycott laws. The most common type of violations are furnishing boycott-related information, refusal to deal with blacklisted businesses, and discrimination for a boycott purpose based on religion or national origin. In addition, BIS provides information on boycott activity to the Department of State as part of the U.S. Government's opposition to the Arab League boycott of Israel.

### Accomplishments In Fiscal Year 2004

#### *Penalties*

During Fiscal Year 2004, BIS increased both the number of criminal convictions and administrative case completions by over 50 percent. BIS investigations resulted in the criminal convictions of 28 individuals and businesses, with \$2.9 million in penalties, compared to 27 convictions and \$3.4 million in penalties in Fiscal Year 2003. In addition, BIS investigations resulted in the completion of 63 administrative enforcement cases against individuals and companies, up from 34 administrative cases in Fiscal Year 2003. The increased number of administrative cases resulted in a substantial increase in civil penalties, which totaled \$6.2 million in Fiscal Year 2004 as compared to \$4.1 million in Fiscal Year 2003. BIS also imposed \$65,000 in fines for violations of the antiboycott provisions of the EAR in Fiscal Year 2004.

#### *Significant Cases*

To prioritize its caseload to focus on the most critical cases BIS created the Export Case Emphasis List (X-CEL). The X-CEL list allows BIS to ensure that it is focusing its efforts and resources on cases involving items with potential use in chemical, biological, and/or nuclear weapons, and cases involving violations where the end-users were from nations or organizations of greatest concern.

Three cases demonstrate the breadth of BIS's enforcement actions:

- In March 2004, Thomas Campbell Butler, M.D., a professor at Texas Tech University, was found guilty

on 47 criminal counts, including illegally exporting *Yersinia Pestis* (Bubonic Plague) to Tanzania. Butler was subsequently sentenced to two years in federal prison and ordered to pay a \$58,375 fine. This was an X-CEL investigation.

- In April 2004, BIS's efforts led to the first two criminal convictions in a deemed export case. Suntek Microwave, Inc. (Suntek) and its former President, Charlie Kuan, pled guilty in the U.S. District Court for the Northern District of California to violating the International Emergency Economic Powers Act (IEEPA) for unlicensed deemed export and other export control violations. Suntek was ordered to pay over \$339,000 in fines and Mr. Kuan is awaiting sentencing. In addition, BIS pursued Suntek and Mr. Kuan administratively. In the administrative cases, Suntek paid a \$275,000 penalty and received a 20-year denial of export privileges. Mr. Kuan agreed to a \$187,000 civil penalty and to a 20-year denial of export privileges.
- In September 2004, St. Jude Medical Export GmbH (St. Jude) settled charges of violating the antiboycott provisions of the EAR by failing to report, in a timely manner, three Iraqi requests that it adhere to the rules of the Arab League boycott of Israel and by agreeing to do business with blacklisted persons. In connection with this settlement, St. Jude paid a \$30,000 civil penalty.

A summary of all the export control cases closed in Fiscal Year 2004 is included in Appendix D of this report.

#### *Preventive Enforcement*

In Fiscal Year 2004, BIS completed 865 preventive enforcement activities. These included a variety of actions such as detaining suspected illegal shipments, performing end-use checks identifying and placing parties on the Unverified List, performing outreach visits to businesses, conducting and participating in numerous presentations to industry, issuing warning letters for minor first time violations, monitoring compliance with the conditions on particular export licenses, recommending denial of license applications, and preventing illegal transfer of controlled technology by denying visas for foreign visitors suspected of targeting such controlled technology.

The majority of the preventive enforcement activities consisted of end-use checks, which are a valuable tool to verify that targeted commodities will be or have been properly used by the proper end-users. End-use checks consist of Pre-License Checks (PLC) and Post-Shipment Verifications (PSV). A PLC is used to determine if an overseas person or firm is a suitable party to a transaction involving controlled U.S. origin goods or technical data. A PSV confirms whether or not goods exported from the United States actually were received by the party named on the license or other export documentation, and whether the goods are being used in accordance with the provisions of that license. During Fiscal Year 2004, BIS conducted 647 end-use checks consisting of 246 PLCs and 401 PSVs.

In cases in which BIS is unable to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to an export transaction, BIS may add the person to the Unverified List (UVL). Based on the results of end-use checks conducted in Fiscal Year 2004, BIS removed six companies from the UVL due to the completion of requested end-use checks at these entities and added five entities to the UVL, based on the inability of U.S. officers to conduct end-use checks at these entities.

### ***Antiboycott Activity***

BIS works in conjunction with other U.S. Government agencies to oppose the Arab League boycott of Israel. BIS compiles and analyzes data from reports of boycott-related requests it receives from U.S. businesses. The data is shared with the Department of State, which uses it to inform U.S. Embassies in boycotting countries about current trends in boycott activities. The U.S. Embassies are able to help U.S. companies to do business in boycotting countries without violating U.S. antiboycott laws. Since the lifting of U.S. trade sanctions on Libya, BIS has sought to enable U.S. companies to resume operation there while complying with the requirements of the antiboycott provisions of the EAR. Similarly, BIS

counsels U.S. businesses on boycott issues in the newly reopened market of Iraq.

During Fiscal Year 2004, four companies agreed to pay civil penalties totaling \$65,500 to settle allegations that they had violated the antiboycott provisions of the EAR,



Acting Chief Counsel Roman Sloniewsky addresses the Bureau of Industry and Security's Update Conference.

including furnishing information for a boycott purpose, agreeing to refuse to do business with blacklisted persons, failing to maintain records relating to boycott-related requests, and failing to report requests to comply with unsanctioned foreign boycotts.

### ***Overseas Attaché Program***

BIS posts experienced Export Control Attachés at the U.S. missions in Abu Dhabi, Beijing, Hong Kong, Moscow, and New Delhi. The attachés facilitate U.S. trade by helping to ensure that imports of U.S.-origin dual-use goods are used in accordance with U.S. export control laws. This is accomplished through education and outreach in the foreign countries, as well as by conducting end-use checks.

