

ECCO

Sarah

Department of Energy's Export Control Coordinator's Organization

29 July 1994

Dear *ECCO* Member:

Subject: Spring 1994 *ECCO* Meeting Minutes

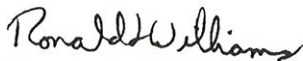
Thanks to the efforts of many *ECCO* members, the spring 1994 *ECCO* meeting was a success. As many of you know, the Department of State provided ITAR training on 27 April 1994 even after it was announced as a holiday. We owe them special thanks for providing this service.

Alan Rither and Janel Tingey of Pacific Northwest Laboratory provided the minutes of the spring meeting (enclosed). They have provided this assistance one more time, which is greatly appreciated.

During the closing business meeting it was decided that only the spring meeting was necessary to accomplish *ECCO* business. Budgetary constraints and other issues are limiting the attendance at the fall meetings. Therefore, the next meeting of *ECCO* will be held in the spring of 1995 at a date and place to be determined. Mr. Mark Jones will solicit inputs for the next conference.

This is my last official act as the *ECCO* chairperson and I thank everyone that provided assistance to me. Alan Rither, Janel Tingey, Mark Jones, Sarah Heath and Karin Rindal are just a few that helped me through this past year. Thank you all very much for making my experience as the chairperson worthwhile and rewarding. I have learned a lot and wish the new chairperson, Mark Jones, success. Again, thanks one and all for your help and support.

Sincerely



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April 27, 1994

Terry Davis - Dept of State licensing officer, Office of Defense Trade Controls

Mr. Davis gave some introductory remarks on the changing geopolitical situation, and the need for a continuing role for export controls.

The State Department controls items and technology on the U.S. Munitions List under the International Traffic in Arms Regulations - the ITAR.

The Arms Export Controls Act gives the President authority to regulate the export of defense articles. That authority, in turn, has been delegated to the Department of State, Office of Defense Trade Controls.

The licensing process centers on the answers to three questions:

What?

Where?

Who?

There is still a "proscribed" list, which conveys a presumption of denial, although many exports to Russia are being approved.

Sue Clark, Department of State EXPORT LICENSING PROCESS

Ms. Clark spoke on licensing under the ITAR. She asked which categories we use most often.

In July 1993, there was a major revision of the ITAR.

Lt. Commander Glenn Smith, Department of State TECHNICAL ASSISTANCE AGREEMENTS

Lt. Comdr. Smith covered changes in the "Agreements" section in the ITAR. Tom Denner will be taking over Commodity Jurisdictions. Major Bob Kovak will be taking over aspects. If we are not sure about the applicability of any provision, send them a "GC" (meaning General correspondence) and they will send us a determination.

The agreements do not need to be signed before sending them to the Office of Defense Trade Controls, because DTC may want to place provisos on them before they are signed. When signed, we must get the agreement back to DTC within 30 days.

Note that a permanent resident alien is considered a "U.S. person" under §120.15 (which refers to the definition in 8 USC 1324b(a)(3)) but only if that person applies for citizenship within six months of eligibility for citizenship.

In response to questions from Duane Landa, he recommended that we write a letter to William B. Robinson, Director, Office of Defense Trade Controls, describing our questions and getting a determination.

Mark Jones asked about the relationship between the ITAR and the MCTL (Militarily Critical Technologies List) maintained by the Department of Defense. Lt Commander Smith said the MCTL is consulted by DoD when they are consulted by the DTC for licensing, but DTC does not use the MCTL directly.

Mary Sweeney, Department of State COMPLIANCE

Ms. Sweeney spoke on compliance and execution of an export license.



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Terry Davis, Department of State SPECIAL ISSUES

Mr. Davis spoke about special issues such as commodity jurisdictions, the appeals process and re-export/re-transfer.

Note that the end use does not determine whether an item is under the jurisdiction of the Office of Defense Trade Controls or the Department of Commerce, because civilian items can be used for military purposes, and military items can have civilian applications.