### ***Penalty Guidance***

In February 2004, BIS published new penalty guidance in the *Federal Register* relating to the settlement of adminis-

## Chapter 3: Enforcement

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trative enforcement cases under the EAR. The new penalty guidance provides the public with a description of how BIS determines what penalties are appropriate in the settlement of administrative enforcement cases. The new penalty guidance identifies general factors, such as the destination of the export, the degree of willfulness involved in violations, as well as specific mitigating and aggravating factors that BIS typically takes into account in determining penalties. The guidance further encourages parties to provide the kind of information to BIS that would be helpful in the consideration of appropriate settlement parameters for their cases.

### Goals For Fiscal Year 2005

In Fiscal Year 2005, BIS intends to strengthen its efforts to investigate and prosecute the most significant violations of the EAR, including by enhancing the Export

Case Emphasis List (X-CEL) and case methodology. BIS will expand and strengthen its program of end-use checks while also coordinating with the Department of Homeland Security and other law enforcement agencies to conduct strategic outreach at different points in the supply chain to ensure the security of trade according to U.S. laws and regulations.

During Fiscal Year 2005, BIS also will strive to increase the exporting community's awareness of the Arab League boycott of Israel and its harmful effects on trade. In addition, BIS plans to develop and implement penalty guidelines for settlement of administrative cases that will increase transparency by explaining how BIS makes penalty determinations for violations of the anti-boycott regulations.



## Chapter 4: Industry Outreach Activities

### Mission

An integral part of the mission of the Bureau of Industry and Security (BIS) is to facilitate compliance with U.S. export controls by keeping U.S. firms informed of export control regulations through an aggressive outreach program. BIS accomplishes this mission through a series of outreach activities that provide timely information to U.S. industry regarding the updating of export controls, new regulations in support of non-proliferation and anti-terrorism goals, and compliance with the Export Administration Regulations (EAR). BIS also trains U.S. exporters to identify and avoid illegal transactions.

### Accomplishments In Fiscal Year 2004

BIS worked closely with industry in Fiscal Year 2004 through meetings, conferences, seminars, and increased public-private partnerships.

#### Exporter Services Outreach Initiatives

##### *Seminars and Conferences*

In Fiscal Year 2004, BIS conducted 50 domestic seminars in 16 states, which were attended by over 3,265 participants. BIS seminars provide guidance to new and established exporters regarding the EAR and changes in export policy and licensing procedures. For example, BIS offers a one-day seminar program that covers the major elements of the U.S. dual-use export control system and an intensive two-day program that provides a more comprehensive presentation of exporter obligations under the EAR. BIS also conducts workshops on topics of specialized interest, such as commercial encryption licensing, freight forwarder compliance, implementation of export management systems, control of technology transfers to

foreign nationals, and reporting and on-site verifications requirements under the Chemical Weapons Convention Regulations.

In addition, BIS holds an annual Update Conference on Export Controls and Policy to bring together high-level government officials and industry representatives to discuss new developments in U.S. export control policies, regulations, and procedures. The Fiscal Year 2004 Update Conference, held in Washington, D.C., attracted over 700 exporters, as well as representatives from key trading partners.

BIS also partnered with a number of public and private sector organizations to explain the mission and services of BIS to audiences in specific business and technology sectors, while providing BIS with greater insight into technology and market developments in key sectors of the economy. BIS supported 52 of these programs, which reached over 2,900 people through company visits and formal presentations at conferences.

##### *International Industry Outreach Initiatives*

In Fiscal Year 2004, BIS conducted international export control outreach seminars in Frankfurt, Germany, and Vienna, Austria. Such seminars provided key export control-related information beneficial to companies in other countries that use U.S.-origin parts and components for manufacturing and assembly, use U.S. origin systems, software, or technology to develop foreign-made products, and reexport U.S.-origin goods.

##### *Counseling*

In Fiscal Year 2004, BIS regulatory specialists assisted over 98,000 people in one-on-one counseling sessions through phone calls, visits, and e-mails to BIS's Outreach

## Chapter 4: Industry Outreach Activities

and Educational Services Division in Washington, D.C., and the BIS Western Regional Office in Newport Beach, California. These sessions provide guidance on regulations, policies, and practices that affect a company's export operations, and thereby help increase compliance with U.S. export control regulations.



Deputy Under Secretary Mark Foulon addresses the Bureau of Industry and Security's Update Conference.

BIS also has implemented an e-mail notification program through its Web site, [www.bis.doc.gov](http://www.bis.doc.gov), whereby exporters may subscribe to receive information about BIS seminars and training programs. Over 4,000 people have signed up to receive monthly e-mails on upcoming BIS outreach events. In addition, exporters may now sign up to receive e-mail notification of Web site changes, regulations, press releases, and other information relating to the administration of export controls.

### *Seeking Industry's Input on Export Control Policy and Regulations*

BIS also continues to partner with U.S. industry to ensure that the private sector's views on export control policy issues and regulations are fully considered. In Fiscal Year 2004, six Technical Advisory Committees (TACs) – covering information systems, materials, materials processing equipment, regulations and procedures, sensors and

instrumentation, and transportation and related equipment — advised BIS on export control issues, including proposed revisions to multilateral export control lists, licensing procedures that affect export controls, and assessments of foreign availability of controlled products. TACs meet quarterly with representatives selected from firms producing a broad range of goods, technologies, and software.

In addition, the President's Export Council Subcommittee on Export Administration (PECSEA) met three times during Fiscal Year 2004 to discuss the impact of technological developments on existing U.S. and foreign export controls, the foreign availability of controlled items, and related security and economic issues. PECSEA, a subcommittee of the President's Export Council, is composed primarily of representatives from the private sector.

In November 2003, the PECSEA formed three working subgroups to focus discussions on the impact of technological developments on existing controls; foreign availability and other countries' export controls; and security and economic issues. In May 2004, PECSEA members approved and provided to the PEC a draft letter to the President on export controls that outlined suggested steps that the Administration should take to strengthen U.S. economic competitiveness and promote U.S. national security. These recommendations included: streamlining the treatment for U.S. technology transfers by developing a process-based set of rules and developing a set of "best practices" for technology transfers; initiating expanded dialogue with U.S. partners to enhance their review of license applications for sensitive items; developing standard conditions that exporters can preview with the end-users; and ensuring that commercial commodities that have military applications remain controlled as dual-use items.

After the PECSEA letter was considered by the PEC, the letter was signed by PEC Chairman J.W. Marriott, Jr., and delivered to President Bush. In Fiscal Year 2005, BIS will review the recommendations contained in the letter and



consider appropriate actions in addition to those already taken on the letter's recommendations.

### ***Targeted Outreach***

In Fiscal Year 2004, BIS conducted instructional seminars to raise industry and government awareness of updates to U.S. encryption export policies and regulations in Boston, Massachusetts; Houston, Texas; Newport Beach, California; St. Louis, Missouri; St. Paul, Minnesota; Santa Clara, California; and Washington, D.C.

In Fiscal Year 2004, BIS conducted 116 deemed outreach activities for industry and relevant government agencies. In Fiscal Year 2004, the program was expanded to include academic institutions and U.S. Government laboratories involved in research. This expanded outreach promoted a better understanding of deemed export licensing requirements outside of the traditional export industries. In presentations given during these outreach activities, BIS representatives outlined documentation requirements for license applications, proper technology classification, and required attributes of internal company technology control plans. One of the effects of this expanded outreach was a 20 percent increase in the number of deemed export license submissions during Fiscal Year 2004.

BIS has also supplemented its deemed export outreach activities with site visits to assess implementation of Technology Control Plans (TCP) by individual license holders and to verify compliance with deemed export license conditions. Based on the information obtained during these visits, BIS has developed required elements for TCPs, which have been included in license conditions. BIS plans to integrate these required elements into a future rule addressing intracompany technology transfers.

BIS also targeted outreach to the semiconductor manufacturing equipment and night vision industry sectors, which currently account for a significant volume of complex export licenses. In the semiconductor sector, for example, BIS participated in 17 outreach events, including national and foreign site visits, attendance at industry-sponsored meetings, and active participation in the



Participants in the Bureau of Industry and Security's Update Conference, an annual event which brings together more than 700 members of the exporting community.

Information Systems TAC. In the night vision sector, BIS participated in 16 outreach activities. These included one-on-one meetings with companies, attendance at industry sponsored events, and active participation in the Sensors and Instrumentation TAC.

The chemical and biological industries were also targeted for outreach activities by BIS in Fiscal Year 2004. BIS conducted 12 site assistance visits (SAVs) during the fiscal year, in response to requests from U.S. companies for assistance in preparing their facilities for inspection by the Organization for the Prohibition of Chemical Weapons (OPCW). In addition, BIS participated in several events that focused on chemical and biological items. These events included outreach to an association of executives engaged in technology transfers; a lecture to a student group examining the relationship between biology and security; a seminar for exporters of controlled biological agents and equipment; and a briefing for a major U.S. biochemical manufacturer.

### ***E-Commerce***

In May 2003, BIS established an E-Commerce Working Group to develop and distribute compliance guidelines for exporters and reexporters. In response to a growing number of inquiries related to e-commerce transactions, BIS created an e-commerce section on the BIS Web site. The

## Chapter 4: Industry Outreach Activities

E-Commerce Web site provides guidelines and best practices for transactions related to e-commerce.

### *Project Outreach*

BIS also maintains a constructive and cooperative relationship with the business community through outreach programs sponsored by its Office of Export Enforcement. Through Project Outreach, BIS held Business Executives Enforcement Team (BEET) meetings around the country, bringing business executives and law enforcement personnel together to discuss compliance with U.S. export controls. Many of these meetings were co-sponsored by local business groups.

During Fiscal Year 2004, BIS Special Agents also spoke at numerous conferences, seminars, and meetings sponsored by local, state, and federal organizations. They participated in 43 public presentations and seminars, and 161 conferences and seminars with government and enforcement organizations. They also visited 838 companies to brief employees on how to identify suspicious transactions and how best to contact law enforcement officials for prompt assistance.

### *Compliance with Antiboycott Regulations*

During Fiscal Year 2004, BIS's Office of Antiboycott Compliance responded to 812 requests from companies for guidance on compliance with the antiboycott regulations. During the same period, BIS officials made 12 public presentations on the antiboycott regulations to exporters, manufacturers, financial services institutions, freight forwarders, and attorneys involved in international trade. In addition, BIS provided extensive counseling to individual companies with specific boycott problems.

## Goals For Fiscal Year 2005

In Fiscal Year 2005, BIS is scheduling over 40 programs at various locations around the country, in addition to the annual Update Conference on Export Controls and Policy in Washington, D.C. BIS also will conduct additional international industry outreach activities. In addition, BIS plans to expand its outreach program to exporters of par-



Under Secretary Kenneth I. Juster meets with members of the news media at the Bureau of Industry and Security's Update Conference.

ticular types of sensitive commodities, such as night vision equipment. For example, BIS will work with the Sensors and Instrumentation TAC and develop a dialogue with industry groups regarding licensing and compliance responsibilities associated with the export of such commodities.

BIS also will continue to work closely with other U.S. Government agencies and industry groups to ensure the continued effectiveness of U.S. encryption export control policy and regulations. BIS has planned encryption-related instructional seminars for Fiscal Year 2005 in Austin, Texas; Newport Beach, California; and Washington, D.C.