Missile Technology Control Regime - applications for export are reviewed by MTCR, an interagency review committee, which meets every Tuesday.

Chemical and Biological Weapons (CBW) are also put through a similar review process.

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Duane Landa - Sandia National Laboratories EXPORT ISSUES, PAST & PRESENT

Duane talked about an experience he had in his Air Force Reserve assignment with the Topaz II space reactor. He was impressed with the technology of this Soviet-designed reactor. Of special interest to us was the Defense Technology Security Agency (DTSA) security plan to protect U.S. technology. One result was to caution U.S. scientists that they could give the Russians no technical data except educational materials and unlimited release information, until it had been cleared by DTSA. They were cautioned not to reveal the U.S. level of technology by gratuitous transfer of technology through questions, photographs on office walls, and social interactions. The research performed by the US scientists on the Topaz II reactor generates technical data, much of which cannot be released to the Russians without export licenses from the Office of Defense Trade Controls of the Department of State, because it involves missile and space technology. One of the biggest problems has been finding the right people to talk to.

Kenneth L. Cage, Attorney - Willian Brinks Olds Hofer Gilson & Lione INTELLECTUAL PROPERTY ISSUES, PATENTS, COPYRIGHTS, ETC.

Ken discussed the Invention Secrecy Act of 1951 to control the release of information contained in patent applications. Its predecessor came about prior to World War II. Inventions from 1933 through WWII and up to the present are still under secrecy orders. There were efforts in the early 1980's to reform the Act to streamline the process and mitigate some of the harshness of the imposition of the secrecy order. Ken discussed the Bolego case where classified information can be used as "prior art" to bar a patent. Under the Atomic Energy Act of 1954, Section 155, there is a clear statement that classified information involving nuclear technology will be considered "prior art." Any DOE-issued secrecy order is exempt from disclosure permits. In response to a question, Ken described the situation where a patent application is filed on a classified invention, and it was granted a notice of allowability but kept under a secrecy order. Then, years later, a different inventor filed a similar application. The answer is that the second invention would be placed under a secrecy order and neither would issue.

The case of In re Gertner dealt with the interaction of the export law to every invention, modification, amendment or supplement filed in a foreign country, or else the invention would be held invalid. Currently, the patent law was amended in 1988 to allow foreign filings of such changes. Remember also that the license issued by the Patent Office license covers only foreign filing of patent applications and does not automatically allow the inventor to disclose or license that invention overseas.

Ken talked about the enormous value of patents in some infringement claims such as a recent decision involving Litton Industries (\$1.1 billion) and Polaroid v. Kodak (\$900 million). Remember, also, that even if an export license is issued which allows



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foreign filing, there may still be other export controls such as the Treasury regulations that prohibit any financial transaction with countries such as Iran.

Finally, Ken suggested a clause that covers export control issues in any license agreement.

Trisha Dedik - Department of Energy NON-PROLIFERATION POLICY, DOE

She discussed the history of the Zangger Committee and the Nuclear Suppliers Group and recent developments.

Col. John Priecko, Defense Technology Security Agency (DTSA), Department of Defense COUNTER-PROLIFERATION AND EXPORT CONTROL POLICY - DOD (See handout)

Definitions of "Weapons of Mass Destruction" differ between agencies. There are so-called "new" dangers, but they are really newly-recognized dangers.

Counter-proliferation involves planning, protecting and preventing proliferation of weapons of mass destruction. A large part of our efforts should be focused on multilateral controls, the Government has recognized, or else we are just hurting ourselves. Economic considerations are now recognized as equally important as military weapons. With the emphasis on such things as the Enhanced Proliferation Control Initiative (EPCI), the burden is increasingly on U.S. industry to know the end use and the end user. There is a new general license, GLX, published April 4, 1994, in the Federal Register, which is available for civilian end use to civilian end users, in Country Groups W, Y and Z such as Russia and the People's Republic of China. He emphasized that DoD is eager to have more contact with industry in order to develop a better understanding of different perspectives.

Elizabeth Johnson, Contracts Department Attorney - Martin-Marietta Energy Systems, Oak Ridge National Laboratory FOREIGN VISITORS AT DOE LABORATORY CASE HISTORY

Ms. Johnson discussed her responsibilities as the export compliance officer at ORNL. She discussed problems with foreign visitors on assignment at the lab. Currently there are over 1000 foreign visitors annually at the lab, half of whom are from "Sensitive Countries" defined by DOE. She now requires a statement from the host of each foreign visitor and assignee requiring the person to certify on DOE form IA-473 that information will be transferred under whichever general or validated export license.

If the host cannot certify that the exchange of information will take place under General License GTDA, then the host must discuss the situation with her. However there is no export control review performed by their authorized derivative classifiers. She said that if the laboratory has the "intent and freedom to publish" the information, then it can be exported under GTDA. Otherwise they have to call her. Therefore, every foreign visit must have an export license. Furthermore, they might have proprietary information considerations if the information is not going to be published.

April 29, 1994

Arvid Lundy, Program Manager for Export Control - Los Alamos National Laboratory ROLE OF DOE LABORATORIES IN EXPORT CONTROL

Arvid first addressed the DOE role, which stems from the Atomic Energy Act, the Non Proliferation Treaty of 1978, the Nuclear Suppliers Group Agreements, and the September 1993 Presidential Decision Directive (PDD-13). PDD-13 provides the framework for current U.S. non-proliferation efforts. It calls for export controls that are uniformly applied by all supplier nations



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with U.S. controls that are "harmonized" with these multilateral controls. Unilateral U.S. controls will be applied only in cases of overriding U.S. national security and foreign policy interests or to lead the international community. PDD-13 goes on to say that export controls should not inhibit legitimate exports that play a key role in American economic strength.

The interagency process for export control involves State, Commerce, Defense, Energy, ACDA, NRC, DOT (Customs) and the Intelligence Community. ACDA usually has the lead in identifying exports that could aid in proliferation. State would have the lead in preparation of a "demarche" to persuade the exporting nation to disallow such an export. DOE plays a major role in determining what commodities and technologies should be export controlled. DOE is supported by the National Laboratories.

LLNL has the lead for Country Evaluations with support from Oak Ridge. Oak Ridge has the lead in the nuclear materials areas, PNL in reactor technologies and LANL in explosives.

DOE, with support from LANL, has pursued a major effort to apply computer tools (databases) to improve the efficiency and effectiveness of U.S. and international export controls. A database (SRD/WNINTEL/NC) called Proliferation Information Network System (PINS) has been implemented at DOE laboratories with the server at LANL. An unclassified database called the NSG Information Sharing System (NISS) is being implemented internationally to share licensing and denial information and to keep historical information to end uses/users. LANL maintains this system also.

It was noted that access to PINS is tightly controlled and is limited to the international affairs or intelligence organizations within each of the National Laboratories. It has not been used to assist each laboratory in its own export licensing activities.

Dan Cook - Department of Commerce BXA AND EAR UPDATES

Dan informed us of three significant developments in the past year.

- 1.) The U.S. has implemented the Nuclear Suppliers Group Agreement by publishing in the Federal Register, March 9, 1994, pages 10958 -10984. There was some controversy over what the U.S. would control that was not on the NSG list. Basically, the U.S. list conforms to the NSG list with only very limited unilateral U.S. controls
- 2.) The first crack has been made in the U.S. embargo of exports to the South African military and police. Some such exports can now be licensed.
- 3.) A new general license "GLX" has been created to allow exports to country groups QWY (former Soviet Union) and Peoples Republic of China, but only for civil uses and civil end users.