BIS also intends to expand the deemed export outreach program initiated in Fiscal Year 2003. Sectors to be added this year for deemed export outreach programs include small business trade associations, the biotechnology industry, universities and educational institutions, and various government agencies, such as relevant components of the Department of Homeland Security. Site visits to deemed export licensees also will continue. BIS plans to use information obtained from such site visits will be used to develop a "Practical Guide for Technology Control Plans."



## Chapter 5: International Regimes and Treaty Compliance

### Mission

One of the principal missions of the Bureau of Industry and Security (BIS) is to promote the effective implementation of export controls, through the multilateral export control regimes and international treaty obligations.

BIS plays a major role in the development, interpretation, and refinement of control lists and operational guidelines related to four major non-proliferation regimes — the Australia Group (AG), which deals with chemical and biological weapons, the Missile Technology Control Regime (MTCR); the Nuclear Suppliers Group (NSG); and the Wassenaar Arrangement, which focuses on controls on conventional arms and dual-use exports.

In addition to these multilateral regimes, BIS administers the industry compliance program for the Chemical Weapons Convention (CWC), which provides for an extensive verification regime to ensure adherence to its terms. BIS also actively works with other CWC State Parties and the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that the provisions of the CWC are being implemented in a rigorous, analytically sound, and equitable manner by all State Parties.

The unanimous adoption of United Nations Security Council Resolution 1540 in April 2004 supplements the multilateral regimes. The resolution calls on states to establish effective national export controls, among other non-proliferation measures.

### Accomplishments In Fiscal Year 2004

In Fiscal Year 2004, BIS continued to play a leading role in U.S. Government efforts to encourage the multilateral

regimes to address the renewed threat of international terrorism; promote the uniform interpretation and enforcement of multilateral controls; strengthen regime end-use/user controls, known as “catch-all” controls; refine technical control parameters to focus on items of specific proliferation concern; expand multilateral control lists to include technological developments; and reach out to non-regime members to enlist their support for multilateral non-proliferation goals.

#### *Australia Group*

In response to the use of chemical weapons during the Iran-Iraq war in the early 1980s, the Australia Group (AG) was formed in 1984 to harmonize export controls on chemical weapons precursor chemicals. It subsequently expanded its initial focus on chemical weapons to include chemical production equipment and technologies. In 1990, the AG expanded to include regime measures to prevent the proliferation of biological weapons.

BIS published a rule on March 18, 2004, implementing the understandings reached at the June 2003 Plenary meeting by adding viruses and bacteria to the list of AG-controlled human and zoonotic pathogens or toxins.

In Fiscal Year 2004, the AG welcomed five new members – Estonia, Latvia, Lithuania, Malta, and Slovenia.

The 2004 AG Plenary was held against the backdrop of significant developments in global non-proliferation, including Libya’s decision to forgo its chemical weapons program and the revelation of the A.Q. Khan proliferation network. Against this background, participants noted growing acceptance of AG guidelines as the international benchmark in relation to export controls directed at chemical and biological weapons, owing in large part to the AG’s ongoing outreach activities. Accordingly, par-

ticipants agreed to strategies for better targeted training and assistance, particularly at a regional level, to assist key supplier and transshipment countries and other interested countries outside the AG to enhance their export controls. In response to increasingly sophisticated procurement activities, the AG also agreed to consider the issue of brokering controls. Such controls could play a key role in curtailing the activities of intermediaries and front companies.

As part of the AG's ongoing efforts to keep its common control lists up to date and scientifically relevant, participants agreed to add five plant pathogens to the control lists – the first such addition since 1993 – and to expand medical exemptions for certain controlled toxins.

### ***Biological Weapons Convention***

The Biological Weapons Convention (BWC), which prohibits developing, producing, stockpiling, or otherwise acquiring or retaining biological agents or toxins for non-peaceful purposes, entered into force in 1975 and currently has 152 State Parties as members. In Fiscal Year 2004, BIS participated in the U.S. delegation to the Annual Meeting on the BWC work program and worked to promote effective action by State Parties to implement the provisions of the BWC and to ensure the security of biological agents and toxins.

### ***Chemical Weapons Convention***

The CWC, which came into force in 1997 and currently consists of 166 members, bans the development, production, stockpiling, or use of chemical weapons among its State Parties, and provides for an extensive verification regime. Its verification functions are the responsibility of the Organization for the Prohibition of Chemical Weapons (OPCW). Approximately 200 inspectors, drawn from the State Parties to the CWC, inspect military and industrial chemical facilities throughout the world to verify compliance with the CWC's requirements.

Under the terms of the CWC, certain commercial chemical facilities are required to submit data declarations, which include information on chemical production, processing, consumption, export, and import levels. U.S. companies exceeding certain thresholds are required to

submit appropriate documents to BIS. This information is then compiled and forwarded to the OPCW's Technical Secretariat, which is charged with carrying out verification functions. As of September 2004, the OPCW has conducted 747 routine inspections at commercial and other related sites in 65 countries. The United States has hosted approximately one-third of all CWC inspections.

During Fiscal Year 2004, 805 declarations and reports from 623 U.S. plant sites were received and verified by BIS staff. Of this number, 783 were forwarded to the OPCW, 13 were maintained for internal information purposes, and 9 were returned without action. BIS also hosted 10 on-site inspections of U.S. facilities engaged in chemical-related activities during Fiscal Year 2004. In addition, in response to requests from U.S. companies for assistance in preparing their facilities for inspection by the OPCW, BIS conducted 12 site assistance visits (SAVs) in Fiscal Year 2004.

The October 2003 Conference of States Parties to the CWC adopted a plan of action to ensure universal State Party compliance with the CWC. This plan includes providing assistance to State Parties that request it. During the past fiscal year, BIS began working with the Technical Secretariat of the OPCW and the Government of Romania to develop outreach materials to assist State Parties in adopting national measures to fully implement the provisions of the CWC. When completed, this Implementation Assistance Program will provide State Parties requesting assistance with electronic and hard-copy materials focusing on the implementation of a national CWC program.

### ***IAEA Additional Protocol***

The U.S. Government was a leading advocate for the development of an Additional Protocol to the International Atomic Energy Agency (IAEA) Safeguards Agreement (Additional Protocol) that would enhance the IAEA's capabilities to detect proliferation activities by expanding state declaration and inspection requirements to include the entire nuclear fuel-cycle. In May 2002, President Bush transmitted the U.S. Additional Protocol to the Senate for its advice and consent to ratification,

which it provided on March 31, 2004. At the end of Fiscal Year 2004, legislation necessary for BIS to implement the Additional Protocol was still pending in Congress.

As part of the domestic implementation effort, BIS is expected to be designated the lead agency for issues, declarations, and inspections related to industrial nuclear fuel cycle activities and locations not licensed by the Nuclear Regulatory Commission (NRC), such as equipment manufacturing, research and development, and hard-rock uranium mines. BIS also will compile and submit the U.S. national declaration to the IAEA. During Fiscal Year 2004, BIS continued to develop draft declaration forms and regulations, and the Additional Protocol Reporting System, which will process BIS and NRC declarations and aggregate all agency submissions into a U.S. national declaration. BIS also conducted outreach with the nuclear industry to explain the Additional Protocol and BIS's planned role in implementing it.

### ***Missile Technology Control Regime***

The United States has been a member of the Missile Technology Control Regime (MTCR) since its inception in 1987. The MTCR currently has 34 member countries, all of which have agreed to coordinate their national export controls to prevent missile proliferation. Bulgaria was welcomed as the newest member of the regime in June 2004.

The annual MTCR Plenary, held in Buenos Aires, Argentina, in September 2003, focused on regional non-proliferation and outreach to non-MTCR countries. Members also agreed that the MTCR Chair should reach out to regional international organizations in order to promote broad adherence to missile non-proliferation objectives. In addition, regime members reached agreement on a number of critical modifications to the MTCR Annex. Agreement was reached on a number of parameter clarifications for existing controls to better ensure international harmonization of interpretation and implementation, such as telemetry items. Agreement was also reached on controlling the export of certain Unmanned Aerial Vehicles (UAVs) designed for the delivery of aerosols. Finally, the MTCR agreed on a regime-wide "catch all" control and

to interpret controls on technology to include intangible transfers such as visual inspections and oral briefings. These accomplishments have not only helped to combat the proliferation of the means to deliver WMD, but have leveled the regulatory burden placed on U.S. industry with the rest of the supplier nations.

The MTCR Technical Experts Meeting, held in London, England, on April 5-8, 2004, focused on technical changes to missile technology controls, including a clarification of the controls on accelerometers, guidance equipment incorporating magnetometers, internal combustion engines designed for use in UAVs, and the introduction of U.S. proposals to revise controls on ball bearings used in liquid propellant rocket engines that will be considered at the 2004 MTCR Plenary in Seoul, Korea.

### ***Nuclear Suppliers Group***

The Nuclear Suppliers Group (NSG) was formally established in 1992, and now totals 44 member countries. Four new members were admitted in Fiscal Year 2004: the People's Republic of China, Lithuania, Malta, and Estonia.

At the May 2004, annual Plenary in Gotheborg, Sweden, discussions focused on the admission of new members, interpretation of existing guidelines, agreement by NSG members to adopt nuclear "catch-all" controls, and consideration of President Bush's major nuclear non-proliferation initiatives. These latter include a number of challenges to international security posed by the proliferation of weapons of mass destruction. In particular, the President proposed that adoption of the Additional Protocol to the International Atomic Energy Agency Safeguards Agreement should be a pre-condition for export of NSG trigger-list items – items related to operation of the nuclear reactor core and under the licensing control of the Nuclear Regulatory Commission. In addition, the United States submitted a proposal to amend the NSG Guidelines to suspend nuclear trade with any state found by the IAEA Board of Governors to be in noncompliance with its safeguards obligations.

The NSG agreed that the Democratic People's Republic of Korea (DPRK) continues to pose a nuclear threat.

Building on agreements made in Fiscal Year 2003, the NSG agreed to adopt U.S.-proposed anti-terrorism amendments to the NSG Guidelines and to issue a press statement alerting supplier states to concerns regarding the DPRK's nuclear weapons program. NSG members also requested the NSG Chair to specifically alert key non-member suppliers, as well as transit states, about the risks of diversion of NSG controlled and non-controlled items to DPRK nuclear weapons programs.

### *Wassenaar Arrangement*

The Wassenaar Arrangement is a multilateral arrangement intended to address and review export controls on conventional arms and sensitive dual-use goods and technologies. The Wassenaar Arrangement was founded in 1996 to replace the East-West technology control program under the Coordinating Committee for Multilateral Export Controls (COCOM) that was disbanded in 1994.

Wassenaar members undertake to maintain effective national export controls for the items on agreed control lists, which are reviewed periodically to respond to technological developments. Wassenaar's specific information-exchange requirements involve semi-annual notifications of arms transfers, covering seven categories derived from the UN Register of Conventional Arms. Members are also required to report approvals, transfers, and denials of certain listed dual-use commodities and technologies. Reporting denials helps to bring to the attention of member countries attempts to obtain strategic items that may undermine the objectives of Wassenaar.

During Fiscal Year 2004, there were several major accomplishments within Wassenaar, reflecting the changing nature of technology and the threat to global security. At the Wassenaar Plenary in Vienna, Austria, in December 2003, members agreed to tighten controls over Man Portable Air Defense Systems (MANPADS), to enhance transparency for the export of small arms and light weapons, to establish elements for national legislation for arms brokering, and to adopt end-use oriented controls encouraging member governments to impose export controls on certain unlisted items when necessary to support United Nations or regional arms embargoes.