Dan mentioned that controls on the export of dual use commodities/technologies have been so relaxed (decontrolled) that the Commerce staff that used to do this is now looking for work to do. He expects to see some reorganizing and farming out of these people. Commerce processed about 25,000 validated licenses in 1993 but does not expect they will process 10,000 in 1994. He also mentioned a major Commerce project to rewrite the Export Regulations and have them in final form by the end of 1994.

Ron Hauber - NRC (with support from Elaine Hemby) NRC'S EXPORT CONTROL RESPONSIBILITIES

NRC's export control regulations are set forth in 10 CFR part 110, most recently revised in March 1993. NRC licenses exports and imports of nuclear materials, components and facilities and oversees the IAEA safeguards at U.S. licensed facilities. The NRC offers both general and specific licenses. The General licenses are self administered. Specific Licenses, applied for are on NRC Form 7. While there are no fees charged by NRC for licenses issues to other federal agencies, the fees charged other organizations are substantial and are scaled from a couple hundred dollars for a license only requiring staff actions to \$8300 for a license requiring a full NRC Commission/US Government review. There were 125 specific licenses issued in 1993, 60 of which were to export LEU. Most of the rest were for the export of reactor components and tritium. There are few NRC controls on imports, mostly on spent or irradiated reactor fuel.



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Ron also reviewed a few of the interesting import and export cases, one of which was the import of the TOPAZ reactors addressed earlier by Duane Landa of SNL.

Ron said that Betty Wright is the point of contact for NRC export licenses.

Karen Rindal - Ariadne International

WHAT'S HAPPENING IN EXPORT CONTROL

Karen said that export control is at a critical crossroads that will determine the course of export controls for the next 10 to 15 years. But, "the more things change, the more complicated they get." The press focus is on what is being decontrolled, but makes little mention of the parts of the laws that make export licensing more complex. There are about two changes a week in export controls published in the federal register. Many of these stem from the use of sanctions and most favored nation status in U.S. foreign policy.

Karen talked about the replacement of COCOM. Without a replacement, each country would be on its own, setting import/export policies unilaterally. This would put U.S. industry at a disadvantage. There are issues in a follow on to COCOM. Should Russia be a member of the follow on regime? But, Russia sells uranium to Iran!

Karen talked about legislation in Congress. The Coalition for Fundamental Reform of the Export Control System has drafted legislation, introduced by Congressmen Roth and Overstar. This legislation would require national security export controls to be multilateral, would call for stricter controls on a smaller list of strategic commodities, would limit the use of unilateral export controls, would establish clearer responsibility and accountability for the decision making and would improve clarity and transparency of export controls. The Administration introduced competing reform legislation that gives the President greater flexibility in using unilateral export controls for a broader range of foreign policy objectives.

Karen presented her "Bibliography of Recent and Upcoming Documents on Export Control & Proliferation Policy" recommending, in particular, the following:

- 1.) The Congressional Office of Technology Assessment report, "Proliferation of Weapons of Mass Destruction: Assessing the Risks" OTA-ISA-559, August 1993 S/N 052-003-013355 \$7.00 Telephone (202) 783-3238
- 2.) The International Committee of the National Security Industrial Association report, "Hidden Impediments to Defense Trade" September 1993, Telephone (202)775-1440
- 3.) Congressional Research Service, Library of Congress Report, "Export Controls: Background and Issues" January 1993, 94-30 ECN, by Glennon J. Harrison

Karen mentioned an increase in the NIST budget for Technology Transfer, up 80% in 1994 over 1993.

Call 1-800-DUAL USE for information on funded projects.

Call 1-800-ATP FUND for information on submitting proposals.

BUSINESS MEETING:

During the business meeting the following actions were taken:

- Mark Jones was officially recognized as the new *ECCO* chairperson
- The membership decided that only one meeting per year was necessary. The spring meeting will continue to be held in the Washington D.C. area.

The meeting was concluded and everyone departed.