In order to keep pace with advances in technology and developments in international security, Wassenaar members also agreed to several control list amendments, including strengthened controls on certain types of microwave electronic devices, semiconductor lasers, and navigation equipment. Wassenaar members also considered and reviewed advances in technology and market availability. A rationalization of export controls was introduced in the areas of electronic components and telecommunications equipment.

## Goals For Fiscal Year 2005

In Fiscal Year 2005, BIS will continue to lead and support U.S. Government efforts to adapt and strengthen international regimes to better support U.S. national security goals.

### *Australia Group*

BIS will work to harmonize its export control requirements with the AG guidelines, which support expedited licensing measures, but only in the case of transfers to destinations that individual AG members determine possess consistently excellent nonproliferation credentials.

### *Chemical Weapons Convention*

BIS will work to complete and distribute the Implementation Assistance Program, a global outreach program to encourage all State Parties to the CWC to establish national legislative programs to fully implement the provisions of the CWC.

BIS will also issue amendments, as needed, to the Chemical Weapons Convention Regulations (CWCR) to clarify the scope of the CWCR, provide alternate data submission options for declarations, and update the CWCR to reflect OPCW decisions.

### *Missile Technology Control Regime*

BIS will continue to support U.S. efforts to review and modernize MTCR Annex items to ensure that the controls properly address proliferation concerns with cruise missiles and Unmanned Aerial Vehicles (UAVs).

### *Nuclear Suppliers Group*

BIS will assist in U.S. efforts to reach consensus in the NSG on several proposals for changing the NSG Guidelines based on President Bush's nuclear nonproliferation initiatives.

### *Wassenaar Arrangement*

In the area of terrorism, BIS will continue to support adoption of a strong anti-terrorism initiative for Wassenaar. BIS will work to move terrorism issues beyond the discussion stage and achieve concrete agreements, such as identifying items of interest to terrorists that should be listed or included on a "watch list," or agreeing on a "catch-all" requirement, to ensure that goods and technology of all types would be controlled to known or suspected terrorists.

In the area of denial consultations, BIS will continue to seek a denial consultation mechanism in which member

countries would consult with each other before one member could approve a transfer that another had denied for security concerns. Such information sharing would promote the broad objectives of Wassenaar through increased transparency and responsibility among member nations. BIS also will continue to support proposals to increase transparency and information-sharing, notably requiring individual reporting of items on Wassenaar's Very Sensitive List to non-member countries.

In addition, BIS will work to finalize Wassenaar agreement on revisions to the list of controlled items, particularly the addition of certain focal plane arrays that are incorporated with night vision equipment. BIS will also work with other U.S. Government agencies to determine the proper scope of implementing a conventional arms "catch-all" control agreed to at the Wassenaar Plenary in December 2003.







## Chapter 6: International Cooperation Programs

### Mission

Advancing responsible economic growth and trade while protecting American security is a major component of the Department of Commerce's mission. In support of this goal, the Bureau of Industry and Security (BIS) promotes the development of effective export and transit control systems in key countries and transshipment hubs. By assisting in the development of effective national export control systems in other countries, BIS not only addresses issues of proliferation concern and terrorism, but also helps to level the playing field for U.S. industry. BIS conducts these activities through a combination of bilateral exchanges, multilateral conferences, and international policy initiatives.

### Accomplishments In Fiscal Year 2004

#### *Nonproliferation and Export Control Cooperation*

BIS conducts an active program of international collaboration with countries seeking assistance in developing effective national export control systems. In 2004, BIS created the Office of International Programs (OIP) to manage and actively participate in BIS's bilateral and multilateral activities. OIP includes the former Nonproliferation Export Control Team, which manages BIS's ten-year old program to work with participating countries to help them develop or strengthen their national export control systems in order to stem the proliferation of nuclear, chemical and biological weapons, and their delivery systems.

During Fiscal Year 2004, BIS managed and coordinated 86 bilateral technical exchanges with 22 countries. BIS performed this function in its capacity as an implementing agency for the Department of State funded Export Control and Related Border Security Assistance Program (EXBS). Each of the exchanges focused on one of five essential components of an effective national export control system: the legal basis and framework of export con-



Under Secretary Kenneth I. Juster and other senior BIS officials meet with a delegation from the Republic of Korea.

trols; export control licensing procedures and practices; export enforcement; industry-government relations; and program administration.

The 86 activities completed in Fiscal Year 2004 represent an increase of approximately 15 percent over Fiscal Year 2003. As a result of these and prior exchanges, BIS helped remedy 41 targeted deficiencies in the export control systems of cooperating countries. The activities un-

## Chapter 6: International Cooperation Programs

dertaken by BIS during Fiscal Year 2004 ranged from assisting in the drafting of laws and regulations to helping companies adopt effective compliance programs. BIS conducted cooperative bilateral export control technical workshops with Armenia, Azerbaijan, Croatia, the Czech Republic, Estonia, Hungary, India, Jordan, the Kyrgyz Republic, Latvia, Lithuania, Moldova, Pakistan, Panama, Russia, Slovakia, Slovenia, Tajikistan, Turkey, Ukraine, the United Arab Emirates, and Uzbekistan.



Office of International Programs Director Mi-Yong Kim addresses the Bureau of Industry and Security's Update Conference.

In addition to the bilateral technical exchanges, BIS participated in the First Asian Export Policy Dialogue and the Eleventh Asian Export Control Seminar in Tokyo, Japan, in October 2003, and the Global Transshipment Control Workshop, held at Valletta, Malta, in May 2004.

Through the Department of State, BIS reported to the United Nations on its implementation of the United Nations Security Council (UNSC) Resolution 1540, which calls on all states to establish, develop, review and maintain appropriate national export controls over items to prevent WMD proliferation, to control activities such as servicing, transporting, and financing of activities related to WMD proliferation, to establish end-user controls, and to enforce appropriate criminal or civil penalties for violations of such export control laws and regulations.

### *Internal Control Program Activities*

The Internal Control Program (ICP), a software program created in 1998, plays an essential role in BIS's nonproliferation and export control cooperation mission. The ICP software tool provides companies with self-paced training, searchable databases, and templates for internal procedures related to their respective national export control systems. The ICP tool is widely used in Czech Republic, Hungary, Kazakhstan, Poland, Romania, Russia, and Ukraine. Through the ICP training program, BIS translates the software into the national language of each recipient country, prototypes the software in host country industries, provides instructor training, and offers a basic ICP workshop, followed by a specialized product classification.

Poland now requires the ICP as an element of the International Organization for Standardization compliance for its exporters. Programs in Russia and Ukraine now provide instruction at the last two levels of training and product classification. BIS held five workshops in Ukraine and 12 workshops in Russia in Fiscal Year 2004. Full scale deployment began in Estonia, Slovakia, and Slovenia.

In addition, BIS initiated development of an ICP for Latvia, Lithuania, Moldova, and Turkey.

### *Product Identification Tool*

The Product Identification Tool (PIT), developed in Fiscal Year 2003 to combat proliferation of weapons of mass destruction (WMD), provides computer-based self-paced training and case studies on screening shipments at the border. The PIT significantly enhances cooperation between licensing and enforcement officials in intercepting unlawful traffic of WMD-related items. The PIT has an extensive database of controlled items, including photographs, that allows officials in the field to match items to information contained in export control documents. During Fiscal Year 2004, BIS initiated PIT customization projects in Estonia, Latvia, Lithuania, and Moldova and

conducted 13 PIT deployment workshops in Russia and Ukraine.

### ***Transshipment Country Export Control Initiative***

Fiscal Year 2004 marked the third year of the Commerce Department's Transshipment Country Export Control Initiative (TECI). TECI is intended to strengthen the export control systems of global transshipment hubs, while improving compliance with relevant rules by companies engaged in trade in those hubs. The two-prong TECI approach promotes government-to-government dialogue and government-to-industry cooperation in key transshipment countries regarding transshipment export controls and secure trade. In Fiscal Year 2004, BIS increased its TECI government-to-government cooperation with seven of the major transshipment hubs: Hong Kong, Malta, Panama, Singapore, Taiwan, Thailand, and the United Arab Emirates.

BIS also developed a set of Best Practices for Industry as part of TECI, with input from BIS's Regulations and Procedures Technical Advisory Committee. The Best Practices are targeted to assist U.S. exporters, foreign re-exporters of U.S. products, and trade facilitators, including freight forwarders, cargo carriers, and customs brokers. The Best Practices can be found on the BIS Web site at [www.bis.doc.gov](http://www.bis.doc.gov).

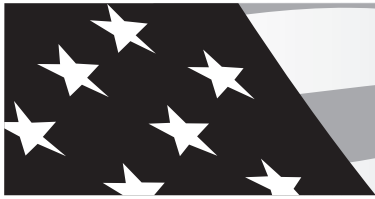
### ***Export Control Cooperation Cooperation with Panama***

BIS worked with Panamanian Government officials in Fiscal Year 2004 on a variety of export controls issues. The Legal Technical Forum, held in December 2003 in Washington, D.C., enabled Panamanian legal experts to build on prior discussions to develop the appropriate legal authorities for Panama to control the export, transit, transshipment, and re-export of dual-use items. In January 2004, BIS provided materials for a draft export control legal framework to Panama and, in July 2004, met with Panamanian officials to finalize draft export control legal authority.

### **Goals For Fiscal Year 2005**

In Fiscal Year 2005, BIS will continue to devise and implement global strategies for adherence to nonproliferation objectives. It will continue to work closely with transshipment hubs to strengthen their controls, while also developing other programs to increase international adherence to United Nations Security Council Resolution 1540. BIS plans to maintain the number of technical exchanges to be conducted during Fiscal Year 2005 at 85, and expects to verify remediation of approximately 45 deficiencies in cooperating countries' national export control system infrastructure capabilities.





## Chapter 7: U.S. Defense Industrial and Technological Base Programs and Advocacy Activities

### Mission

The Bureau of Industry and Security (BIS) is the focal point within the Department of Commerce for issues related to the strength and competitiveness of the U.S. defense industrial and technological base. In partnership with U.S. industry and other U.S. Government agencies, BIS implements programs to ensure that the U.S. defense industrial and technological base has the capacity and capability to meet current and future national security, economic security, and homeland security requirements. BIS supports the U.S. defense industrial and technological base by securing timely delivery of products for approved national defense, emergency preparedness, and critical infrastructure programs; by conducting analyses of industry sectors important to U.S. national defense; and by promoting U.S. defense exports.

### Accomplishments in Fiscal Year 2004

#### Supporting National Defense Requirements and Homeland Security

##### *Administering the Defense Priorities and Allocations System*

BIS's administration of the Defense Priorities and Allocations System (DPAS) continues to play an important role in support of the deployment of U.S. and allied forces in Iraq and Afghanistan, and in other critical national defense and homeland security requirements.

In Fiscal Year 2004, BIS worked closely with U.S. industry and the Department of Defense to utilize the DPAS to expedite the supply of defense articles needed to support Operation Iraqi Freedom and Operation Enduring Free-



Deputy Secretary of Commerce Ted Kassinger addresses the Bureau of Industry and Security's Update Conference.

dom in Afghanistan. A noteworthy example is the use of DPAS directives to ensure the delivery of special ballistic material to produce lightweight body armor for the U.S. Army and the U.S. Marine Corps.

In cooperation with the Department of Homeland Security (DHS), BIS also authorized use of the DPAS to ensure the timely delivery of physical security upgrades and improvements at a key facility to support DHS continuity of operations programs. In addition, BIS was an active participant in the Administration's review of Defense Production Act-related homeland security activities and chaired an interagency sub-working group on the industrial base.

### *Monitoring the Strength of the U.S. Defense Industrial and Technological Base*

BIS completed several major initiatives in Fiscal Year 2004 to monitor the strength of the U.S. defense industrial and technological base. In May 2004, BIS completed an industrial base assessment of the U.S. air delivery (parachute) industry, completed at the request of the U.S. Army's Soldier Biological and Chemical Command, which was concerned about the ability of its suppliers to meet future demand. In addition, at the request of the U.S. Air Force, BIS completed an assessment of industry's attitudes toward collaborating with the Department of Defense on research and development. BIS also published an industrial base assessment of the U.S. theater support vessel industry, which included an economic impact assessment of a possible decision to produce these vessels in the United States, completed at the request of the U.S. Army.

During Fiscal Year 2004, BIS completed its eighth report to Congress on the impact of offsets in defense trade, covering data for 1993-2002. Offsets are mandatory compensation required by foreign governments when purchasing weapons systems and services. These reports detail the impact of offsets in defense trade on U.S. defense preparedness, industrial competitiveness, employment, and trade.

In addition to its annual offset report to Congress, BIS also completed a one-time comprehensive assessment of the impact of offsets on all tiers of the industrial base, with a particular focus on how offsets affect employment. Section 7 of the Defense Production Act Reauthorization of 2003 required this additional report.

BIS's defense industrial and technological base responsibilities extend beyond the analysis of specific industry sectors. In Fiscal Year 2004, BIS, in coordination with the Department's International Trade Administration, conducted reviews of 44 foreign acquisition cases submitted to the interagency Committee on Foreign Investment in the United States to ensure that they did not threaten U.S. national security. BIS also reviewed 67 proposed transfers of excess defense equipment to foreign governments through the Department of Defense's Excess Defense

Articles program and provided the Department of Defense with determinations as to whether these transfers would interfere with ongoing sales or marketing activities of U.S. industry.

### *Public/Private Partnerships*

#### *Supporting the U.S. Defense Industry's International Competitiveness*

BIS continues to work successfully with other U.S. Government agencies to help U.S. companies compete and win in the highly competitive international defense market. BIS advocates on behalf of U.S. companies for foreign defense contracts, and works closely with the Departments of State and Defense to engage foreign decision makers on the strategic, military, and economic issues associated with major defense procurements.

In Fiscal Year 2004, BIS successfully assisted U.S. companies in obtaining contracts to supply foreign governments with defense articles worth approximately \$7 billion. These sales help maintain the U.S. defense industrial and technological base and preserve high-technology employment. BIS also actively supported proposals by U.S. industry to satisfy the fixed wing, rotary aircraft, and engine requirements of a number of nations, with several multibillion dollar procurement decisions expected in Fiscal Year 2005.

BIS also worked closely with the Commerce Department's global network of commercial offices, including Export Assistance Centers across the United States, to identify defense trade opportunities for U.S. industry, to support U.S. defense trade exhibitions overseas, and to provide export counseling to U.S. industry exploring emerging market opportunities.

In February 2004, BIS also assumed the responsibility for administering the Commerce Department's NATO Security Investment Program (NSIP)-related functions. BIS now certifies U.S. companies interested in competing to supply goods and services in NSIP-funded procurements. Such certification is a requirement for American companies to qualify to compete for more than \$1 billion annually in NSIP-related procurements.

### *Supporting the U.S. Maritime Industry*

BIS has partnered with the U.S. Coast Guard to promote the export of an array of assets being developed through the U.S. Coast Guard's Integrated Deepwater System Program to modernize its fleet of ships, aircraft, sensors, communications, and logistics infrastructure. During Fiscal Year 2004, BIS participated, as part of the Deepwater team, in maritime trade meetings in Australia, Bahrain, India, New Zealand, Singapore, Sri Lanka, Thailand, and the United States to promote the sale of Deepwater assets to foreign navies, coast guards, fisheries, and environmental agencies. These sales are intended to bolster interoperability with allied and friendly nations, create business opportunities for U.S. industry at the prime and subcontractor levels, and lower unit procurement costs for the U.S. Coast Guard.

### **Goals for Fiscal Year 2005**

Building on Fiscal Year 2004's accomplishments, BIS will continue to partner with industry and other U.S. Government agencies to support the ability of the U.S. defense industrial and technological base to meet current and future national security requirements.

BIS will continue to work closely with U.S. industry and interagency partners, under the authority of the DPAS program, to support the production and delivery of industrial resources needed to meet national defense and homeland security requirements.

For the U.S. Army, BIS plans to complete and publish assessments of the munitions power sources industry. For the U.S. Navy, BIS intends to begin work on a comprehensive assessment of the cartridge-actuated and propellant-actuated device industry. BIS also expects to complete an assessment of the imaging and sensors industry, including an analysis of the economic strength of this industry as well as the effect of export controls on industry competitiveness.

BIS has already begun work on its ninth report on the impact of offsets in defense trade to the Congress. With the completion of this report, BIS will have collected and analyzed data on offset agreements and transactions from 1993-2003. In addition, President Bush has initiated the interagency committee on defense offsets; this group will initiate consultations with our trading partners in order to reduce or eliminate the negative impact of offsets on the competitiveness of U.S. industry.

BIS will continue to work with U.S. industry and interagency partners to support the sale of U.S. defense products overseas and will expand outreach initiatives to raise industry awareness of the defense trade advocacy program. BIS also will support the Department of Defense in negotiating bilateral Security of Supply agreements with Germany, Italy, the Netherlands, Norway, and Spain.